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UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK

IN RE: . Case No. 05-17923 (PCB)  
DELTA AIR LINES, INC., et al, . New York, New York  
Debtors. . Wednesday, November 30, 2005  
2:05 p.m.  
.....

TRANSCRIPT OF HEARING  
BEFORE THE HONORABLE PRUDENCE C. BEATTY  
UNITED STATES BANKRUPTCY JUDGE

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(Appearances continued)

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1 (Proceedings commence at 2:05 p.m.)

2 THE COURT: There's more of you today. You may be  
3 seated.

4 **DANIEL M. KASPER, DEBTORS' WITNESS, RESUMES STAND**

5 THE COURT: Mr. Kasper.

6 THE WITNESS: Yes, Your Honor.

7 THE COURT: I read your second declaration, and I did  
8 not think that it adequately -- I thought that it dumped on  
9 ALPA's objection inappropriately.

10 My understanding of what ALPA has said is that, in  
11 late 1994, that it was advised that the company needed to  
12 effect savings, and that it asked ALPA for \$1 billion in  
13 savings, which ALPA provided, and that ALPA was told with those  
14 savings, the company would make it probably be able to stay out  
15 of Chapter 11.

16 And what I understand ALPA to be saying is simply  
17 that, as a result of the unexpectedly high fuel costs, that for  
18 the year 2005, Delta was not able to make its budget simply  
19 because of the unexpected fuel costs. It was not talking about  
20 2004, it was not talking about 2003; it was talking about 2005,  
21 when the debtor had said that it could make its budget with a  
22 billion dollars in concessions from ALPA, but that it wasn't  
23 able to because of the fuel problem.

24 I don't think that ALPA has said that the low-cost  
25 carriers have absolutely no effect on Delta's business, I don't

1 think they have denied those realities. I think they're simply  
2 saying that in 2005, the debtor had supposedly made all of the  
3 cuts it needed in order to be able to survive.

4 Now am I wrong about that?

5 MR. SIMON: No, Your Honor, you are not.

6 THE COURT: Okay. I mean, you aren't saying, oh,  
7 well, these things didn't have anything to do with anything.  
8 You just say it didn't have anything to do with what was  
9 supposed to happen in 2005.

10 MR. SIMON: That is correct.

11 MR. KASPER: Your Honor, there were some statements in  
12 the objection that I think could be read another way.

13 THE COURT: Well, I'm -- you know -- you know  
14 something? If I read everything that everybody wrote exactly  
15 the way they wrote it and didn't bother to use any brains, boy,  
16 every one of you guys would be in trouble.

17 (Laughter.)

18 THE COURT: I mean, sometimes the things you people  
19 write are just amazing.

20 But I don't understand them to have said, oh, low-cost  
21 carriers have nothing to do with your business, or any of those  
22 things. They were saying, 2005, you have said your problem was  
23 fuel.

24 Now I believe that that's what I was told when this  
25 case was filed, basically in the first day or so, that that's

1 what your problem was in 2005.

2 **DIRECT EXAMINATION**

3 **BY MR. SPAN: (Continued)**

4 Q Mr. Kasper, without casting aspersions or calling names or  
5 anything else, can you explain who -- react or explain the  
6 relationship of the fuel costs and the other aspects of the  
7 instruments of conveyance (sic).

8 A Well, yes, certainly I can.

9 First of all, Your Honor, I was simply attempting to  
10 respond to some points that were made, or at least I thought  
11 ALPA was attempting to make in its --

12 THE COURT: I mean, if they were saying that low-cost  
13 carriers are not in any way a factor in this business, then I  
14 think they would have to be somehow blind, deaf, and dumb, and  
15 I don't think they are.

16 THE WITNESS: And, Your Honor, I would agree they did  
17 not say that. What I did respond to, and which I believe they  
18 did say, was that the -- this kind of low-cost carrier  
19 competition was not significantly different today than it was  
20 in the late 1990s; and, as I explained yesterday, I don't  
21 believe that's true.

22 THE COURT: Well, but we really -- the issue is: What  
23 are we going to do today, and what happened in 2005 to make  
24 what was planned to be a successful year not a successful year?  
25 And that was fuel.

1 THE WITNESS: Well, I think fuel was certainly one  
2 factor. I would remind you it was not the only factor.

3 THE COURT: Well, it was the factor that the debtor  
4 had decided would be -- was the factor because that's what it  
5 said to me.

6 MR. HUEBNER: Your Honor?

7 THE COURT: Yeah?

8 MR. HUEBNER: Can I jump in for a minute? Because I  
9 was your speaker on that day.

10 THE COURT: No.

11 MR. HUEBNER: And in fact, last night, I reread the  
12 first-day transcript because I was very concerned that your  
13 question about DFW not go unanswered. And, Your Honor, if I  
14 can be so bold, I actually said that there was a multi-part set  
15 of factors that have brought us here, and I actually went  
16 through them one after the other. One was the rise of low-cost  
17 carriers; the second was fuel; the third was the fundamental  
18 change in the industry pricing due to internet. Remember, we  
19 had an exchange about --

20 THE COURT: I mean, but I'm not saying that you didn't  
21 say that those other things were factors. I think that all  
22 we're saying is that, for 2005, there wasn't a change in those  
23 factors --

24 MR. HUEBNER: And, Your Honor --

25 THE COURT: -- as far as I can tell. It was the

1 change in fuel that was the major problem.

2 MR. HUEBNER: Well, I think to some extent, actually,  
3 there was a change in each of those factors during 2005. One  
4 of the problems that all legacy carriers are facing, and the  
5 reason, coincidentally, both Northwest and Delta have to file  
6 at the end of 2005, was because --

7 THE COURT: On the same day.

8 MR. HUEBNER: Within fifteen minutes, Your Honor. In  
9 fact, people kept asking me, are you the guy from Northwest.  
10 Was because --

11 THE COURT: And you said, sure, do you want me to give  
12 you a statement.

13 (Laughter.)

14 MR. HUEBNER: We wish we were Delta.

15 Your Honor, unfortunately, all of those factors  
16 intensified to the detriment of Delta all throughout 2005. LCC  
17 market penetration and pricing ability continued to grow more  
18 severe. Other legacy carriers like USAir, that virtually  
19 everybody thought would be long gone by now, pulled off an  
20 amazing coup merger and has turned into a very ferocious new  
21 competitor for us with a tremendous overlap with many of our  
22 routes. United and USAir both morphed throughout 2005, et  
23 cetera, et cetera.

24 Fuel was a very material factor, make no mistake, Your  
25 Honor. But unfortunately, we have been buffeted by multiple

1 currents and multiple winds, of which fuel is unfortunately but  
2 one.

3 MR. SIMON: Your Honor, Mr. Huebner's testimony is not  
4 consistent with CFO Bastian's testimony, who was quite explicit  
5 in saying that, in '05, the company met its revenue enhancement  
6 target; in fact, exceeded its revenue enhancement target, and  
7 was right on target with its labor cost reduction, and the only  
8 change in its business plan performance for '05 was fuel oil.

9 MR. HUEBNER: Meeting your business plan that you had  
10 set a year earlier is not the same thing as being able to be a  
11 long-term survival.

12 THE COURT: Nobody was talking about long-term  
13 survival.

14 MR. HUEBNER: Exactly. And that's what mister --

15 THE COURT: People were talking about meeting a  
16 business plan --

17 MR. HUEBNER: That's right, Your Honor.

18 THE COURT: -- and that --

19 MR. HUEBNER: Yes. Mr. Simon is right, but wrong.  
20 Mr. Bastian testified quite correctly that we met the plan we  
21 set in 2004 --

22 THE COURT: Except for the fact that you didn't have  
23 the right fuel prices.

24 MR. HUEBNER: -- but for fuel. That's different than  
25 saying, at the end of 2005, everything was rosey, but for fuel,

1 which is --

2 THE COURT: No, I don't think that -- I don't think  
3 Mr. Simon is saying that, I don't think that's what I  
4 understood. I'm simply saying I don't appreciate people filing  
5 papers that say other people, you know, were writing  
6 misleading, you know, whatever kind of papers. I mean, I  
7 really think that you have to go very cautiously before you say  
8 that somebody else deliberately and intentionally wrote  
9 something that they knew or ought to have known was wrong, and  
10 that you ought to consider that perhaps you have misread what  
11 they wrote, rather than that -- you know, I mean, I think  
12 that's more my problem, which is that Mr. Kasper went a little  
13 too far in characterizing what he considered to be the, you  
14 know, errors, mischaracterizations, and conclusions without  
15 economic basis, or that are unsupported by data, you know. And  
16 they're not what ALPA was doing, and they're not what ALPA was  
17 saying. I mean:

18 "In particular, ALPA erroneously argues the cause of  
19 Delta's bankruptcy was high fuel prices."

20 Now that, in fact, was stated to be a reason why Delta  
21 actually had to file, rather than was able to make it on the  
22 outside. But then it goes on to say:

23 "Competition from low-cost carriers has not been a  
24 significant contributing factor to Delta's bankruptcy."

25 I mean, it depends again on what are you talking

1 about. Are you talking about the fact that Delta said that it  
2 could stay out of bankruptcy if it could meet its 2005 plan.

3 So I don't really think that this adequately deals  
4 with what it was ALPA was saying or what ALPA was putting out  
5 about Delta's business. I mean, if you can stay out in 2005,  
6 you know, the implication is that you could stay out in 2006.  
7 I mean, I don't think we did the reorganization in late 2004  
8 and 2005, just so we could delay the filing until 2006.

9 MR. HUEBNER: Your Honor, that is certainly true, and  
10 that I think is the critical point. When we did the  
11 reorganization in late 2004, which included ALPA's very  
12 substantial contract concession, the company believed that if  
13 things went its way, we would not have to file, hopefully ever.

14 I think the only small point that I'm trying to make  
15 is that the reason we ended up in Chapter 11 -- and the 2005  
16 plan, to be clear, showed a multi-hundred-million-dollar loss.  
17 It's not like anyone ever thought we would be anywhere near  
18 breaking even in 2005. The hope was that, with the 2004  
19 restructuring in place, we would have enough time to absorb  
20 those massive losses, but then turn it around and become  
21 profitable.

22 During 2005, we were buffeted, as all legacy carriers  
23 were, by a very horrible combination of factors, of which fuel  
24 was the leader. But the other ones, all of which --

25 THE COURT: All I'm saying is that I think ALPA is

1 talking about one thing, and you're talking about another  
2 thing. And I think that when you cast aspersions on someone  
3 because they're talking about one thing, and you're talking  
4 about another thing, and you don't notice they're not talking  
5 about the same thing you are, that --

6 MR. HUEBNER: Your Honor --

7 THE COURT: -- I take less -- I take less weight to  
8 that objection.

9 MR. HUEBNER: To the extent that ALPA agrees with us,  
10 and I assume that they do, that the rise of low-cost carriers,  
11 their market penetration, internet pricing, fuel, and lots of  
12 other things and why we're here, I agree to that extent there's  
13 --

14 THE COURT: Well, I mean, how in the world could you  
15 deny that there were low-cost carriers? I mean, you'd have to  
16 be blind, deaf, and dumb to say they weren't low-cost carriers.  
17 You would have to be blind, deaf, and dumb to ignore the  
18 purchase of tickets on the internet. I mean, and I -- I'm  
19 saying, I mean, these are things where it's beyond obvious that  
20 somebody would recognize that they are factors of some sort. I  
21 mean, it might even be that buying tickets on the internet was  
22 better for you, it's a no-cost proposition. I don't know.

23 MR. HUEBNER: I think --

24 THE COURT: Sell more tickets because it's easier to  
25 buy a ticket.

1 MR. HUEBNER: And you have lower booking fees when you  
2 sell them on your own website.

3 Your Honor, I think, at least in part, we certainly  
4 agree.

5 THE COURT: Yeah, okay.

6 MR. SPAN: Shall we proceed, Your Honor?

7 THE COURT: You may.

8 BY MR. SPAN:

9 Q Mr. Kasper, I just want to end the point that we were  
10 discussing when we broke yesterday with respect to the use of  
11 regional jets, and we talked about regional partners or DCI or  
12 Delta Connection all being kind of interchangeable terms.

13 Just as Delta has these type of regional partners, do other  
14 legacy airlines, also?

15 A Yes, all of the other legacy airlines have similar regional  
16 partner arrangements.

17 Q Okay. But let's take an example of United. What does  
18 United call its regional partners?

19 A United has a series of regional partners, three or four  
20 anyway, and they are called "United Express." They fly with  
21 the United logo, they have a sign on the side of the plane that  
22 says "Operated for United by" whoever the carrier is that's  
23 operating it; it's disclosed in the computer reservations and  
24 any printed advertising materials.

25 Q And are the United Express pilots who fly those aircraft

1 paid on a different scale than the --

2 THE COURT: Wait, wait, wait. I'm sorry. You just  
3 made a jump that I don't understand. I understand that in  
4 Delta's case, the pilots on the Delta Connection, with the  
5 exception of the one company that Delta owns, are not Delta  
6 pilots. Okay? So now you're just suddenly telling me these  
7 pilots on the United regional partners are, quote, "United  
8 pilots."

9 MR. SPAN: No, I'm sorry.

10 THE COURT: That is what you said.

11 MR. SPAN: I'm sorry, Your Honor. I may have dropped  
12 a word there. Let me step back and ask a preliminary question.

13 BY MR. SPAN:

14 Q Who flies the --

15 THE COURT: Pilots.

16 MR. SPAN: I knew I was going to be --

17 (Laughter.)

18 THE WITNESS: I'm not going there again.

19 BY MR. SPAN:

20 Q Who employs the pilots who fly the United Express regional  
21 aircraft?

22 A They are -- the pilots on those regional carriers are  
23 employed by the regional carriers: Mesa, Air Wisconsin, and  
24 SkyWest.

25 Q And so they are not employed by United.

1 A That is correct.

2 THE COURT: And who owns those companies?

3 THE WITNESS: I believe each of those companies is  
4 independently owned. They're not owned by United.

5 BY MR. SPAN:

6 Q And for example, SkyWest you mentioned is one of the United  
7 regional partners. Is that correct?

8 A That is correct.

9 Q And SkyWest is also a Delta regional partner.

10 A It is; and, likewise, Mesa flies for several legacy  
11 carriers.

12 THE COURT: So it has a group of planes all painted  
13 different colors?

14 THE WITNESS: That is correct.

15 THE COURT: And tries not to use the wrong color.

16 (Laughter.)

17 THE WITNESS: I'm told they've been able to manage  
18 that. But they do have, in effect, largely separate fleets for  
19 each airline they fly for.

20 THE COURT: Okay.

21 BY MR. SPAN:

22 Q Now the -- let's take Mesa or SkyWest. Those employees or  
23 pilots, when you're flying United Express regional aircraft,  
24 are they paid at a different scale and different rate than  
25 United's main line pilots?

1 A Yes, they are, they're paid at a substantially lower rate.

2 Q Now what about Northwest; does Northwest also have a  
3 similar arrangement?

4 A Yes. Northwest has a similar arrangement. Their two  
5 primary regional carrier affiliates are Mesaba and Pinnacle.

6 Q And what does Northwest call its connections?

7 A I believe it's called "Northwest Airlink."

8 THE COURT: Okay. And those companies are not owned  
9 by Northwest?

10 THE WITNESS: Mesaba is -- I -- Northwest has an  
11 equity interest, a less-than-majority interest in Pinnacle. It  
12 did, at one time, have a similar interest in Mesaba; I believe  
13 it still does, maybe in the twenty percent range. But they're  
14 majority-owned by outside investors.

15 THE COURT: Okay. So it's a little more tricky to  
16 talk about, you know, who employs the pilots. I mean, they're  
17 employed by the company, but the company has got a significant  
18 ownership interest of its parent.

19 THE WITNESS: Your Honor, there's one other example,  
20 just to get them all out, and maybe save us some time.  
21 American Airlines, which is the largest airline in the country;  
22 indeed, the world, also has a regional affiliate called  
23 "American Eagle." American Eagle is entirely owned by American  
24 Airlines; it's a wholly owned subsidiary. Eagle's pilots are  
25 represented by a separate bargaining unit of ALPA, and so it's

1 quite clear they are employed by American Eagle, the company --  
2 that bargaining unit has been recognized as the bargaining unit  
3 for their employees.

4 MR. SIMON: Just for full disclosure, Your Honor, the  
5 pilots of American Airlines itself are not --

6 THE COURT: Also have a bargaining unit.

7 MR. SIMON: But not of ALPA's. That is a non-ALPA  
8 union so that --

9 THE COURT: Well, is --

10 MR. SIMON: -- in American and American Eagle, you  
11 have the American Airline pilots employed by American Airlines  
12 are represented by the Allied Pilots Association, an  
13 independent company union, and the pilots employed by American  
14 Eagle are represented by the Airline Pilots Association.

15 THE WITNESS: That is correct.

16 THE COURT: Okay. Now explain to me again who  
17 represents the American --

18 MR. SIMON: It's an organization called the Allied  
19 Pilots Association. It is an independent, unaffiliated company  
20 union.

21 THE COURT: Meaning it only --

22 MR. SIMON: It only represents the pilots of American  
23 Airlines.

24 THE COURT: Okay.

25 MR. SIMON: It represents no other employees or pilots

1 anywhere.

2 THE WITNESS: And it's not affiliated with a national  
3 organization like ALPA.

4 MR. SIMON: It's not affiliated -- that's correct.  
5 Not affiliated with a national organization, it's not  
6 affiliated with the AFL-CIO or with the new organization. It  
7 is what we used to know back in the good old days as a "company  
8 union."

9 THE WITNESS: I would take one difference, Mr. Simon,  
10 with your description of that, and that is the implication what  
11 I took from your description and that is that, as I understand  
12 it, ALPA locals represent the members of those unions. So  
13 Northwest's ALPA union represents only Northwest pilots. Each  
14 local represents --

15 THE COURT: I'm sorry. I just missed what you were  
16 talking about. As I understand it, in -- when we're talking  
17 about American, and then American, the pilots are represented  
18 by the Allied Pilots Association.

19 THE WITNESS: At American Airlines, the main line,  
20 that's correct.

21 THE COURT: And that they only represent the American  
22 pilots, and that it's what's called a "company union."

23 MR. SIMON: As opposed to unions that represent  
24 employees at different employers. This is a single employer  
25 and the employees of that single employer are represented only

1 by that union. That's the only representational function they  
2 perform.

3 THE COURT: Okay. But then, American Eagle, I have  
4 ALPA --

5 MR. SIMON: That is correct.

6 THE COURT: -- with a separate bargaining unit based  
7 on the fact that the American Eagle pilots are sufficiently  
8 alike in their duties and whatever that they can be represented  
9 in the same union.

10 MR. SIMON: And I think, Your Honor, it's important to  
11 distinguish between corporate structure and ownership and  
12 separate airline status.

13 The FAA certifies an airline as an independent,  
14 stand-alone airline. And for each of the airlines we've been  
15 talking about, whatever their corporate structure, they are all  
16 independent, certified FAA airlines. That holds true for  
17 American Airlines on the one hand; American Eagle is a separate  
18 airline. Delta is a separate airline, Comair and the other  
19 Delta Connection airlines are each separate airlines. That's  
20 true at Northwest, and it's true literally everywhere we speak,  
21 with the exception of Sun and with the exception at United of  
22 Ted, which are not separately certificated airlines. They are,  
23 in effect, functional divisions or subsidiaries of their  
24 respective parents.

25 THE WITNESS: And neither of those airlines, Sun or

1 Ted, operates regional jet aircraft.

2 MR. SIMON: That is correct. I just want to get a --  
3 we've heard a bunch of names.

4 THE COURT: We're not talking -- you know, let's stop  
5 fixing information that we're not talking about. We were  
6 talking about something that had some usefulness to my  
7 understanding something about, you know, why and how pilots of  
8 regional airlines get paid and/or their payment -- their prices  
9 are fixed.

10 MR. SPAN: That's why we raised the subject, Your  
11 Honor.

12 BY MR. SPAN:

13 Q So the, if we can continue on that, the pilots at American  
14 -- the pilots at American Eagle who are represented by the  
15 separate ALPA bargaining unit, are they paid on a lower scale  
16 than the main line American pilots?

17 A Yes, they are.

18 Q And is that scale lower than the main line pilots' scale?

19 A Yes.

20 THE COURT: That's what he just said.

21 THE WITNESS: I think we just said that.

22 MR. SPAN: Oh, I'm sorry. Sometimes I don't know what  
23 I've said myself, Your Honor. Sorry.

24 BY MR. SPAN:

25 Q We haven't mentioned Continental, but would it be a similar

1 description for --

2 A Continental, U.S. Airways similar.

3 THE COURT: But does Continental have any regional  
4 airlines? I don't know.

5 THE WITNESS: Yes, Your Honor, they do.

6 THE COURT: I mean, here's what I'm saying. Why do we  
7 keep picking up new airlines instead of staying with the four  
8 or five we already have? Because if we're not going to go  
9 through each and every one of whether or not they have this or  
10 that or the other thing, you're leaving me with the impression  
11 that you're trying to tell me that Continental's main planes  
12 are being flown, you know, at regional airline prices.

13 THE WITNESS: No, Your Honor. That was not what I  
14 intended to testify. Perhaps I can --

15 MR. SPAN: Your Honor, I apologize. I was trying to  
16 shortcut by just --

17 THE COURT: Yeah. But, unless they have regional  
18 airlines, what you're talking about doesn't make any  
19 difference.

20 MR. SPAN: Okay.

21 BY MR. SPAN:

22 Q Does Continental have regional partners?

23 A Yes.

24 Q And do you know what is their name for the Continental  
25 regional partners?

1 A Well, the carrier -- their primarily regional affiliate is  
2 a carrier called Express One and I believe it flies under the  
3 name of Continental Express.

4 Q And is that Express One a separate company from  
5 Continental?

6 A It is.

7 Q And are the Express One aircraft --

8 THE COURT: Okay. And is it owned by Continental?

9 THE WITNESS: It was originally owned by Continental.  
10 It was -- its stock was sold to the public about two years ago.

11 THE COURT: Oh, how wonderful.

12 THE WITNESS: So I -- Continental -- I'm not sure.  
13 Continental originally retained an equity stake, a less-than-  
14 majority equity stake. I'm not sure they still hold it.

15 THE COURT: There was an absolutely full page in  
16 yesterday's New York Times of original offerings that were  
17 somehow being -- that was in litigation with respect to  
18 hundreds of them. Anyway --

19 BY MR. SPAN:

20 Q Now why doesn't Delta simply buy the regional jets,  
21 seventy-seater, seventy-nine seater regional jets, and use them  
22 with the main line and have them flown by main line Delta  
23 flights?

24 A The reason that Delta doesn't do that I think is the same  
25 reason that no other legacy airline does it, and that is the

1 economics of regional jets don't work at main line rates. They  
2 don't generate. They're much smaller airplanes. They generate  
3 much less revenue. They simply can't support the higher labor  
4 costs. And that's not just pilot labor cost. In many cases  
5 that includes -- extends to flight attendants, sometimes  
6 mechanics, the whole labor structure, cost structure of  
7 regional airlines.

8 THE COURT: I hope the mechanics are just as good.

9 THE WITNESS: The mechanics are just as good. They're  
10 sometimes paid less than the mechanics at main line airlines.

11 I should point -- I guess as Mr. Simon has pointed out  
12 on several occasions, like pilots, machinists are also licensed  
13 by the Federal Aviation Administration. Mechanics have to have  
14 a license and suitable training to qualify in order to even  
15 work on a commercial airplane.

16 THE COURT: Okay. But if you don't own the regional  
17 carriers, then why are you buying planes for them?

18 MR. SPAN: I don't think we are, Your Honor.

19 THE COURT: Oh. Well, that's what I thought I heard  
20 him say.

21 MR. SPAN: I think the -- referring to the scope  
22 clause proposal here, it's to allow -- the current contract --

23 THE COURT: No. I just -- I thought -- I just thought  
24 you said that we were making a suggestion that Delta could buy  
25 these seventy-seat planes.

1 MR. SPAN: I was asking why could they not do that or  
2 why would they do that. And I think the answer was it wouldn't  
3 make economic sense to do it.

4 THE WITNESS: Typically, the regional carrier, when it  
5 has a contract with a major carrier, is able to go to the  
6 aircraft manufacturers and to finance the aircraft on that  
7 basis.

8 THE COURT: What do you mean, "on that basis"?

9 THE WITNESS: Once --

10 THE COURT: I mean, it uses the main carriers credit?

11 THE WITNESS: It uses the fact that it has a contract  
12 with the main carrier, a main line carrier, to provide some  
13 assurance, if you will, to the aircraft manufacturer.

14 THE COURT: Of what?

15 THE WITNESS: That it will be able -- that it will  
16 have sufficient revenues to pay for the aircraft that it is  
17 ordering from or attempting to order from it.

18 THE COURT: Okay.

19 BY MR. SPAN:

20 Q Does the use of regional partners take away flying from  
21 Delta main line pilots?

22 A No, I do not believe it does.

23 Q Why not?

24 A Well, it doesn't take it away. First of all, I believe it  
25 actually contributes to main line flying for reasons I

1 explained yesterday, which is that it brings feed traffic into  
2 the hubs which is where it goes onto mainline flying so that  
3 it's actually putting passengers and building up loads for  
4 mainline flights that make it attractive, economically  
5 attractive, to use large airplanes.

6 Secondly, if you look at the markets, we're talking here  
7 about seventy or seventy-nine-seat aircraft. I said yesterday  
8 that the smallest aircraft in the Delta fleet will soon be, I  
9 think I said 150, I think it's probably 142 seats when they  
10 retire some of the old 737s. There -- seventy-nine seats is a  
11 long way from 142 seats and it simply doesn't make sense to  
12 operate 140-seat aircraft in a market that is only big enough  
13 to support a seventy or seventy-nine-seat aircraft. The  
14 economics just don't work.

15 Q Now I want to move to a different subject very briefly, and  
16 that's fuel. There was some discussion in the colloquy between  
17 Mr. Simon and Mr. Bastian about the possibility that fuel costs  
18 might come down in 2006.

19 If the fuel costs decline in 2006, will that mean a  
20 windfall for Delta?

21 A Well, first of all, let me say that if you look at the --  
22 there's no indication that fuel prices are going to be down  
23 significantly in 2006. So I think that's an unlikely  
24 hypothesis.

25 But if it did happen, I think the answer is it would not be

1 an unmixed blessing for Delta. And the reason for that is that  
2 one of the things that high fuel prices have done over the  
3 course of the last year is have significantly restrained low-  
4 cost carriers who had, up until that point, been cutting prices  
5 and putting tremendous pressure on the revenues of Delta and  
6 other airlines.

7 History in the airline industry suggests that when fuel  
8 prices go down, low-cost carriers will once again start taking  
9 advantage of their lower operating cost, excluding fuel, and  
10 start cutting prices so that it's not reasonable, in my view,  
11 to assume that prices will stay where they are at sixty-dollar-  
12 a-barrel oil if, in fact, oil falls to \$30 a barrel.

13 Q You mean the ticket prices?

14 A Ticket prices. Sorry, be very clear. Ticket prices, in my  
15 view, if oil prices fall to forty or thirty or \$50, I believe  
16 you will see downward pressure fairly rapidly on prices as  
17 well, ticket prices as well.

18 Q So whatever gain there may be on the --

19 THE COURT: I don't think you can say, "whatever  
20 gain." There is obviously a point at which, you know, it comes  
21 out and it's what you thought it was before we had this big  
22 balloon. And that price doesn't necessarily give the regional  
23 carriers an advantage that would allow them to really push hard  
24 on the ticket prices.

25 It's if you then went below that price that you'd

1 start to get this feeding as I understand it.

2 THE WITNESS: Your Honor, I was actually referring to  
3 low-cost carriers, not regional carriers.

4 THE COURT: I'm sorry. I meant low-cost carriers.  
5 I'm sorry.

6 I don't understand. If we went back to more of what  
7 we had at say mid 2004, that that would be something that was  
8 going to have this kind of effect.

9 THE WITNESS: Your Honor, I think if -- any time I  
10 think fuel prices go down from where they are it would give the  
11 low-cost carriers who have generally remained profitable  
12 throughout this period, that means that they can -- gives them  
13 more flexibility to cut prices.

14 As fuel prices have gotten up in the fifty-five to  
15 sixty-dollar-a-barrel range, the low-cost carriers have been  
16 much more cautious in their pricing and that has --

17 THE COURT: Forty-two quarts or forty-two gallons?

18 THE WITNESS: Forty-two gallons.

19 THE COURT: Okay.

20 BY MR. SPAN:

21 Q Okay. Let's then move on to another point.

22 You've testified over the last -- yesterday and today about  
23 the challenges facing Delta. Is Delta unique in that regard?

24 A No, it is not. If you look back between 1997 and 2000,  
25 U.S. Airlines as a group lost about \$27 billion. From 2001 to

1 2004 -- I'm sorry, from 1997 to 2000, they made \$27 billion.  
2 From 2001 to 2004, they lost \$27 billion.

3 So Delta is not the only airline. And most of the vast  
4 bulk of --

5 THE COURT: Delta is just the last.

6 THE WITNESS: Well, Delta is --

7 THE COURT: I mean, the only one that's left is  
8 American.

9 THE WITNESS: And American, as Your Honor may recall -  
10 -

11 THE COURT: Is the biggest airline in the world.

12 THE WITNESS: It also had a bankruptcy --

13 THE COURT: Except for, presumably, Aeroflight which  
14 nobody will fly anymore.

15 THE WITNESS: It's no longer the largest in the world.  
16 American is.

17 But Your Honor may recall reading back in 2000 --  
18 early 2003, that American literally had a bankruptcy petition  
19 ready to be filed when they reached agreement with their labor  
20 groups, including their pilots. So they were -- American  
21 narrowly avoided bankruptcy. United --

22 THE COURT: Okay. But what you're talking about then  
23 is solely a union problem that they had. You're talking about  
24 here is something that Delta seems to have problems that are  
25 beyond that.

1 THE WITNESS: Your Honor, I would not say that  
2 American's problems, nor the problems of any other legacy  
3 carrier, were solely union problems.

4 THE COURT: No. But I mean they, obviously, felt that  
5 if they solved that particular problem they didn't need to  
6 file.

7 THE WITNESS: They did and -- well, they, in addition  
8 to -- they also were able to negotiate some out-of-court  
9 restructuring of their debts, not nearly as extensively.

10 THE COURT: So that they can manage to keep the gold  
11 star on their forehead and not have to say, I actually went  
12 through the Chapter 11 process.

13 THE WITNESS: That's correct, although I think in --  
14 so that the record is completely clear on that, I think they  
15 were able to do that in large part because their primary  
16 competitor, United, had filed, and it was quite clear that if  
17 no agreement was reached, American would have to file.

18 THE COURT: So if that happened, then you would have  
19 been the last one.

20 THE WITNESS: That Delta would have been the last one?

21 THE COURT: Yeah.

22 THE WITNESS: Yes. And it -- but I think it was --  
23 Your Honor, my own view is that each of the legacy carriers was  
24 in a position that it needed to make substantial changes in  
25 order to survive.

1 THE COURT: I'm not saying that. I'm just saying, you  
2 would have managed to hold on the longest.

3 THE WITNESS: That may have been a dubious  
4 distinction, but it probably would have been true.

5 THE COURT: Yeah, well, if American had gone, then --

6 THE WITNESS: Continental, Your Honor, which is --

7 THE COURT: I know. But Continental went through  
8 twice.

9 THE WITNESS: They've done it twice previously, quite  
10 correct.

11 THE COURT: And you want to know something?  
12 Continental is the reason that Delaware became a big spot for  
13 filing because Continental's first case was filed in Texas.  
14 And, apparently, they did not want to file -- refile in Texas.  
15 And someone of their attorneys re-looked at the venue statute  
16 and realized that they could file at the domicile of the  
17 corporation. And Continental was a Delaware corporation, and  
18 they filed in Delaware. And that is what started the run on  
19 Delaware.

20 THE WITNESS: I was not aware of that.

21 THE COURT: Well, I know all sorts of random little  
22 pieces of information, some of which you people think are  
23 interesting and some of which you don't. But I mean --

24 THE WITNESS: I saved the one about shirts. I thought  
25 that was useful, Your Honor.

1 BY MR. SPAN:

2 Q So the -- and we've talked -- there's been reference to  
3 "the problem" that faces the legacy carriers. Is the problem  
4 put simply an imbalance in the cost structure versus the  
5 ability to obtain revenue through ticket prices?

6 A In a nutshell, yes. Their costs are too -- their costs  
7 were too high to support the existing or probable future  
8 revenues that they could generate. And, therefore, the only  
9 way, and I emphasize the only way, that they could survive was  
10 to do substantial restructuring, including substantial cost  
11 reductions.

12 Q Now do you believe -- you know, we've heard fairly  
13 pessimistic talk. But do you believe Delta can survive?

14 A I do believe Delta can survive. But I believe it can only  
15 do so if it cuts its costs to get them within what they can  
16 reasonable expect to generate in revenue.

17 And let me emphasize I believe Delta is in grave financial  
18 danger, that its survival is at stake if it is unable to get  
19 its costs in line. This is a very competitive industry. And  
20 if Delta were to go away, the market would be filled up. We  
21 have 600 planes on order from low-cost carriers. People would  
22 remember Delta, but the gap would be filled in the market  
23 quickly, in my view.

24 THE COURT: Just like we remember PanAm.

25 THE WITNESS: Very similar, Your Honor. Hopefully not

1 at the end. Hopefully, Delta will have a long --

2 THE COURT: Do you realize that the name was sold, not  
3 just once, but twice? And the person that bought it the third  
4 time went to jail for misusing it?

5 THE WITNESS: That -- I was not aware of that, Your  
6 Honor. I was approached, many years ago, by one of the  
7 potential buyers, who was convinced that buying PanAm's name  
8 and logo would be a gold mine. It told him that that might  
9 have been the case many years ago, but I thought by the time he  
10 proposed it --

11 THE COURT: I think it might have possibly even been  
12 that person, but it was the third bankruptcy and it does  
13 suggest to me that any one of these airlines that goes out of  
14 business, the name should not be sold and it should be buried  
15 for a legacy.

16 THE WITNESS: I think the evidence supports that and I  
17 think -- and I hope that Delta will be able to make the changes  
18 required, so that the Delta name and logo can go on for many  
19 years.

20 THE COURT: See now, I disagree with you, but that's -  
21 - I don't disagree with you that I'd like to see the carrier go  
22 on for many years. I think the carrier would be better to  
23 emerge under the name Song and use the Song logo and get people  
24 away from thinking about Delta, the airline that failed.

25 THE WITNESS: An interesting thought, Your Honor.

1 MR. SPAN: Your Honor, we did not fail. We came to  
2 you to help us.

3 THE COURT: No, no. I mean, you know, it's a -- that  
4 should be somebody else completely.

5 MR. SPAN: Well, one of the powers -- and again, just  
6 because the press and others take things like this a little  
7 seriously and the jocular tone may not carry through, the Delta  
8 brand name and the Delta franchise and the Delta international  
9 alliances, in fact, have tremendous value and tremendous power.  
10 Frankly, the concept of a Delta pilot has tremendous value and  
11 tremendous power and so, I think it is important to know  
12 that --

13 THE COURT: Well, I'm not -- I'm not trying to, in any  
14 -- I guess what I'm really trying to say is I don't think that  
15 Delta should throw it away any time soon because it may well  
16 have uses that are such that it shouldn't be thrown away.

17 MR. SPAN: And the fact that, frankly, more than half  
18 of the nation's airline capacity is in Chapter 11 means that  
19 the flying public, in fact, understands that financial  
20 reorganization for an airline that is a legacy airline is  
21 critical and is not failure.

22 THE COURT: Well, then you have to look at USAir or  
23 Continental having had to do it twice.

24 MR. SPAN: We don't intend to, Your Honor. Let me  
25 make that very clear.

1 THE COURT: It's kind of like New York, you know, the  
2 New York joke. It's so nice, we had to name it twice.

3 MR. SPAN: Your Honor, I just have a now, just a  
4 couple of housekeeping details. We would like to mark, as  
5 Exhibit 87, the first Kasper declaration as Exhibit 88 and the  
6 second Kasper declaration and then the series of slides that  
7 Mr. Kasper has been referring to would be Exhibit 89.

8 THE COURT: Okay.

9 MR. SPAN: And the -- the last page of Exhibit 89,  
10 Page 27, is a corrected or revised chart to a chart that was in  
11 the second declaration of Mr. Kasper's exhibit -- it was  
12 Exhibit 2 in that declaration and it's just been updated to  
13 reflect figures from a more recent business plan. And that  
14 would be the only change to the second declaration.

15 THE COURT: Okay.

16 THE WITNESS: Mr. Span, I should note that the figure  
17 7.1 should replace 6.6 in Paragraph 6 of that declaration, as  
18 well, which is where --

19 THE COURT: Wait. What paragraph?

20 THE WITNESS: Paragraph 6, Your Honor. At the --

21 THE COURT: Of what?

22 THE WITNESS: Of my second declaration.

23 MR. SPAN: Of the second declaration, at the top of --

24 THE WITNESS: At Page 7, the bottom of Page 7, the top  
25 of --

1 THE COURT: Okay. We should have what number?

2 THE WITNESS: 7.1 percent, instead of 6.6.

3 THE COURT: Okay.

4 THE WITNESS: And then again, at the top of the next  
5 page, that same figure is repeated.

6 THE COURT: Okay.

7 THE WITNESS: And that should be 7.1 percent, also.

8 THE COURT: Okay.

9 THE WITNESS: And that, Your Honor, corresponds to the  
10 7.1 percent line shown in the revised Exhibit 2, attached to or  
11 is that --

12 THE COURT: Which is the very last page --

13 THE WITNESS: Page of Exhibit --

14 THE COURT: Which is Page --

15 MR. SPAN: Page 27.

16 THE WITNESS: 27.

17 THE COURT: 27. Okay. Okay.

18 MR. SPAN: And with that, Your Honor, we would offer  
19 Exhibits 87, 88 and 89 into evidence.

20 THE COURT: Any objection?

21 MR. SIMON: No objection.

22 THE COURT: Well, they will be admitted into evidence.

23 (Exhibits 87, 88 and 89 received in evidence.)

24 MR. SPAN: And I have no further questions.

25 THE COURT: Okay. Now, is that one of those pilots'

1 bags you got there? Is your stuff in it besides -- beside your  
2 seat?

3 MR. SPAN: You mean that?

4 THE COURT: Yeah.

5 MR. SPAN: No. That's a Paul Hastings bag.

6 (Counsel confer.)

7 THE COURT: No, okay. I just thought it looked like  
8 one of those pilots' carry-on, all of my maps to know where I'm  
9 supposed to go.

10 (Laughter.)

11 MR. SIMON: I believe it is not, Your Honor. I  
12 believe it is the economy version of a litigation bag that our  
13 firm goes out and gives to its old and creaky lawyers.

14 THE COURT: Okay. I just wanted to know.

15 MR. SIMON: At least that's what --

16 **CROSS-EXAMINATION**

17 **BY MR. SIMON:**

18 Q Mr. Kasper, I'm trying to understand what you had to say  
19 about fuel expense and if I understand what you've said and  
20 what Mr. Bastian said the other day, it was that because fuel  
21 went up in cost, Delta, in effect, went into bankruptcy, but  
22 now, the worst thing that could happen is for fuel to go down  
23 because it would create competition, so Delta is in a position  
24 where it gets hurt if the price goes up and it gets hurt if the  
25 price goes down.

1           Is that answer somehow shaped by the fact that the price of  
2 fuel oil today is \$1.56, which is forty-four cents less than  
3 Delta's projection for the month of December, which would  
4 create a savings of about \$90 million in their business plan  
5 for the month of December alone and if carried over with the  
6 forward curve into 2006, would represent a savings of \$425  
7 million for the year, which swamps the entire cost of what  
8 Delta is demanding from ALPA in this hearing. So do we now  
9 have another twist to the Delta story? Fuel oil caused us to  
10 be here when it went up and it's going to create a problem for  
11 us when it goes down?

12           MR. SPAN: Objection, Your Honor. How many question  
13 would the witness --

14           THE COURT: Oh, please.

15           MR. SIMON: The question, Your Honor --

16           THE COURT: Please. I think that the question --

17           MR. SIMON: The question is withdrawn.

18           THE COURT: I think the question is perfectly  
19 intelligible. Is up or down really -- I mean, you know, it  
20 goes up, you've got a problem. If it goes down, I've got a  
21 problem.

22 A I think the short answer, Your Honor and Mr. Simon, is that  
23 Delta has a problem and it is a problem that exceeds fuel. The  
24 problem -- the primary problem Delta has, in my view, is that  
25 its costs exceed its ability to generate revenues. Fuel was

1 clearly a contributing factor because it -- to the decision to  
2 file bankruptcy because Delta was running out of cash and  
3 people think airlines run on fuel, and they do. But even more  
4 important than fuel to an airline is cash; and, without cash,  
5 the airline closes down. So fuel --

6 THE COURT: No. Companies run on cash. Airlines run  
7 on cash. Cash is a kind of fuel.

8 A Cash is an important fuel for airlines, absolutely. So I  
9 did not testify that oil prices were not important in the  
10 bankruptcy. They were. They were not the sole factor. There  
11 were a number of other factors. The biggest underlying  
12 problem, in my view, is that Delta's cost structure is still  
13 not yet at the point it needs to be profitable and survive in  
14 this industry.

15 Q You've gone well beyond my question, but thank you. Now  
16 let's move on to some other questions.

17 When were you first engaged by Delta in connection with  
18 this matter?

19 A In connection with this current proceeding?

20 Q Well, then -- answer that question first and then, if  
21 there's another instance in which were retained, we'll talk  
22 about that.

23 When were you first retained in connection with the Chapter  
24 11 proceeding?

25 A I was probably retained sometime in mid-year this year.

1 Q And had you been retained by Delta in connection with the  
2 development of its '04 transformation plan, the one that  
3 produced the five-billion-dollar plan and the billion dollar in  
4 pilot cuts?

5 A No, but I had been retained by Delta in contemplation of a  
6 possible bankruptcy filing at that time.

7 Q And when was that?

8 A That would have been in early or probably mid-2004. I'm  
9 going to say late spring, early summer.

10 Q And did you advise Delta at that point, or consult with  
11 them regarding the development of that '04 transformation plan,  
12 the five-billion-dollar plan?

13 A I did not.

14 Q And what function did you perform for Delta in connection  
15 with your mid '04 retention?

16 A I was primarily retained to analyze the economics and  
17 competitive conditions in the airline industry and in general,  
18 and Delta's relative position and prospects in that, in  
19 particular.

20 Q And were you consulted specifically with regard to labor  
21 costs in mid 2004?

22 A Well, part of my task was to look at all of Delta's costs,  
23 including its labor cost.

24 Q And were you consulted in connection with the course of  
25 collective bargaining that ensued between Delta and the Airline

1 Pilots Association, which produced Letter of Agreement 46, the  
2 one-billion-dollar concessionary agreement?

3 A I was not.

4 Q So that you do not know the framework within which that  
5 agreement was negotiated?

6 A Only what I've heard testified and read in the proceedings.

7 Q Do you know whether or not, in the negotiation of that  
8 agreement in 2004, the question of LCC penetration in the  
9 market was discussed between the parties?

10 A I do not.

11 Q Do you know whether the yield issue was addressed between  
12 the parties?

13 A I do not.

14 Q So that you were, in effect, not part of that series of  
15 discussions or the planning for those discussions, vis a vis  
16 the pilot labor cost reductions?

17 A That is correct.

18 Q On Page 3, Paragraph 3 of your second declaration, if you  
19 have that --

20 A Yes, I have that in front of me.

21 Q This is, to some extent, what was addressed by the Court  
22 earlier and Your Honor, I will try not to duplicate that  
23 conversation.

24 THE COURT: No. Well, you're welcome to. I mean, you  
25 know, I wasn't trying to take over your job. I would just

1 happen to have a real distaste for papers that I find --

2 MR. SIMON: I'm going to try not to deal with that  
3 piece of it, Your Honor. I'm going to try and lay the  
4 foundation for an argument that will build, as we go through  
5 this witness and others, as to the significance of the '04,  
6 billion-dollar cuts, what they comprehended, what they  
7 anticipated and what '05 brought to bear and I will not try and  
8 testify it. I'm just trying to --

9 THE COURT: No, I -- as I say, I really was bringing  
10 up something that's more --

11 MR. SIMON: I understand.

12 THE COURT: -- a bug of mine, which is --

13 MR. SIMON: I understand it was a -- and it was a fine  
14 lead in and I thank Your Honor for the effort. But what --

15 THE COURT: Oh, don't expect me to litigate it for  
16 you.

17 MR. SIMON: Thank you, Your Honor. I might, if you  
18 made the offer to sit down and permit that to occur.

19 BY MR. SIMON:

20 Q You say that ALPA, in its motion and its objections in the  
21 motion, ignores key factors, other than fuel, which you  
22 testified to earlier, which contributed to the company's  
23 bankruptcy and you identify a number of them. You say LCC  
24 competition, 9/11/01, SARS, the war in Iraq, a shift in travel  
25 purchase plans by business travelers, increased price

1 transparency and access to low fares through the Internet.

2 Have I fairly characterized your statement there?

3 A Yes, I would say so.

4 THE COURT: I don't know anybody that hasn't flown  
5 because of SARS. It really would effect only flights that went  
6 from the west coast to the far east.

7 THE WITNESS: Your Honor, there was, in fact, a very  
8 perceptible effect on demand in the market, more heavily in the  
9 Asian/Pacific markets, but --

10 THE COURT: But, I mean, it's not an effect on the  
11 domestic market?

12 THE WITNESS: Most of the effect was international,  
13 but it actually affected traffic in both international markets,  
14 as well. So it was one --

15 THE COURT: You mean the European international  
16 market?

17 THE WITNESS: Correct.

18 THE COURT: But it's an international market?

19 THE WITNESS: Primarily. Primarily. There was --  
20 when --

21 THE COURT: Oh, I know. We know people who have never  
22 flown and can think that --

23 THE WITNESS: Right.

24 THE COURT: -- you know, the plane is going to fall  
25 out of the sky. I thought that a helicopter was going to fall

1 out of the sky because I didn't think that planes could stay in  
2 the sky unless they move forward, but it obviously is not the  
3 case.

4 THE WITNESS: There are some fixed-wing pilots, I'm  
5 told, who believe the same thing.

6 BY MR. SIMON:

7 Q And just to make sure I understood your earlier answer, you  
8 don't know whether or not, and if so, to what extent, those  
9 factors, which we've just gone through, had any role in the  
10 collective bargaining negotiations between ALPA and Delta,  
11 leading to the '04 billion-dollar agreement. Is that correct?

12 A I would be surprised if they didn't, but I don't know. I  
13 wasn't involved.

14 Q All right. I guess what I'd like to do is go through some  
15 of your slides to establish, well, the testimony will establish  
16 what it establishes.

17 You talk about the penetration of LCC competition. Is it  
18 fair to say that the major portion of that penetration occurred  
19 between the late nineties and '04 and that while there may have  
20 been some penetration since, both Delta and the pilots were  
21 well aware, by mid 2004, of the penetration of LCC markets?

22 A I would say both sides were certainly well aware of that  
23 and clearly, over a period of six, seven years, more -- there  
24 was a greater increase than in the year 2004 to 2005. However,  
25 there was one significant difference in 2004 to 2005. As you

1 may recall, in late 2004, there was considerable concern or  
2 speculation or perhaps wishful thinking on some people's parts  
3 that US Airways would not emerge from bankruptcy and that was  
4 viewed widely, I believe, as a very positive prospect for Delta  
5 and other legacy carriers, because if U.S. Airways went out of  
6 business, that would, at least for some period of time, reduce  
7 competition and permit them to raise prices. That obviously  
8 didn't happen. U.S. Airways emerged, merging with America West  
9 and has become, by most accounts, a much more viable carrier  
10 and one with very low costs. And that's so -- while that  
11 doesn't show up hugely in the difference between 2004 and 2005,  
12 I certainly would expect it to have an impact going forward.

13 Q With respect to yield, would you turn to Page 11 of your  
14 first declaration and Exhibit 5 in that?

15 A Yes, I have that.

16 Q And that would indicate that the decline in yield for the  
17 airline prices was significant between '78 and '04 and that  
18 both Delta and ALPA was well aware of the pressure on yield by  
19 mid 2004?

20 A I think that's quite likely, yes. I'm sure it is in the  
21 case of Delta.

22 Q And looking at Page 18 of your first declaration, another  
23 chart which indicates, again, LCC penetration in the  
24 marketplace and the significance of that between 1990 and 2004,  
25 representing a shift from 24.5 percent in 1990 to 75.1 percent

1 in 2004 and a slight bump-up to 75.2 percent in the first  
2 quarter of '05, would indicate, again, that both parties in mid  
3 '04 were well aware of the LCC penetration issue?

4 A I would agree with that and just point out that I also  
5 submitted an exhibit that showed the impact in '05 of including  
6 US Airways and it goes up to about eighty-three percent, but I  
7 agree, they were aware of that.

8 Q And on Page 19, Exhibit 12, there is yet further evidence  
9 of that?

10 A That the parties were aware of it?

11 Q Yeah.

12 A Yes. I would agree.

13 Q And on Page 20, Exhibit 13, yet another indication?

14 A Agreed.

15 Q You also indicate that the shift in premium ticket recover,  
16 in effect, was a significant element in what you see as what  
17 Delta's fundamental problems are, correct?

18 A That was a significant negative effect on their ability to  
19 generate revenue, yes.

20 Q And if you turn to Page 12 of your declaration, your first  
21 declaration, Exhibit 22, again, we'll see that --

22 A I'm sorry. Not page --

23 Q Page -- I'm sorry. Page 32.

24 A 32. Thank you.

25 Q Exhibit 22.

1 A Yes.

2 Q We see that phenomenon, as well, tracing from 1998 to 2004,  
3 actually with a slight decrease, but not meaningful, in 2005,  
4 which suggests that the parties, in mid-2004, will come in with  
5 this phenomenon as well?

6 A I think that's quite likely.

7 THE COURT: Do you have any reason to think that the  
8 proportion of domestic tickets -- passengers using premium  
9 tickets is somehow radically different for any one of these  
10 type of carriers?

11 THE WITNESS: There are some variations among  
12 carriers, but all of the legacy carriers have experienced  
13 exactly the same phenomenon, so it's all been downhill. Some  
14 of them started at a higher place and may be a little higher,  
15 others started at a lower place and may be a little lower, but  
16 the trend line looks very much the same for all of the  
17 carriers.

18 BY MR. SIMON:

19 Q And another factor, I believe you testified, impacts on  
20 Delta's fragility going forward is the increased use of the  
21 internet for both identifying and booking and peripheral impact  
22 on ticket prices, correct?

23 A One of the factors that has made prices -- cheap prices  
24 easier to get.

25 Q And if you turn to Page 36 of your first declaration,

1 Exhibit 24, you trace the development of that from 1999 up  
2 through 2004 with increases in '95 and projected '96, but an  
3 increase from five percent in '99 to thirty-three percent in  
4 '04, again suggesting, I'm sure you would agree, that the  
5 parties were aware of the growing impact of the internet on  
6 their business.

7 A I would agree.

8 Q And your Page 38, Exhibit 25 is a graphic representation,  
9 again, from '98 through '04 and '05 indicating the decline in  
10 domestic and industry yields, again suggesting that the  
11 parties, by mid-'04, were certainly aware of the yield  
12 deterioration issue.

13 A I would think so, yes.

14 Q You also indicate that of the impact of 9/11 has not fully  
15 been dissipated, that it was really a rather significant event  
16 in the airline industry and if we look at Page 40, Exhibit 27,  
17 dealing with the Gulf war and the recession and presumably the  
18 hangover from 9/11, we again would expect parties, by mid-'04,  
19 were well aware of the continuing impact of those fairly  
20 cataclysmic events.

21 A Acutely so, I suspect.

22 Q Another area I think you identified is the impact on  
23 passenger traffic of the increased security measures that one  
24 has to go through when one goes through an airport these days.  
25 Again, I think that you would acknowledge that that was

1 something the parties were well aware of in mid-2004.

2 A Certainly the pilots who have to go through security much  
3 more often than most of us are well aware of that.

4 THE COURT: Well, but this doesn't affect Delta  
5 passengers, per se. It affects everybody that has to go  
6 through these things.

7 MR. SIMON: Yes, it does, Your Honor. We're not  
8 suggesting to the contrary. In fact, I'm not suggesting that  
9 anything that the witness has testified to is not fully  
10 subscribed to by ALPA. In fact, almost everything the witness  
11 has testified to is subscribed to by ALPA.

12 THE COURT: Okay. I'm just saying that --

13 MR. SIMON: We do not dispute --

14 THE COURT: I was more suggesting that the witness  
15 wasn't suggesting that this was somehow a Delta phenomenon.

16 THE WITNESS: And actually, Your Honor, it is  
17 certainly a phenomenon that's industry-wide, but because Delta  
18 carried such a high proportion of its traffic in short-haul  
19 markets, it actually had a somewhat disproportional effect on  
20 Delta because we know that traffic in the zero-to-thousand-mile  
21 range, which is where Delta carries more traffic than many  
22 other airlines, was more adversely affected than the long-haul  
23 traffic, so it actually --

24 THE COURT: People still have only two feet.

25 THE WITNESS: They do, but apparently people that have

1 an option have chosen -- in the shorter hauls have chosen other  
2 modes of transportation more frequently than those flying long  
3 hauls.

4 THE COURT: That doesn't make any sense to me except  
5 from a money point of view.

6 THE WITNESS: Your Honor, I don't want to belabor the  
7 point, but it's called the "hassle factor" and it's for  
8 business travelers, for example, who try to do day trips, the  
9 uncertainty and the added time of going through security has  
10 clearly caused many of them either not to travel as often, or  
11 to use Amtrak if it's available or drive, and that clearly  
12 shows up in a steep decline in travel between zero and 500  
13 miles since 2001.

14 THE COURT: You also don't have to worry about  
15 terrorists.

16 THE WITNESS: Some of us who drive in Massachusetts  
17 think terrorists on four wheels may be more dangerous.

18 BY MR. SIMON:

19 Q And just to close the circle, and the hassle factor was  
20 also well known to the parties by mid-2004?

21 A I agree.

22 Q Now again, just to bring it all together, so that the  
23 factors other than fuel, which you've identified in your  
24 declarations and today in your testimony as factors impacting  
25 upon Delta's future viability and ability to survive, were

1 factors that were in the marketplace before 2004, in most cases  
2 for a number of years before 2004, and were certainly  
3 understood by each of the parties as they entered into the  
4 negotiations in 2004?

5 A I would think they were well aware of those. The one thing  
6 I would again emphasize that the parties may not have been  
7 aware of, in fact, could not have been aware of in late 2004  
8 was the fact that U.S. Airways would successfully emerge from  
9 bankruptcy.

10 Q Understood.

11 THE COURT: Why do you think they couldn't predict it?

12 THE WITNESS: Your Honor, at the time it was widely  
13 expected among people following this closely that they would  
14 not be able to obtain financing to emerge, and so there was  
15 widespread expectation and speculation that they would fail to  
16 emerge.

17 BY MR. SIMON:

18 Q And did you share that view?

19 A I had said at the time I thought it was a 50/50  
20 proposition.

21 THE COURT: See, now I was -- go in the second time  
22 around, you're smarter, more likely to make things work. Never  
23 can be sure.

24 The other thing about financing is it really puts a  
25 premium on the investment bankers to put their selling book

1 together and depending on how well and how carefully that's put  
2 together is really a factor in whether or not they can find  
3 somebody to finance it.

4 THE WITNESS: Your Honor, you're right. I guess I  
5 shortcutted the answer a little bit. One reason why there was  
6 such skepticism that they would be able to emerge and obtain  
7 financing is because there was considerable doubt that they  
8 would be able to obtain either the agreements, requisite  
9 agreements with their unions to get their wage cost down, and  
10 as Your Honor is probably aware, they were able to do so in an  
11 1113 proceeding by agreement.

12 THE COURT: Where is USAir headquartered?

13 THE WITNESS: Well, they're currently -- the former  
14 company was headquartered --

15 THE COURT: I don't mean the company, I mean the --

16 THE WITNESS: Hub?

17 THE COURT: Yeah.

18 THE WITNESS: They have hubs in -- the old company had  
19 hubs in Philadelphia and Charlotte, were their primary hubs.  
20 With America West, when they merged they added a hub in Phoenix  
21 and they used to have a hub in Pittsburgh which they had closed  
22 down in the bankruptcy process.

23 THE COURT: Now what I want to know, though, is, how  
24 many people are going to go to Philadelphia to fly an  
25 international flight to save \$100?

1 THE WITNESS: Quite a few.

2 THE COURT: Must be because I wouldn't -- it wouldn't  
3 be worth it to me.

4 THE WITNESS: Your Honor's views of Philadelphia sound  
5 like those of W.C. Fields. There may be --

6 THE COURT: Well, I'll tell you, I mean, my parents  
7 grew up down there. I've been there many times and, you know,  
8 I can understand spending the money to get down there, but when  
9 you get off the plane and you're that tired and you still have  
10 to get home from Philadelphia --

11 MR. SIMON: As the witness suggested, second prize is  
12 two flights to Philadelphia.

13 BY MR. SIMON:

14 Q Do you believe that the demise or the expected demise of  
15 U.S. Airways was a factor in the 2004 negotiations between  
16 Delta and ALPA?

17 A Well, as I said, I wasn't involved and I don't know, but my  
18 educated guess would be that people were aware that there was  
19 substantial doubt and that if USAir were to fail, that would  
20 provide a lift to Delta, which is in substantial competition  
21 with USAir, particularly up and down the east coast, but  
22 increasingly in international markets as well.

23 Q But you'll acknowledge that that's speculation?

24 A On my part, yes. An educated guess, I would say.

25 Q At Page 52 in your first declaration, addressing -- going

1 back to fuel for a moment if you would, at the end of Paragraph  
2 73 at the top of the page you state that prices in the futures  
3 markets indicate that crude oil prices are expected to remain  
4 at or near \$65 a barrel until the end of this year and above  
5 \$60 a barrel through the end of 2011. Is that still your  
6 opinion?

7 A Well, I believe I actually submitted an additional exhibit  
8 which showed that, based on the fuel futures market as of  
9 November 21st rather than September 11th, the futures prices  
10 had gone down somewhat, so --

11 Q Somewhat or somewhat significantly?

12 A Well, we can look at the exhibit. They were certainly down  
13 somewhat.

14 THE COURT: It was my understanding there was some  
15 government interference or potential interference with fuel  
16 prices when they were up as high as they were with the  
17 suggestion that they were past the point of open and fair  
18 competition?

19 THE WITNESS: I'm not sure --

20 MR. SIMON: Your Honor, I know periodically they would  
21 rattle the -- that they would release some oil from the  
22 reserves in the Caribbean. I don't believe they ever did that  
23 and I don't believe there was any official suggestion there  
24 would, I think it was a carefully controlled lead, but I don't  
25 know of any other -- I may be unaware, but I just don't know of

1 any other governmental action. I think there was some  
2 jawboning, and there may have been action that I'm simply not  
3 aware of.

4 THE COURT: I think it was more in the area of what  
5 they call "jawboning" as saying, well, you know, I believe in  
6 free-market prices. But are these really free-market prices?

7 MR. SIMON: You've just jogged my memory. There were  
8 some state actions taken alleging, in effect, gouging, and I  
9 believe there were some actions taken in some localities  
10 against price gouging or what was perceived as price-gouging.  
11 Again, I think it was some of the bully pulpit effect and there  
12 began to be some moderation of some of the gas prices at the  
13 pump. I think those activities, if I'm correct -- and I don't  
14 mean to testify, but I'm recalling news reports at the time  
15 that Your Honor's referring to.

16 THE COURT: No, but I guess all I'm saying is, if my  
17 recollection is correct, it would have some dampening effect on  
18 future prices for crude oil simply because of the desire to --  
19 oil reducers to avoid anybody having those kinds of inquiries  
20 made after what happened in California in the electricity  
21 situation.

22 THE WITNESS: Unfortunately, Your Honor, most of the  
23 oil producers these days are beyond the jurisdiction of U.S.  
24 authorities, since they involve Middle Eastern governments.

25 THE COURT: Well, they may be, but that still doesn't

1 mean you have to let it in.

2 BY MR. SIMON:

3 Q Could we -- you referred to an additional exhibit. Is that

4 --

5 THE COURT: That's the last page of --

6 A Page 25.

7 Q Page 25?

8 A Correct. Of Exhibit 89. Sorry.

9 Q And there you're projecting prices for '06, for example,

10 between 57.40 and \$60 a barrel.

11 Are you aware of the fact that the Delta business plan  
12 projects fuel oil at \$1.73 a gallon, consisting of \$60 a barrel  
13 and -- someone help me -- fourteen, fifteen-dollar crack spread  
14 and \$1.73 a gallon is the Delta business plan --

15 THE COURT: Oh, I can't make the difference between --  
16 can't get the difference between the gallon --

17 MR. SIMON: Okay. I need a moment. There is a -- if  
18 Your Honor --

19 THE COURT: The barrel price plus the cracking price  
20 and then --

21 MR. SIMON: Right. Divided by forty-two.

22 THE COURT: I know it is, but I can't do it that  
23 quickly.

24 MR. SIMON: Okay.

25 THE COURT: So you're telling me that it would be

1 what? And what would be the gallon price and what would be the  
2 barrel price? Or maybe it doesn't matter.

3 MR. SIMON: Well, it does matter, Your Honor.

4 THE WITNESS: Perhaps, Your Honor, I could help with  
5 that. First of all, Mr. Simon, these are not my projections  
6 these are prices from the futures market as you described.

7 In addition, Your Honor, to the price for crude oil,  
8 which is shown here, say December of '06, \$60, there is also  
9 what's called the "crack spread" which is what the refiners  
10 charge to refine it.

11 THE COURT: Yeah, and that went up in September and  
12 October.

13 THE WITNESS: Correct. And, Your Honor, if in --

14 THE COURT: Which was what, thirteen or \$14 a barrel?

15 THE WITNESS: It actually went up much higher than  
16 that. I believe it was up --

17 THE COURT: No, but I mean I think it had been  
18 thirteen or \$14 a barrel.

19 THE WITNESS: But it went up to about twenty-five, if  
20 memory serves me correctly.

21 BY MR. SIMON:

22 Q And today it's \$9.22?

23 A I'm going to disagree with you on that.

24 THE COURT: What a surprise.

25 THE WITNESS: No, I'm going to -- I'm sorry. I have

1 to disagree as a factual matter because, in the -- anticipating  
2 perhaps I would have a question on this, I actually looked at  
3 the crack spread. There is no futures curve for jet fuel.

4 There is --

5 THE COURT: I know that because there's not enough jet  
6 fuel to have a futures curve for --

7 THE WITNESS: Correct.

8 THE COURT: -- so we take something else that we think  
9 will move in the same way and we use that in lieu of the one  
10 that we're really looking for. And we chose to use gasoline  
11 rather than corn or soybeans because it was more likely to move  
12 in the same direction.

13 BY MR. SIMON:

14 Q Mr. Kasper, before you disagree with me, what I said was  
15 the crack price today.

16 A Today. I'm sorry.

17 Q Didn't talk about future market --

18 A I don't know what it is today. I do know what it is in the  
19 futures market.

20 Q I suggest to you that the crack price today is \$9.22, as  
21 opposed to the twelve-and-a-half dollars it was last week and  
22 two weeks ago and the difference, with all due respect, is  
23 significant, is it not?

24 A It is, but I think I need to clarify --

25 THE COURT: The crack number is per gallon or per

1 barrel?

2 MR. SIMON: Per barrel, Your Honor.

3 THE WITNESS: Per barrel, Your Honor.

4 MR. SIMON: So what you do is you take the price per  
5 barrel of fuel oil --

6 THE COURT: And you add the crack number to it.

7 MR. SIMON: That's correct.

8 THE WITNESS: And just so -- since I've introduced the  
9 future crack spread, I would like to make it clear that the  
10 future crack spread is between twelve and \$15 a barrel,  
11 depending on what month going out through 2007.

12 THE COURT: It's just not anywhere near what it is  
13 that it is --

14 MR. SIMON: That is correct.

15 THE COURT: -- inadvertently went up to -- what a  
16 surprise -- during a period of excessive shortage.

17 THE WITNESS: That is correct. It's now back in the  
18 twelve-to-fifteen-dollar range, going forward.

19 THE COURT: Just surprising how quickly they got those  
20 factories back online.

21 BY MR. SIMON:

22 Q Well, Mr. Kasper, do you know what the price of fuel is  
23 today? If I suggested to you it was \$1.56, would you accept  
24 that as an assumption for the next question?

25 A I would.

1 Q And if the company's business plan for '06 projects \$1.73,  
2 and if you assume for the moment that the price of fuel today,  
3 \$1.56, held true through 2006, you would have a seventeen-cent  
4 differential between the business plan and the \$1.56. Just  
5 simple math.

6 A So just to be clear, what you're asking me to assume for  
7 purposes of this question is that the fuel price --

8 Q That is correct.

9 A -- would be lower than the futures market indicates it's  
10 going to be?

11 Q No, I'm not going to accept that suggestion because I think  
12 when you go back and do the homework you will see --

13 THE COURT: I don't even think it's the question you  
14 asked. You said the business plan says the price will be  
15 \$1.73. If it were to stay at \$1.56 as it is today, wouldn't  
16 that be seventeen cents less per gallon?

17 THE WITNESS: The answer is yes. As a mathematical  
18 matter, absolutely yes.

19 BY MR. SIMON:

20 Q And if we accept on the low side that each penny is worth  
21 \$25 million a year, that would produce a savings to the company  
22 between its projected business plan \$1.73 and today's \$1.56  
23 spread throughout the year of \$425 million? Mathematically  
24 correct?

25 A I will take your math on that. I don't like to do math

1 quickly on the stand.

2 Q I'm going to violate a basic rule of cross-examination and  
3 ask a question, the answer to which I don't know, simply  
4 because there's a great curiosity about it.

5 On Slide 3 of your book --

6 A In Exhibit 89?

7 Q Right. In the footnote --

8 A Yes.

9 Q -- you note that you've excluded Atlanta, Cincinnati, and  
10 Salt Lake City, which are Delta's three major hubs and where  
11 presumably they get the best pricing. Can you tell us why you  
12 exempted them?

13 A Well, I actually did it both ways and I'm happy to tell  
14 you. The reason is we were trying to focus here primarily on  
15 the northeast-to-Florida markets where Delta is in intense  
16 competition with Song -- or using Song primarily, but in  
17 intense competition with Jet Blue and, to a lesser extent,  
18 Southwest and other airlines.

19 If you put in the numbers for the hubs, what happens is the  
20 revenue premiums go up slightly, but the trend, it goes almost  
21 identical so that in the first quarter of 2005 instead of a  
22 revenue premium of 2.2 percent, the revenue premium I believe  
23 is 3.5 or 3.6 percent.

24 Q You have satisfied my prurient curiosity.

25 THE COURT: Okay. Are you finished?

1 MR. SIMON: I have a few more questions, Your Honor,  
2 but then --

3 THE COURT: Could we just take a break for ten or  
4 fifteen minutes? Thanks.

5 (Recess taken at 3:29 p.m.)

6 (Proceedings resume at 3:40 p.m.)

7 THE CLERK: Court is now in session.

8 THE COURT: You may be seated.

9 MR. SIMON: No further questions, Your Honor.

10 THE COURT: It's amazing what taking a break can do.  
11 Okay.

12 Do you have any redirect?

13 MR. SPAN: Very brief, Your Honor. I hope very brief.

14 **REDIRECT EXAMINATION**

15 **BY MR. SPAN:**

16 Q Mr. Kasper, I don't know if you've had time to do the math,  
17 but if the price of fuel in -- the price of crude oil in 2006  
18 is at the levels shown on your Page 25 and the crack spread is  
19 at projected levels, have you been able to calculate or do you  
20 know what the range -- the approximate price of jet fuel per  
21 gallon will be in 2006?

22 A Well, I think if you take the December '06 futures price  
23 here on Page 25 as \$60 and you added --

24 THE COURT: But those prices are per barrel.

25 THE WITNESS: This is barrel, right. And we're going

1 to try to get to gallons here.

2 THE COURT: Yeah, but what difference does it make? I  
3 mean, if you're telling me that the crack spread is on the  
4 barrel and not on the gallon, then we don't need to know what  
5 the crack spread per gallon is, we only want to know what -- we  
6 really don't even need to know what a gallon is, we just need  
7 to know what a barrel is.

8 MR. SPAN: Let me rephrase the question, Your Honor.

9 BY MR. SPAN:

10 Q In Mr. Bastian's declaration, he stated that the business  
11 plan for 2006, Delta's business plan, assumes a price for jet  
12 fuel based on a crude oil price of \$60 a barrel and a crack  
13 spread of \$13. Are both those assumptions within range that  
14 the market is predicting?

15 A Well, yes, they are.

16 Q Now if -- let's assume Mr. Simon's hypothetical came true  
17 and the price of jet fuel stayed at today's level, which is  
18 below what the market thinks it's going to be next year, and  
19 Delta saved \$425 million in jet fuel. Do you think that Delta  
20 would see the full benefit of that savings?

21 A No, I don't.

22 Q Why?

23 A Well, they would clearly get some benefit from that, but  
24 for reasons I explained, low-cost carriers --

25 THE COURT: Wait, wait, wait, wait, wait. Now the

1 only reason they wouldn't get the full benefit of it is because  
2 the pipelines didn't give him a true measure. I mean, you  
3 know, they're getting the full benefit of every dollar they're  
4 spending. They're getting the oil that they purchased. No --

5 MR. SPAN: Let me rephrase the question, Your Honor.  
6 It was not well stated.

7 THE COURT: Well, I mean, you know, they are getting  
8 the full benefit of the oil they purchased.

9 BY MR. SPAN:

10 Q Would that savings on the cost side, in your opinion, be  
11 offset to any degree by lower revenues?

12 A Yes, it would.

13 Q And do you have any -- based on your experience, can you  
14 make any projections on how much of that \$425 million in cost  
15 savings would be offset by lower revenues?

16 A No, but it would be substantial, in my opinion.

17 MR. SPAN: I have no further questions.

18 MR. SIMON: No recross.

19 THE COURT: You may step down.

20 THE WITNESS: Thank you.

21 (Witness excused.)

22 MR. GALLAGHER: At this time, Your Honor, the debtor  
23 would call Timothy Coleman to the witness stand.

24 THE COURT: Okay.

25 **TIMOTHY COLEMAN, DEBTORS' WITNESS, SWORN.**

1 THE WITNESS: Good afternoon, Your Honor.

2 THE COURT: Good afternoon. Do I have a book?

3 MR. GALLAGHER: May I approach, Your Honor?

4 THE COURT: Can I ask a question? I'm sure this is  
5 the case, but I'm assuming that Delta and ALPA haven't reached  
6 an agreement yet.

7 THE WITNESS: That is certainly the case, Your Honor.

8 THE COURT: Okay. Because I do have this ALPA  
9 explanation of November 25, 2005 proposal, you know, and I  
10 don't necessarily think I need to know how far apart you are,  
11 but I have no idea how far apart you are. Okay?

12 MR. GALLAGHER: Our next witness, Your Honor, will be  
13 able to help identify that, our next witness after Mr. Coleman.

14 THE COURT: As I say, I don't necessarily know whether  
15 it's one of those things that it's helpful that I know or not.  
16 I'm just saying it's not very easy for me to figure what these  
17 different changes do.

18 MR. GALLAGHER: We understand that, Your Honor, and we  
19 will endeavor to assist the Court's understanding that with Ms.  
20 Carolan, our next witness.

21 THE COURT: Okay.

22 MR. GALLAGHER: But first, Your Honor, we introduced  
23 Mr. Coleman.

24 **DIRECT EXAMINATION**

25 **BY MR. GALLAGHER:**

1 Q Mr. Coleman, would you state your full name and employment  
2 for the record?

3 A Timothy R. Coleman. I work for the Blackstone Group, LP.

4 Q And what is your educational background?

5 A I have a Bachelor of Arts from the University of California  
6 at Santa Barbara and a Master of Business Administration from  
7 the University of Southern California.

8 Q All right. And what is your --

9 THE COURT: So you grew up in California?

10 THE WITNESS: I grew up in California, Your Honor.

11 THE COURT: Now how would I know that? I would know  
12 that because you can't get into those schools unless you live  
13 in California.

14 THE WITNESS: Well, they're -- I'm actually lucky.

15 THE COURT: Becoming a little easier, but it's pretty  
16 hard.

17 THE WITNESS: USC actually you can get into from afar.  
18 They have a very large foreign student population. The UCs are  
19 a little bit more aimed towards the state residents.

20 BY MR. GALLAGHER:

21 Q Following obtaining your MBA, Mr. Coleman, can you briefly  
22 describe your employment history?

23 A I've worked for two organizations. I worked for Citibank,  
24 N.A. for twelve and a half years, where I spent time in the  
25 lending area, but most of my time in the restructuring area.

1 Institutional recovery management was the name of the area  
2 within Citibank. And then I --

3 Q I'm sorry. Can you say that again? What was the --

4 A Yes. Institutional recovery management. And then I --

5 THE COURT: One of those, if we're not sure what it  
6 means, we're not bothering to tell you.

7 THE WITNESS: It was --

8 THE COURT: Oh, I know, but I'm saying it's like, you  
9 know, "institutional recovery management." It's got one of  
10 those nice little names we don't really know. It means this is  
11 the money we've lost and haven't gotten back yet?

12 THE WITNESS: That could have been another name. Some  
13 of the --

14 (Laughter.)

15 THE WITNESS: Some of the banks actually called it  
16 "special assets division," which stood for SAD, which they got  
17 a little chuckle out of. But ours was meant to mean that it  
18 was corporate lending and trying to recover losses on those  
19 loans.

20 BY MR. GALLAGHER:

21 Q And was that dealing primarily with distressed or  
22 bankruptcy borrowers?

23 A Yes, it was.

24 Q And you did that for twelve years at Citibank?

25 A No, I spent six-and-a-half years in that department. My

1 last job at Citibank was during the real estate crisis in the  
2 early '90s, where I ran the New York real estate work-out  
3 group.

4 THE COURT: Oh, that must have been fun.

5 THE WITNESS: It was fascinating, Your Honor. As you  
6 will recall yourself, I'm sure, because New York had a lot of  
7 those loans and a lot of those buildings which sold for \$90 a  
8 square foot are worth a little bit more today.

9 THE COURT: I don't know whether you had the one at  
10 the northwest corner of 57th and Lex.

11 THE WITNESS: No. I know which building you mean, but  
12 no.

13 THE COURT: That's one of the ones that went under and  
14 I don't remember the name of the family that put that building  
15 up.

16 THE WITNESS: The one with the round piece in front of  
17 it?

18 THE COURT: Yeah, that was supposed to be their piece  
19 de resistance and it went under.

20 THE WITNESS: I handled a number of the buildings in  
21 Times Square and some of the most famous real estate families  
22 in New York, one of them which is the Bertelsmann Building, was  
23 sold for under \$100 a square foot to Bertelsmann as a user, so  
24 there was no speculation to it. And they have -- I haven't  
25 looked at their financials lately, but my guess is they're

1 making more money on the building than they are in their  
2 business. It was a terrific real estate play for them.

3 THE COURT: Well, you know, I did Rockefeller Center.  
4 That was really fun. We had to assume like -- I don't know.  
5 They actually prepared a separate order for each one of those  
6 leases.

7 THE WITNESS: People did not think New York would  
8 recover, the office market would recover as quickly as it did  
9 and it actually came back very fast.

10 THE COURT: Well, I think the Japanese lost their  
11 shirts.

12 THE WITNESS: There were a lot of people that lost  
13 their shirts, but those who invested made more than a few  
14 shirts back.

15 THE COURT: You mean the ones that invested at the  
16 time the first ones were losing their shirts?

17 THE WITNESS: During the trouble, yes. It was a gutsy  
18 move, though. They were buying -- many of them were buying  
19 empty office buildings with no obvious sign of replacement of  
20 tenant.

21 The rest of my career has been at the Blackstone  
22 Group, where I have spent fourteen years, all in the  
23 restructuring and reorganization group.

24 BY MR. GALLAGHER:

25 Q And what is the Blackstone Group? What's the nature of

1 your business?

2 THE COURT: They're the people that somebody gets me  
3 to approve on the first to tenth day of the case and tells me  
4 that they're the people that have the outside information  
5 that's going to allow this company to really, really turn it  
6 around. And every once in awhile they come in and they say to  
7 me, you know, we're letting the president go and we don't think  
8 we can find one quick enough and would one of your guys please  
9 be the CEO or something like that?

10 THE WITNESS: No, I think you're thinking of Alvarez &  
11 Marsal or AlixPartners. We just serve as financial advisors to  
12 companies or creditors, primarily companies --

13 THE COURT: Okay. So you don't -- you won't go in  
14 there as an officer?

15 THE WITNESS: No, we do not perform crisis management  
16 services, it's purely as an advisor. There are other aspects  
17 of the firm. We do have some buy-out funds where we buy  
18 companies and real estate and a few other activities.

19 THE COURT: Okay. So you do the financial advising  
20 but you don't take the title?

21 THE WITNESS: We don't take the title, no, Your Honor.

22 THE COURT: Okay.

23 BY MR. GALLAGHER:

24 Q And then in your practice within Blackstone, what is your  
25 typical role or function when representing a company?

1 A Typically as a financial advisor to a company, we work with  
2 the company from the very beginning to the very end of a  
3 restructure, whether that is an out-of-court restructure, Your  
4 Honor, or an in-court restructure. So that would start with  
5 helping the company either build its business plan or  
6 critiquing its business plan, working through then what its  
7 capital structure should allow, trying to figure out how to  
8 take its existing capital structure and work into that new  
9 possible capital structure and ultimately negotiating with the  
10 various constituents of the company.

11 THE COURT: And sort of trying to tell those people  
12 who seem to be stuck in one place that they can't stay stuck.  
13 I mean, I think that's usually a big part of what you people's  
14 business --

15 THE WITNESS: Interestingly -- and I lecture at  
16 Columbia every semester in the business school and it's on the  
17 topic of restructuring and specifically one of the things that  
18 I talk about is the importance of the business plan and  
19 understanding that business plan. And if people agree with  
20 that business plan or understand it, it will be easier to, what  
21 you just described, get out of the position they're in, stuck  
22 position, and agree to take whatever securities are available,  
23 whether that's new debt or new stock or options or something  
24 like that, but it is a very critical part of the work, trying  
25 to convince them that this is the business plan, this is what

1 the company is capable of doing, and this is what we are  
2 capable of giving out.

3 THE COURT: And that this is what the president should  
4 not be saying about how we are going to be paying everybody  
5 what we don't have.

6 THE WITNESS: That's usually what gets people in  
7 trouble, offering to pay things they don't have, but we're  
8 trying to get to a point where they can actually operate with  
9 an appropriate capital structure. If we do it right, and we  
10 have a pretty good track record, Your Honor, the parties end up  
11 -- many parties end up with some portion of the equity and if  
12 we've done it right, they end up getting a very nice recovery  
13 as the company goes on and operates and recovers. And if you  
14 look back at some of our examples, if you go way back you can  
15 look at something like Macy's, which I represented, which today  
16 people would be very surprised to hear they were even in  
17 bankruptcy, but it was a very successful turnaround of an  
18 operation.

19 THE COURT: They're putting the Macy's name on  
20 Marshall Fields in Chicago.

21 THE WITNESS: Yes.

22 THE COURT: That's a tragedy.

23 THE WITNESS: I think it's a sad loss of a brand name,  
24 but the problem today is a brand name does not necessarily mean  
25 profits and the Marshall Fields brand name is not sufficient to

1 create the profits that they need and --

2 THE COURT: They probably changed the whole  
3 merchandise.

4 THE WITNESS: They probably already --

5 THE COURT: Because Marshall Fields merchandise is a  
6 little higher quality than Macy's.

7 THE WITNESS: Right. Macy's has been pretty  
8 successful going into a number of locations. If you remember  
9 Bullock's on the west coast, which was a higher-end market than  
10 the Marshall Fields brand name, they went in and turned those  
11 all into Macy's and there was a lot of complaining, but  
12 ultimately Macy's saved a lot of money on the entire  
13 merchandising structure. They brought it into a lower-cost  
14 structure. It allowed them to meet the price range that  
15 customers actually wanted and the problem with the Marshall  
16 Fields -- I haven't studied it, but I did back then --

17 THE COURT: I'm almost certain that's true because  
18 Marshall Fields is higher priced than Macy's. It's just a  
19 tragedy. It'd kind of like --

20 THE WITNESS: It's sad, but people won't pay for it,  
21 and that's really the issue with a lot of these situations.

22 THE COURT: I didn't realize that Marshall Fields was  
23 part of Macy's.

24 THE WITNESS: They are. That's my understanding. I  
25 heard it's --

1 THE COURT: I mean, there's nothing to suggest it was  
2 just some recent purchase.

3 THE WITNESS: No. I haven't actually studied it. I  
4 don't recall that, but that is what -- Federated is one of the  
5 large remaining -- I think Marshall Fields may have been part  
6 of May Company and they actually bought May. I think that's  
7 how they ended up with it.

8 THE COURT: Probably is.

9 THE WITNESS: But I shouldn't be saying all this under  
10 oath, Your Honor, because I'm not positive on that transaction.  
11 I am positive about the statements I'm making, but not how they  
12 ended up with the company.

13 THE COURT: No, but it seems to me that one of the  
14 things that you do have to do is to try to get the people at  
15 the top to be on board with what you're doing and to be willing  
16 to say to people that they're on board with what you're doing  
17 because they don't want to have to change and they don't want  
18 to have to admit they were wrong, so when they say, oh, he told  
19 me that's what the deal is, they're not wrong, it's you.

20 THE WITNESS: It's a critical part of any company's  
21 turnaround to be sure that you have a management team that will  
22 not protect sacred cows, will go after every part of the  
23 business and make sure that they are thinking in today's  
24 economy versus what they remember from yesterday's.

25 THE COURT: And which also has someone behind them

1 that they can say, this is not just me, this is these hired  
2 people that we agreed to pay some enormous amount of money to.

3 THE WITNESS: One of the things that we believe we  
4 bring to the party for companies is that we have looked at and  
5 helped construct business plans across an array of industries.  
6 And while we don't necessarily sell ourselves as the expert in  
7 this specific industry, although we end up doing a lot of deals  
8 often in the industries that are in trouble, what we're really  
9 selling is the ability to get down to the brass tacks on a  
10 business plan and really drill the company and we have a sort  
11 of skill of doing that, of helping them get to the bottom line  
12 of what they can expect out of revenues, what they can expect  
13 out of costs, and making sure that the projections are  
14 something that not only the management will believe or not that  
15 we will believe, but the creditors will believe, that any new  
16 equity investors will believe, any new exit lenders will  
17 believe, or on the way in, DIP lenders will believe.

18 And in fact, this company is an example of that,  
19 having to convince DIP lenders that the forecast that we're  
20 putting in front of them, the \$3 billion in this case, is, in  
21 fact, achievable and is enough to bring this company through to  
22 a competitive cost structure and operation so that they can go  
23 on and exit bankruptcy successfully and eventually operate  
24 successfully.

25 BY MR. GALLAGHER:

1 Q Now, Mr. Coleman, it appears the Court is much more  
2 familiar than I am with your role of a financial advisor to a  
3 company in need of restructuring, but if I understand it, the  
4 one part of your role is internal to help the company  
5 understand itself, its problems, and what it needs to do to fix  
6 them. Is that right?

7 A I'd say that's correct, in conjunction with management, but  
8 that's correct.

9 Q But then another part of your role is to let management  
10 know what the capital markets will expect in order to extend  
11 new financing, whether it's debt or equity. Is that right?

12 A That is correct.

13 Q And then is another part of your role to help management  
14 then go out to the capital markets to solicit financing?

15 A Yes, we are -- even if it's an out-of-court, but for the  
16 moment let's talk about an in-court.

17 If it's an in-court situation, the first thing we're doing  
18 is taking the business plan out to the debtor-in-possession  
19 market and convincing them to loan the company money while it  
20 is in Chapter 11. And then obviously, if it's either that same  
21 business plan or a modified business plan, eventually  
22 convincing creditors to change the securities they hold, either  
23 into new debt instruments or into equity instruments and  
24 convince, most importantly -- not most importantly, but as  
25 importantly any exit financing lender, because as we all know,

1 a debtor-in-possession loan is rarely repaid to zero. It is  
2 typically rolled into some kind of exit facility.

3 Q And now you mentioned that Blackstone, your practice group,  
4 has a good track record for restructuring. Is that right?

5 A I think we have a pretty decent one. You have to remember  
6 these are companies in trouble. Not all survive in a wonderful  
7 way, but I think we have a decent track record.

8 Q And why is your track record important as you go to the  
9 next client?

10 A Well, the -- one of the things that we bring, I think, as I  
11 said, credibility to the marketplace and credibility --

12 THE COURT: Well, if you busted the lender on the last  
13 two deals, he's not going to go with you for the third one.

14 THE WITNESS: And that is precisely right, Your Honor,  
15 and I remember very vividly your comments at the DIP hearing.  
16 There are not a lot of lenders out there that can lead, in our  
17 case over two-billion-dollar debtor-in-possession financing.  
18 There are probably five in the world, and so if we, in a case  
19 or multiple cases, leave that lender in a position where they  
20 can't get repaid or are in a very difficult spot, it will be  
21 very hard later to convince them in another case. So it  
22 sometimes puts us in a little bit of tension with management;  
23 mostly not, but sometimes as we're pushing them hard to be sure  
24 that what they're putting forth is a plan that is a viable  
25 plan.

1 THE COURT: Well, see, that's what management never  
2 likes to do.

3 THE WITNESS: It depends on the management, really.

4 THE COURT: No, I know. I'm saying that that's what I  
5 always find is the hardest thing, even in this size case,  
6 particularly in smaller cases is for people to recognize what  
7 the truth really is.

8 THE WITNESS: It's an enormous part of the business  
9 and not to sing the praises too much perhaps of management  
10 here, but what you have is a new COO, frankly a new CFO, and a  
11 number of new positions and I often find that when people are  
12 new in those positions, they are more willing to accept that  
13 things have changed. And that was our track record by example  
14 also in Macy's. If you remember, Mr. Finkelstein was a CEO and  
15 he moved on and others came in and took his place. Even though  
16 they were from within Macy's, it was a new attitude and a new  
17 willingness to look at all aspects.

18 THE COURT: And you don't have responsibility for the  
19 things that happened before.

20 THE WITNESS: Right.

21 THE COURT: You have to accept the effect of them, but  
22 you didn't personally do them.

23 THE WITNESS: Right. You have often talked about this  
24 stock buy-back here at this company back before 2000. The  
25 management team that's there now had nothing to do with that,

1 so when we talk about it, it's interesting and it's unfortunate  
2 and everybody's sorry the money's out the door, but it doesn't  
3 impact their decision making.

4 THE COURT: I mean, to me what's more significant  
5 about it is the debtor's sort of harping on, oh, wow, Delta was  
6 just doing wonderful, weren't we just doing great, and this is  
7 why we were doing so great and this is why we should stand on  
8 the pilots. And to me it's -- the fact is, there were a number  
9 of things that Delta did before 2004 with their money that  
10 weren't really that smart.

11 THE WITNESS: Unfortunately, that's true. Not with  
12 this management team, but unfortunately that is -- some of  
13 those things were not the smartest. Now some of them, frankly,  
14 looked smart at the time. It was an investment-grade company  
15 and we often forget how quickly this company went from  
16 investment grade to non-investment grade, but it was --

17 THE COURT: I think that no company should be asking  
18 its employees to take the company stock -- I mean a company  
19 with this many employees -- the company stock instead of money.  
20 I mean, I understand all of the reasons why we can argue about  
21 it, but the number of companies which have gone under, leaving  
22 their employees with nothing but the company stock is too many.  
23 Let them go out and buy something else and lose that.

24 THE WITNESS: It depends on the cycle of the company.  
25 The Wal-Mart employees, the Microsoft employees, the Google

1 employees would tell you, thank God I got that stock. The  
2 Enron employees who all wanted that stock obviously were a  
3 little sad afterward that they had it, so I think it's somewhat  
4 dependant on the cycle.

5 THE COURT: But I'm saying I think in some cases the  
6 companies that made it impossible to do anything else --

7 THE WITNESS: Right. That's unfortunate.

8 THE COURT: -- I think that's very unfortunate because  
9 when you have a pension plan and that's all that you've got in  
10 it --

11 THE WITNESS: Then you have nothing.

12 THE COURT: -- you have nothing. You aren't properly  
13 -- what do you call it?

14 MR. GALLAGHER: Diversified.

15 THE COURT: Diversified.

16 THE WITNESS: It's the worst part of the business,  
17 from my perspective, and the hardest thing to do is to maintain  
18 a dispassionate view rather -- because it's very easy to look  
19 at those people and feel badly because I do, I happen to be a  
20 little Democrat about it, but it is not the way to manage a  
21 business. Even if it's happened, you can't allow that to make  
22 business decisions for you. If you put all of their stock in a  
23 pension, it is a terrible, terrible event, but whoever did it  
24 made the mistake and you can't then go on and make more  
25 mistakes.

1 THE COURT: I think that the government, though, has  
2 now made it -- I think that during one of the cases they  
3 changed the rule so that the company could no longer mandate  
4 that all of the things in your thing go into the company.

5 THE WITNESS: I don't know. I hope that's true, but I  
6 don't know.

7 THE COURT: I have that feeling, but I may be wrong.

8 MR. GALLAGHER: Well, I know there's been a lot of  
9 litigation, Your Honor, by planned beneficiaries saying that  
10 the plan sponsors have been -- breached fiduciary obligations  
11 by concentrating in the employer's stock, but that's a subject  
12 that I think is beyond my expertise.

13 THE COURT: It's a subject for another day and all I  
14 was pointing out was that -- pointing out some of the things  
15 that happened before we got to late 2004 was really a way of  
16 saying, well, you know, Delta has made its share of mistakes.  
17 I mean, Delta -- I don't know how much you were paying a year  
18 towards your employees' pensions, but they could have been  
19 terminated in 2004, they could have been terminated in 2003.  
20 I'm not talking about the -- I'm talking about the -- don't  
21 look at me like that. I'm talking about the pensions you were  
22 paying to your employees who did not have a contractual right  
23 to such pensions.

24 THE WITNESS: The 44,000 people.

25 THE COURT: Yeah.

1 BY MR. GALLAGHER:

2 Q Mr. Coleman, if we may, let's turn to Delta.

3 Would you describe your role in relationship with Delta Air  
4 Lines?

5 A We were originally hired in May of 2004 to work with the  
6 company on its first restructure and worked on that business  
7 plan with the company. That's the one that involved the five-  
8 billion-dollar cost and revenue enhancement restructure. And  
9 we worked with the company through that -- what hoped was a  
10 successful out-of-court restructuring. We then completed that  
11 assignment I think it was November/December of '04 and then we  
12 were rehired in May of this year to go about looking at the  
13 situation at hand.

14 Q Well, let's talk about 2004 for a minute. Was there -- we  
15 know that there was a new labor contract with ALPA in the fall  
16 effective December 1st of 2004. Was there also a financial  
17 restructuring of Delta out of court?

18 A There was. There was. There were a number of things that  
19 occurred. There was a debt-for-debt exchange. There was some  
20 debt-for-equity swaps done under a 3(a)(9) provision. There  
21 were a number of other --

22 THE COURT: Debt-for-debt with whom?

23 THE WITNESS: With the same holders. Some of the  
24 holders -- some of the debt that was coming due at a certain  
25 time in exchange for collateral or other provisions, they move

1 their maturities out.

2 THE COURT: Okay. And what about debt-for-equity?

3 THE WITNESS: The debt-for-equities were done through  
4 a 3(a)(9) exchange, which is a way to -- it's a part of --

5 THE COURT: Yeah, I know, but they got Delta stock,  
6 right?

7 THE WITNESS: They ended up getting Delta stock. They  
8 swapped their debt into equity.

9 THE COURT: Which was really -- that was a big treat.

10 THE WITNESS: Excuse me?

11 THE COURT: That was a big treat.

12 THE WITNESS: Well, I'll tell you something. Tell you  
13 something interesting about those kinds of situations, Your  
14 Honor. Delta has been, for a long time, one of the highest  
15 volume on the short list, on the short-position list, and most  
16 of the people, if not all, though they don't disclose this to  
17 us, would typically be fully short the stock so that when they  
18 converted their debt to equity they would actually be locking  
19 in a profit on their short. And when -- so that when things  
20 are that short, it's very hard for them to sometimes go out and  
21 borrow those shares. If they're already short the position,  
22 they can buy new debt at a discount, strike a deal with the  
23 company -- in this case, Delta -- at a premium to what they  
24 bought the debt at, and convert that into stock and they're  
25 instantly out of both securities. It's a very successful kind

1 of financial transaction that benefits both parties.

2 Obviously, the company --

3 THE COURT: That requires the party on the other side  
4 to be quite knowledgeable.

5 THE WITNESS: To be very sophisticated and that is the  
6 whole point of the 3(a)(9) provision. It allows the company to  
7 basically skip through a number of the Securities and Exchange  
8 kinds of provisions. They obviously have to be a sophisticated  
9 party to transact such a deal.

10 THE COURT: I agree.

11 THE WITNESS: The deal's actually very simple, but  
12 it's under a very specific provision.

13 BY MR. GALLAGHER:

14 Q Did Delta have a new business plan in the fall of 2004?

15 A Yes.

16 Q And did you help Delta develop that business plan?

17 A Yes, we did. We were --

18 Q Did you help Delta market that business plan to the other  
19 parties in these various financial restructuring transactions?

20 A Yes, we did. We talked to the various groups about what  
21 the plan looked like and the five-billion-dollar cost save and  
22 where Delta hoped to take the business and to hopefully avoid  
23 Chapter 11.

24 Q So Delta didn't avoid Chapter 11.

25 A Delta did not avoid Chapter 11.

1 Q So the plan didn't work.

2 A Well, I don't think that's entirely true. The company was  
3 very successful at taking the controllable costs out that they  
4 actually committed to do and I think that the creditors in the  
5 marketplace were actually impressed by the company's success at  
6 doing what they said they would do on all of those costs that  
7 were controllable.

8 THE COURT: I realize that we've had this discussion  
9 before, not with you, but it still appears to me as if the  
10 really major thing that made that plan not work is the fuel  
11 problem.

12 THE WITNESS: Well, I would say there's no question  
13 that with a billion-four of fuel change, obviously that was a  
14 major impact on the company, a very major negative impact on  
15 the company. It is my view and my very strongly felt view that  
16 there were a high number of other things, Your Honor.

17 By example, you mentioned earlier or somebody  
18 mentioned earlier with the prior witness USAir. There was a  
19 very strong belief that USAir, being in its second bankruptcy -  
20 - and it had filed in September of '04, the second filing --  
21 there was a very strong view that USAir would not exit Chapter  
22 11. USAir competes directly with Delta throughout the eastern  
23 seaboard. And there was a very strong view that the -- while  
24 somebody eventually would come in and fill USAir's position,  
25 there would be somewhat of a hiatus; and, therefore, an

1 opportunity to profit while they were having their troubles.

2 THE COURT: Okay. Where was the first case filed?

3 THE WITNESS: The first USAir case?

4 THE COURT: Yeah.

5 THE WITNESS: My recollection is it was Virginia.

6 MR. GALLAGHER: Eastern District of Virginia, Your  
7 Honor, both times.

8 THE COURT: Both times? Same judge? Different judge?

9 MR. GALLAGHER: I believe it was the same judge, Your  
10 Honor, but I'm not sure about that.

11 THE WITNESS: But the thought that if you could see  
12 certain participants in the marketplace, for instance, owners  
13 of planes, lessors of planes, lessees of planes -- I always get  
14 that wrong -- those who actually owned the planes, many of them  
15 were trying to figure out how to place USAir's planes  
16 throughout the rest of the industry because they felt they were  
17 going to get them back in a liquidation. So any business plan  
18 of Delta's would have believed that we would have a competitor  
19 going out --

20 THE COURT: Okay. You know what you weren't counting  
21 on? You had the same judge in both cases. That judge wouldn't  
22 have wanted to see USAir go down.

23 THE WITNESS: No.

24 THE COURT: And so there was probably more going on in  
25 the courtroom than people who were outside of the courtroom

1 understood in terms of what the judge was prepared to let USAir  
2 do in order to, you know, pull it off.

3 THE WITNESS: I think that's right, except for one  
4 thing. Obviously, a judge can't force a buyer to buy the  
5 company.

6 THE COURT: I agree with that.

7 THE WITNESS: Yeah. And they were, unfortunately,  
8 extremely successful in finding a very well-regarded buyer.

9 THE COURT: Well, but the judge can help force the  
10 debtor to moving to find professionals that are good and  
11 agreeing to pay those professionals appropriate rates. And one  
12 of the big problems outside of the major cities where there are  
13 these kinds of cases is that the judges won't approve the fees  
14 because it's way too much. Don't you think?

15 THE WITNESS: Well, you're singing to the right guy on  
16 that one, I'll tell you, Your Honor. But I do think that this  
17 judge handled it very well and allowed, unfortunately for Delta  
18 and other carriers, somebody who looked like they were on their  
19 knees in capacity hopefully to go out of the market for awhile,  
20 because it would be refilled by a low-cost carrier, but  
21 unfortunately it was filled immediately by a very formidable  
22 competitor and put them not just from weak to liquidation to  
23 somebody refilling, but a competitor as formidable as Jet Blue  
24 or AirTran or Southwest Air. It's unfortunate for us, but it  
25 was a smart move by the USAir people and that judge.

1 BY MR. GALLAGHER:

2 Q And has USAir now successfully exited from its second  
3 bankruptcy?

4 A They have.

5 Q In less than a year or just about a year?

6 A It was before September, but -- I'm trying to remember  
7 because I flew out there. Actually, I think it was right after  
8 September, so it was about a year.

9 Q Now you indicated that one difference from the business  
10 plan, one factor impacting it was the re-emergence of USAir as  
11 a formidable competitor.

12 A Right.

13 Q What were the other differences? Why did the business plan  
14 fail?

15 A Right. Sticking on competition for a minute, United  
16 Airlines, which was rumored to be liquidating for three years,  
17 was floundering at that time, looking for a business plan.  
18 They may have been doing better internally, but externally the  
19 rumor was that they didn't have a good business plan, they were  
20 -- it wasn't obvious how successful they would be. It was  
21 always believed, Your Honor, they would get out of bankruptcy  
22 because they have a very large unsecured-asset pool, so there  
23 was never a question whether they could exit. The question was  
24 whether they would do a USAir, go out of bankruptcy and go back  
25 in.

1 But USAir seems to have successfully found their financing,  
2 found their legs in a business plan --

3 Q You mean United?

4 A United. Sorry. United Air. Thank you.

5 THE COURT: This is one of the reasons why I don't  
6 understand why the new changes under the bankruptcy code have  
7 set deadlines as short as they have because, in my view, cases  
8 just have a time line and it's not any one time line for any  
9 one case. And, you know, maybe US Air went out too quick the  
10 first time.

11 THE WITNESS: I think you're going to find with that  
12 new bankruptcy code that, after about eight months, all parties  
13 will stop trying to negotiate and wait for the eighteen months,  
14 and then you're going to find five plans of reorganization on  
15 your desk. And it's going to -- I agree with you. I think  
16 that eighteen months is a false deadline. We bring some  
17 companies out in six months, not prepacks; six months. Other  
18 ones have taken three years. It really depends on what the  
19 issues are that they're facing.

20 BY MR. GALLAGHER:

21 Q Now you mentioned USAir and United. But what else were  
22 factors, in your view, that led to the business plan of -- the  
23 2004 Delta business plan not to work?

24 A I'll go to the balance sheet in a minute. But sticking  
25 for, again, in the competition within the industry, there's no

1 question everybody knew about the LCCs. There's no question  
2 that Delta knew them as a competitor, and you saw Mr. Kasper's  
3 charts. It has been more severe, I think, than anybody could  
4 have anticipated.

5 A good example of that, Your Honor, is on the shuttle that  
6 everybody was talking about, Jet Blue is actually putting a  
7 regional jet on that route, which most people think of when  
8 they ride in it as if it's a mainline plane. So it has all of  
9 the lower cost structure that Mr. Kasper just talked about in  
10 terms of pilot costs and flight attendant costs and operating  
11 costs and, yet, it's getting some of the view from the public  
12 that it's a very comfortable ride, where most regional jets, as  
13 you know, are not that comfortable.

14 So I think that's an example of just ongoing encroachment  
15 into --

16 THE COURT: But, see, I still don't understand where  
17 Jet Blue is going to be at LaGuardia.

18 MR. COLEMAN: Well, the shuttle is going to be out of  
19 JFK, that shuttle flight.

20 THE COURT: Oh, okay.

21 MR. COLEMAN: And I think you raised a very good  
22 question, which is who wants to go to JFK to take a short  
23 flight up to Boston or to Washington. But if the price is  
24 right, there will be a lot of people that will do that.

25 THE COURT: Well, I think that the short answer is

1 that JFK -- I mean, that LaGuardia draws from an angle above --  
2 it starts a little bit above it down through Astoria and right  
3 into Manhattan.

4 MR. COLEMAN: Right.

5 THE COURT: And JFK draws from southern Long Island.

6 MR. COLEMAN: JFK draws from a further area, I think,  
7 mainly because it has a lot of long-haul flights.

8 THE COURT: Yeah. But what I'm saying is, you know,  
9 at \$35 to \$45 for the taxi, it's not really very competitive.

10 MR. COLEMAN: Depends on the ticket price --

11 THE COURT: Yeah.

12 MR. COLEMAN: -- of what Jet Blue is going to charge.  
13 And, again, since they will have a different cost structure, a  
14 lower cost structure on that plane --

15 THE COURT: I don't know why I always have the feeling  
16 that I know how long it's going to take me to get to LaGuardia,  
17 but I have no idea how long it's going to take me to get to  
18 JFK.

19 MR. COLEMAN: Yeah. There are more routes to  
20 LaGuardia. There -- it's just you can get there from the  
21 tunnel, from the bridge, you know. There are other ways to get  
22 there, whereas you're sort of stuck going out to JFK,  
23 obviously, from Manhattan.

24 BY MR. GALLAGHER:

25 Q Okay. Mr. Coleman, I want to keep coming back to why did

1 the 2004 Delta business plan not work?

2 A Right. Okay. There were a number of things that I would  
3 put in the context of the balance sheet with a capital  
4 structure. The first one was this credit card processing  
5 agreement.

6 The forecast at the time, Your Honor, for the credit card  
7 processing holdback, which the company knew would be -- the  
8 agreement was expiring in August of 2005. The company expected  
9 that to be a hundred-million-dollar holdback. And, as time  
10 went forward and it really started to heat up in May of '05, it  
11 became clearer, although it got to be the clearest nearer to  
12 August, that that would be a six hundred and fifty-million-  
13 dollar-holdback. It's an average because it depends on what's  
14 outstanding. But that --

15 Q Was it, in effect, a hundred percent holdback in the final  
16 --

17 A It's essentially a hundred percent holdback. And that's a  
18 half-billion-dollar cash reduction. It's not an annual number.  
19 It's a one-time number. But it is a very large number.

20 THE COURT: Okay. Has anybody really made any effort  
21 to determine how soon after purchase these tickets are used to  
22 see to what degree that holdback is really at an appropriate  
23 number?

24 MR. COLEMAN: The -- I don't know -- I'm sure somebody  
25 has done that. But I would look at it from a different

1 perspective as a financial person, which is there are very few  
2 credit card processors. And the company went, obviously, to  
3 not just one. None of them wanted to take this risk on. None  
4 of them wanted to be in a position where for a very, very  
5 little fee, profit, they'd take on --

6 THE COURT: Two to three percent?

7 MR. COLEMAN: Something low like that. They take on a  
8 very high risk, which is if the airline stops operating and all  
9 these tickets come back, they are the ones that have put the  
10 money out and they have no recovery on that money.

11 THE COURT: But, for example, let's take the shuttle  
12 tickets. I'd say the shuttle tickets are bought primarily on  
13 the day they're used.

14 MR. COLEMAN: No. It's -- a lot of companies buy  
15 tickets way in advance, especially on the shuttle, companies  
16 that use them a lot. There are a lot bought a day or two in  
17 advance, you're right. But there's a very high number of  
18 parties, and I'm not the expert in this, there's probably  
19 somebody else in the room that is, that buy them in advance.

20 MR. HUEBNER: Well, let me make this a lot easier for  
21 you. The holdback floats every single day in accordance with  
22 our actual advance ticket liability. One of the extremely  
23 attractive features to us in the contract that we cut was that,  
24 unlike the one or two other processors in the world who could  
25 have done this for us who wanted a fixed holdback and to hold

1 our money even when their liability shrunk because of  
2 seasonality, this contract literally adjusts every single day.

3 THE COURT: Okay. You didn't get that guy was running  
4 the problem for Visa and MasterCard, did you?

5 MR. HUEBNER: No, Your Honor. We have US Bank, a very  
6 major --

7 THE COURT: I just want to make sure you didn't happen  
8 to sign up with that one.

9 MR. HUEBNER: Well, just so Your Honor understands  
10 that a lot of business thought goes into exactly the things  
11 that you're raising. And we never give them a penny more than  
12 our actual liability, which is a very important feature to us  
13 of the contract because during times of the year when traffic  
14 is slower, our liquidity improves to the tune of tens or  
15 hundreds of millions of dollars because they're not holding  
16 more than they need.

17 THE COURT: Well, I mean, also tickets to different  
18 places get bought a different number of days in advance.

19 MR. HUEBNER: Exactly. And that exact metric we just  
20 call advanced ticket liability, or ATL, is measured  
21 electronically literally every day. And whatever it is, they  
22 return, we top up, they return, we top up. It's exactly right,  
23 Your Honor.

24 MR. COLEMAN: If somebody offered you a dollar or two  
25 percent fee or whatever to take this risk with your own money -

1 -

2 THE COURT: You wouldn't do it. Why would you do it?

3 MR. COLEMAN: -- you wouldn't do it. And that's why  
4 it just cost us a full holdback.

5 THE COURT: No. I was more interested in this, you  
6 know, day of issue or near-term issue because it wasn't clear  
7 to me how long that money was being held.

8 MR. HUEBNER: Exactly long enough, and not one day  
9 longer.

10 THE COURT: Okay.

11 BY MR. GALLAGHER:

12 Q So, Mr. Coleman, the US Bank, the credit card processor,  
13 required a hundred percent holdback.

14 A Correct.

15 Q Why? Was it because Delta -- they viewed Delta at that  
16 point as a very bad credit risk?

17 THE COURT: It's really simple. They only get two to  
18 three percent. It's not very much money. It's enough to run  
19 these businesses, you know, but it's not enough to want to take  
20 a hit.

21 MR. COLEMAN: There are a lot of businesses in the  
22 world that have very, very thin margins.

23 THE COURT: Like, take grocery stores.

24 MR. COLEMAN: Same point.

25 THE COURT: Okay? And you can only afford to take

1 certain liability. And, in this case and that case I was  
2 talking about, and I can't remember the name of the company, I  
3 hope they had, you know, employee misconduct insurance because  
4 that's probably the basic insurance you need in this business  
5 to make sure that the processing is done in an honest fashion.

6 But it had been -- I mean, this is why, you know,  
7 American Express and Visa and Mastercard have this ongoing sort  
8 of little dispute because American Express has always charged  
9 closer to five percent and Visa and Mastercard it's in the two  
10 to three range. So the American Express requires that its card  
11 license -- the people that can take its card not tell the  
12 customers that they really would rather have a Visa or a  
13 Mastercard because they'd make more money, right?

14 MR. COLEMAN: No, that's right. That's right. And,  
15 in fact, they sue people regularly for taking that position,  
16 American Express does.

17 BY MR. GALLAGHER:

18 Q And, Mr. Coleman, was Delta's --

19 THE COURT: Which means that, depending on what  
20 percentage of your sales are on American Express, you got a  
21 five percent cost.

22 MR. COLEMAN: Those credit card companies are pretty  
23 smart, Your Honor, because with these credit card processors,  
24 they take away the large one customer risk. They have all of -  
25 - probably everybody here has an American Express card. So

1 they have an actuarial risk against all holders, whereas those  
2 who are processing these receivables have a Delta risk, have a  
3 US Air risk, have a UAL risk, and it's a very different level  
4 of risk.

5 THE COURT: Which means -- this is why these  
6 companies, in order to be able to take a credit card, you have  
7 to get an agreement with one of the credit card companies or  
8 one of the banks that will basically bond you out.

9 MR. COLEMAN: Basically, that's what they're doing in  
10 a sense. But they're processing. And, as a consequence, they  
11 could be left holding a very, very empty bag.

12 I personally don't agree entirely with their  
13 assessment of risk. But if it were my own money, I think I'd  
14 probably agree a lot more.

15 BY MR. GALLAGHER:

16 Q Was Delta's available liquidity published in quarterly  
17 reports in 2005?

18 A Yes.

19 Q And was the decline in that liquidity public knowledge as a  
20 result of those reports?

21 A Yes. US Bank was very vividly aware of it.

22 Q And, of course, the 1.4-billion-dollar swing in fuel prices  
23 had an impact on Delta's liquidity, didn't it?

24 A As -- yes. Obviously, it was an ongoing amount, we're  
25 adding it all up. But, yes.

1 Q So what else besides the credit card holdback -- what swing  
2 did you say that constituted in the business plan?

3 A Net of the hundred-dollar -- hundred million dollars that  
4 was expected. That was about \$550 million, a little over half  
5 a billion.

6 Q Okay. And what else changed in the business plan or did  
7 not work?

8 A There was an assumption that the Comair business could be  
9 sold for \$550 million. A lot went on at Comair. As you know,  
10 Your Honor, there were some baggage issues at Christmas with  
11 Comair.

12 THE COURT: I must not have been going anywhere they  
13 were going at that time.

14 MR. COLEMAN: They couldn't deliver any bags to  
15 anybody for about three days. It was not pretty.

16 THE COURT: Why?

17 MR. COLEMAN: There was some snafu with the computer.  
18 There is somebody probably here that knows more about it than I  
19 do, but --

20 THE COURT: No. You know --

21 MR. COLEMAN: It was on every news channel. It was a  
22 very big deal.

23 THE COURT: No. It's known as a human didn't decide  
24 to figure it out, because every one of those bags has a tag on  
25 it that tells you to whom it belongs and you could have brought

1 hand scanners to hand scan the tags to get the rest of the  
2 information.

3 MR. COLEMAN: I don't know. I wasn't -- that --

4 THE COURT: And FedEx delivers anything anywhere you  
5 want.

6 MR. COLEMAN: The -- that -- I'm just mentioning it in  
7 passing more than anything. The real truth was, as the Comair  
8 business was looked at, it became evident that it needed its  
9 own overhaul. And that's one of the things that's going on  
10 right now. And, as a consequence, the ability to sell that  
11 business when it was, in fact, having an operational  
12 restructure became -- it was evident you couldn't do that. So  
13 that was another approximately \$550 million. So now more than  
14 a billion dollars of cash.

15 There was a forecast --

16 THE COURT: Okay. Can I ask you a question about  
17 Comair?

18 MR. COLEMAN: Sure.

19 THE COURT: Unless I'm mistaken, I have flown Comair  
20 up to Raleigh and there were three seats, two on either side,  
21 and it doesn't add up to seventy.

22 MR. GALLAGHER: Many of the aircraft, Your Honor, are  
23 fifty-seaters.

24 THE COURT: I still don't think it adds up to fifty.

25 MR. GALLAGHER: I'm not aware --

1 THE COURT: Maybe it wasn't Comair. But, I mean,  
2 they're flying a lot of flights down there on these two on one  
3 and one on the other.

4 MR. GALLAGHER: Yes, Your Honor. That's a typical  
5 regional airplane and -- but Comair's hub is at Cincinnati  
6 where --

7 THE COURT: No. But I'm saying, but what size plane  
8 is that? I don't think they're fifty-seat planes.

9 MR. GALLAGHER: Comair operates some fifty-seaters and  
10 some seventy-seaters, Your Honor. I don't know. But I can  
11 find out quickly if it operates even smaller.

12 THE COURT: Well, I just -- they seem like they're  
13 more like thirty-five-seaters to me.

14 MR. GALLAGHER: I'm told, Your Honor, they also have  
15 forty-four seaters.

16 THE COURT: Well, maybe it wasn't a Comair plane.  
17 They certainly had one of those little signs on it, it's not  
18 really ours.

19 BY MR. GALLAGHER:

20 Q Now, Mr. Coleman, you --

21 THE COURT: Okay. Why would you want to sell Comair  
22 if Comair is a low-cost carrier? It would seem to me that,  
23 well, then you make the money on your low-cost carrier.

24 MR. GALLAGHER: Comair is a regional carrier, Your  
25 Honor, not a low-cost carrier.

1 THE COURT: Well, yeah, but --

2 MR. COLEMAN: It's the same analysis that went into  
3 selling ASA, which is it's --

4 THE COURT: Well, since I have no idea what that  
5 analysis was --

6 MR. COLEMAN: Right. If you remember that when most -  
7 - other than American Eagle, as was just testified to, most  
8 mainline carriers don't own or own very little of their  
9 connection carriers. So it was a way, frankly, to raise  
10 capital for the company to raise liquidity. And then you would  
11 have a long-term contract just like there is in the ASA  
12 arrangement. So, you know, it's really something that you do  
13 when you are trying to figure out how to redo your balance  
14 sheet and raise capital.

15 And what it did for Delta is it took away about a  
16 little over a half billion dollars of expected liquidity that  
17 the company would otherwise have. So between the credit card  
18 and that business was also a projection as the hoped \$5 billion  
19 took hold that there would be some kind of an equity offering,  
20 probably a convertible equity offering, in '05 -- I guess it  
21 was '06, which my recollection is that was another about a  
22 quarter of a billion dollars --

23 THE COURT: A convertible equity offering of what?

24 THE WITNESS: Probably convertible preferred or  
25 something of that nature.

1           The idea is, again, to bring more capital and  
2 liquidity into the business.

3           THE COURT: Oh, I understand that. I just don't know  
4 -- and then that would have been, you were thinking, two fifty.

5           THE WITNESS: That was the hope. That was in the  
6 projection.

7           And then, finally, as was mentioned, fuel. So if you  
8 take the billion-four of fuel and, you know, the sort of  
9 billion and a quarter, almost the same number, about a billion-  
10 four of other events; credit card, et cetera, it was almost a  
11 three-billion-dollar reduction in liquidity that the company  
12 was expecting. None of those things are hopeful -- hopefully  
13 are ongoing events. There were a one -- hopefully, a one-time  
14 event.

15           But a company that has that much cash go out of it,  
16 especially a company that has gone through, you know, 2001 and  
17 9/11, and all of the cash losses leading up to that, that  
18 really made their business plan and their attempt to stay out  
19 of Chapter 11 quite unsustainable.

20           MR. GALLAGHER: Well, let me back --

21           THE COURT: Well, it would seem to me that at this  
22 point you would want to save Comair and use it to get out of  
23 Chapter 11.

24           THE WITNESS: Well, I don't think we've concluded yet  
25 on what will happen to Comair, but there is an internal

1 reorganization going on with that business and what it should  
2 look like. So while that's going on, the ability to sell it is  
3 obviously no longer --

4 THE COURT: Well, I know. But we have some assets to  
5 offer our creditors.

6 THE WITNESS: Well, it's part of the DIP facility, the  
7 assets of that --

8 THE COURT: No, no. But what I'm saying is, that when  
9 we get to try to get a plan together --

10 THE WITNESS: Uh-huh.

11 THE COURT: -- you know, we've got to have something  
12 that we can offer them that -- you know.

13 THE WITNESS: Right.

14 THE COURT: And that would be a potential --

15 THE WITNESS: Perhaps. I mean, we haven't thought of  
16 it that way, Your Honor, and I would hate to testify that  
17 that's the plan, because it's not at this stage, but --

18 THE COURT: Oh, I'm not suggesting it is.

19 THE WITNESS: Yeah. Yeah.

20 THE COURT: I'm just saying, you know, it is an asset  
21 that's not attached to Delta with so many strings and it  
22 couldn't be --

23 (Counsel confer.)

24 THE WITNESS: Right. As a financial person, I --  
25 there's not a great need to own that asset. That's my personal

1 view. It is not necessarily the view that the company is  
2 espousing at this time --

3 THE COURT: Well, but I'm saying -- I'm saying to sell  
4 that asset now and use the money for operations would be a poor  
5 choice in my view.

6 THE WITNESS: Well, it depends on what the liquidity  
7 is of the company. But it's -- it doesn't -- it makes --

8 THE COURT: I mean, it might need the money, but that  
9 doesn't necessarily mean you should use it.

10 THE WITNESS: Right. And it is not an option today  
11 because it really needs to be revitalized in order to even be  
12 in a position where we could decide whether to sell it or not.

13 THE COURT: I'm sorry I missed all that stuff on the  
14 bags.

15 BY MR. GALLAGHER:

16 Q Was ASA -- was the sale of ASA, the other commuter  
17 subsidiary, also part of the business plan?

18 A That was and that did occur.

19 Q And how much was that worth, in terms of liquidity?

20 A That was -- I think it was \$425 million, after the holdback  
21 was received.

22 Q All right. So adding up the items that failed to happen,  
23 that were in the business plan, the 500 million credit card  
24 holdback, five hundred and fifty Comair sale, and that's a  
25 billion-fifty; 250 million convertible equity offering, we're

1 up to --

2 THE COURT: The two fifty convertible equity offering  
3 he did not testify was going to happen in 2005.

4 THE WITNESS: No. I think it was '06 and I don't  
5 remember the exact number, Your Honor. It might have been two  
6 hundred. It was somewhere in that range.

7 BY MR. GALLAGHER:

8 Q Well, if the 1.5 -- 1,050,000 of the credit card holdback  
9 and the Comair sale had happened, would Delta have been in a  
10 position to weather the amount of the fuel price up-tick?

11 A I doubt it. A billion-four is a lot of money on -- to miss  
12 out on a business plan. And even though they had been very  
13 successful on the elements they could control, a billion four  
14 is a lot of money, so that, probably alone, knocked it out, but  
15 all of those other components added up to really make it a very  
16 difficult situation for the company.

17 Q So fuel might have been the precipitating event, but these  
18 other factors were -- were very much in the mix?

19 A I would say they -- all of them were in the mix. Fuel,  
20 credit card, Comair, et cetera.

21 Q Well, with Delta being at such risk in the marketplace --

22 THE COURT: Well, was the credit card change the  
23 result of the fact that the near-term thought was by anybody  
24 that you were going to file?

25 THE WITNESS: I think that -- I don't know entirely,

1 because some of the interaction occurred while we were not  
2 hired by the company. We finished in about November or  
3 December of last year. We were rehired in May and there were  
4 some negotiations in that period of time, but by the time we  
5 got rehired, we were starting to hear some rather negative  
6 rumblings from the credit card processor. It was obviously at  
7 a time when fuel was already starting to raise its ugly head  
8 and I think that they were starting to become extremely  
9 nervous.

10 BY MR. GALLAGHER:

11 Q Well, with all of these risk factors facing Delta in the  
12 fall of '04, Mr. Coleman, why --

13 THE COURT: Wait, wait, wait. They were not facing --  
14 he has not testified that they were facing Delta in the fall of  
15 '04. He has talked about the early part of '05.

16 MR. GALLAGHER: I'm sorry, Your Honor. I may have  
17 misspoke.

18 THE COURT: I'm maybe mistaken. Maybe I misheard him.

19 THE WITNESS: No, you were right.

20 BY MR. GALLAGHER:

21 Q Mr. Coleman, let's clarify. The business plan for '05 was  
22 put together in the fall of '04, correct?

23 A That is correct.

24 Q And that business plan contemplated the credit card  
25 holdback and the Comair -- a much smaller credit card holdback

1 and the sale of Comair, correct?

2 A That is correct.

3 Q But those were, as it turned out, risky events that didn't  
4 happen?

5 A They clearly were events that did not occur.

6 THE COURT: Okay. And when was it that -- you're  
7 saying to me that with respect to Comair, after the baggage  
8 debacle at Christmas, you wouldn't have put it up for sale,  
9 even if it was working fine, because you wouldn't have wanted  
10 to have been laughed all the way to the door.

11 THE WITNESS: I probably would have been better not to  
12 even mention the baggage debacle because I don't mean that to  
13 be the reason why it didn't get put on the market.

14 THE COURT: No, no. But what I'm saying to you is,  
15 having just had such a debacle, one normally wouldn't put such  
16 a business on the plate because anybody taking -- that you talk  
17 to would probably start laughing hysterically.

18 THE WITNESS: Well, you know what I'm going to do,  
19 whenever we take a break? I'm going to go back and get myself  
20 smarter on exactly what happened there, so I can explain it.

21 THE COURT: It's all right. I mean, I could probably  
22 live without knowing.

23 THE WITNESS: All right.

24 THE COURT: It was just curiosity.

25 BY MR. GALLAGHER:

1 Q Now, Mr. Coleman --

2 THE COURT: But what I'm saying is, that -- what I am  
3 saying is that you do say that that happened in December of  
4 '04.

5 THE WITNESS: That is my -- there was a baggage issue  
6 with the DCI in the Christmas time frame --

7 THE COURT: Okay.

8 THE WITNESS: But that is not, in my opinion, why  
9 Comair didn't get sold.

10 THE COURT: Okay.

11 THE WITNESS: I just mentioned I was -- as I said, I  
12 was sort of mentioning it in passing, as I was coming into the  
13 rest of it.

14 THE COURT: Okay. So we have this Comair problem in  
15 December of '04, but in your view, it isn't the real reason why  
16 Comair doesn't get sold later in the spring or in the early  
17 summer?

18 THE WITNESS: Correct. Comair had other issues where  
19 it needed to really be reorganized as an operation and that  
20 made it obvious that Comair would not get sold. It's really  
21 the operational aspects of that business --

22 THE COURT: Now -- okay. Now --

23 THE WITNESS: -- how profitable or not profitable.

24 THE COURT: When did we start knowing that the deposit  
25 for the credit card company was going to increase to the extent

1 that it did?

2 THE WITNESS: That's a great question because it was  
3 really an iterative process and like any negotiation, it's hard  
4 to tell when somebody puts something on the table and means it  
5 and when they put it on the table in hopes of getting to some  
6 middle ground. But we were starting to hear, as we got  
7 rehired, certainly May, June, July, in that time frame, there  
8 were negotiations going on or not going on, as the case may be,  
9 and it started to become something that we all were very  
10 concerned about from two perspectives. One is to be sure we  
11 had a credit card processor because without one --

12 THE COURT: Without that, you sort of have a real  
13 problem.

14 THE WITNESS: Yeah. It's a little hard to run an  
15 airline without credit cards. And the second thing was, you  
16 know, the amount.

17 THE COURT: We're going to develop -- you know what we  
18 would develop? We would have developed Delta deposit coins or  
19 something.

20 THE WITNESS: It's an idea in the future, perhaps, but  
21 it wouldn't have helped much at that time.

22 THE COURT: Or perhaps you could have purchased  
23 tickets with Euros. Okay. So what we're saying is, that when  
24 the deal was done in December of '04, we didn't know about the  
25 credit card problem?

1 THE WITNESS: We knew that it was expiring in August  
2 of '05, Your Honor. It was contract and everyone knew it was  
3 expiring and we were all aware it needed to be re-upped and the  
4 assumption, at that time, was that there would be a holdback.  
5 There wasn't one originally, but there would be a holdback and  
6 the assumption was that it would be \$100 million, not -- and  
7 again, I'm using hard dollars, as Mr. Huebner pointed out.  
8 It's really a percentage of what the liability is, but the  
9 assumption was that it would not be a hundred percent holdback.

10 THE COURT: Okay. And in December of 2004,  
11 notwithstanding the fact that we knew there had been this  
12 problem that Comair had, that there wasn't -- nothing had  
13 changed at that point to say, well, Comair won't get sold or  
14 whatever. That was still --

15 THE WITNESS: Are you saying in the fall of '04?

16 THE COURT: Yeah.

17 THE WITNESS: Yeah. In the fall of '04, there was a  
18 belief that the company would first put ASA on the market, sell  
19 ASA and then turn its attentions to Comair. And as time went  
20 forward and people really studied that business more  
21 thoroughly, not that they hadn't studied it thoroughly, but  
22 continued to look at the business and some of the changes that  
23 were being made --

24 THE COURT: No, it's okay if you say they hadn't  
25 studied it.

1 THE WITNESS: No, they had. But it's -- it's --

2 THE COURT: I mean, you know, sometimes people  
3 haven't.

4 THE WITNESS: But the goal was to sell it and it  
5 became obvious, as we went through, as we were rehired, it was  
6 obvious, in that time frame, that the likelihood of its sale  
7 was extremely low, which obviously is what has happened.

8 BY MR. GALLAGHER:

9 Q So, Mr. Coleman, you were first hired when in '04?

10 A We were hired both times in May. May of '04 and May of  
11 '05.

12 Q And you worked with Delta to develop this business plan and  
13 that was pretty complete in the fall of '04?

14 A That's correct.

15 Q And then that is the plan that, it has now turned out,  
16 didn't work in '05?

17 A That is the plan that was the '05 plan that obviously we  
18 are operating under.

19 THE COURT: But we're saying that the '04 plan, with  
20 the \$1 billion from the pilots, was based on a situation in  
21 which no one knew that there would be a request for this extra  
22 \$500 million and no one knew that Comair would, in fact, not  
23 get sold.

24 THE WITNESS: And nobody knew that fuel would cost us  
25 an additional billion-four.

1 THE COURT: Right.

2 THE WITNESS: So the -- there were a number of things  
3 in that business plan which were, I would describe as out of  
4 the company's control, that were, I think, still good  
5 assumptions from that period of time. I'm not apologizing for  
6 the assumptions, but it turned out not to be true. The company  
7 did work through and is on plan with all of its \$5 billion of  
8 savings and so, when we got to the DIP market, and I'm sure we  
9 will talk about that in a while, the DIP lenders were very  
10 impressed with what management was able to accomplish, but  
11 these other external factors had a very negative impact on the  
12 company.

13 BY MR. GALLAGHER:

14 Q Now, Mr. Coleman, when you were involved in the financial  
15 elements of the restructuring, the debt swaps, et cetera, in  
16 the fall of '04, were they, in any way, tied to or contingent  
17 upon a new pilot agreement being effectuated?

18 THE COURT: I'm sorry. I didn't understand the first  
19 part of what you said.

20 BY MR. GALLAGHER:

21 Q When you assisted Delta in restructuring some of its  
22 financial arrangements in the fall of '04, were the resulting  
23 transactions conditioned on or tied to an agreement with the  
24 pilots?

25 A I didn't work on every piece of those, but my recollection

1 is that the whole restructure had to come together at the same  
2 time, that it was all contingent upon each other.

3 Q So there was --

4 THE COURT: It wasn't contingent on the pilots. It  
5 was contingent on everything happening together?

6 THE WITNESS: Right. And that's --

7 THE COURT: But that the pilot piece was --

8 THE WITNESS: A critical part.

9 THE COURT: Yeah, okay.

10 THE WITNESS: A very critical part.

11 BY MR. GALLAGHER:

12 Q And I take it, then, that one way of looking at it is that  
13 Delta and these other financial parties and ALPA effectively,  
14 all together agreed to take this business plan and run with it.  
15 Is that right?

16 A That is correct.

17 Q Now, did they do that with -- was everyone convinced at  
18 that point? Were you convinced at that point, that it was  
19 going to be a slam-dunk success?

20 THE COURT: Who could have been convinced at that  
21 point, that it was going to be a slam-dunk success? Nobody can  
22 be convinced that a business is going to be a slam-dunk  
23 success.

24 THE WITNESS: It was actually, I would say, the  
25 cutting edge of risk. The amount of liquidity in the forecast

1 --

2 THE COURT: I mean, there's no question that they  
3 would have preferred to have \$7 million than five.

4 THE WITNESS: Right.

5 THE COURT: I mean, five was like a hair's breath  
6 above the minimum they thought they could get away with.

7 THE WITNESS: That is correct, Your Honor. In fact,  
8 when you got to the beginning of '06, their cash resources  
9 actually dropped to about \$600 million.

10 THE COURT: You mean -- we haven't gotten to '06.

11 THE WITNESS: Liquidity. I'm just saying --

12 THE COURT: We didn't get to '06 yet.

13 THE WITNESS: -- in the forecast. No, I meant in the  
14 fore --

15 THE COURT: Oh, okay.

16 THE WITNESS: Sorry about that. In the forecast.  
17 Everybody knew, including the lenders, because the covenants  
18 allowed for this, was that you would have a momentary dip as a  
19 consequence of winter travel before more cash started coming  
20 into the company.

21 THE COURT: Right. Winter travel is more or less?

22 THE WITNESS: Less. You have fewer people booking  
23 flights.

24 BY MR. GALLAGHER:

25 Q And that was -- the '04 business plan projected a low point

1 of liquidity, even if it was successful in all of these  
2 transactions, a low point of liquidity in the winter of '06.

3 Is that correct?

4 A That is correct.

5 Q All right. Now, you say the other financial parties to the  
6 '04 restructuring knew of the risk. Was this business plan  
7 shared with ALPA?

8 A Yes, it was.

9 Q All right. And did you make Delta aware of the risk?

10 A Yes. Delta was obviously -- it's their business plan, so  
11 they were very aware of the risk.

12 Q And was ALPA aware of the risk?

13 A It's my understanding they were, yes.

14 Q All right. And all parties did consummate this  
15 restructuring, with the pilots signing their agreement and  
16 other financial parties signing restructuring agreements in the  
17 fall of 2004, correct?

18 A That is correct. The debt for debt was a little lower than  
19 people had hoped, but it was sufficient to cause all parties to  
20 move forward.

21 Q All right. Now, did you and Blackstone depart the scene at  
22 that point?

23 A We did. Our work was finished and we terminated our  
24 engagement.

25 Q And when did you next become involved with Delta?

1 A That was in May of '05.

2 Q And what happened then?

3 A We were hired to come back in and obviously, a lot had  
4 transpired in that period of time. A lot of negative things  
5 had transpired in terms of the liquidity of the company and the  
6 general state of the industry, as I was describing, and so we  
7 came in to work with the company again, to see if another  
8 restructure was required, an in-court restructure or an out-of-  
9 court restructure, whatever was necessary. We didn't have any  
10 specific guidelines when we came back.

11 Q And had the company already undertaken an internal  
12 strategic review to identify additional cost cuts that could be  
13 made out of court?

14 A Yes. The company was working non-stop, looking for --  
15 under every rock, for whatever cost savings they could find.

16 Q That would be out of court, in addition, incremental to the  
17 \$5 billion targeted in the '04 plan. Is that right?

18 A That is correct.

19 Q All right. Now, when did you -- were you involved in --

20 THE COURT: No, okay, but for example, as I understand  
21 it, the 7,000 employees were only let go fairly recently.

22 MR. GALLAGHER: Large numbers of employees have been  
23 let go over the past four years, Your Honor. Twenty-five  
24 thousand. The 7,000 number is prospective over the next two  
25 years. Twenty-five thousand had been let go over the past four

1 years.

2 THE COURT: You know something? I never get told the  
3 numbers in a way that lets me know what they really are.

4 MR. GALLAGHER: There's a chart.

5 THE COURT: Okay.

6 MR. GALLAGHER: There's a chart in Ms. Carolan's  
7 declaration, Your Honor, and we'll put -- give Your Honor  
8 another copy of it.

9 THE COURT: No, I know. But I mean, you know, you've  
10 been telling me you let this many employees go. Well, you  
11 haven't let them go at all.

12 MR. GALLAGHER: That's right, Your Honor. The  
13 business plan.

14 THE COURT: So you haven't let them go at all?

15 MR. GALLAGHER: We've let twenty --

16 THE COURT: But you haven't let anybody go since the  
17 filing of the petition?

18 MR. GALLAGHER: Well --

19 THE COURT: See, I'm not interested in what happened.  
20 You have to understand something. It's very critical to me to  
21 be able to keep drawing that line between what happened before  
22 you filed and what's happened since you filed.

23 MR. GALLAGHER: Right.

24 THE COURT: I mean, what rock didn't you look under to  
25 find that you didn't have a legal obligation to fund their

1 pensions last year? You didn't look under that legal rock.

2 MR. GALLAGHER: Well, Your Honor, there was an element  
3 to try and keep faith with the work force as long as we  
4 possibly could.

5 THE COURT: Yeah, but how could you keep faith with  
6 something --

7 MR. GALLAGHER: There was an element of joining  
8 together with ALPA to try to make this plan work.

9 THE COURT: But, I mean, they didn't have a contract  
10 for that. You know?

11 MR. GALLAGHER: They had a moral contract.

12 THE COURT: Somebody just turned something off. But  
13 what I'm saying is, I don't know how much money that costs you  
14 every year.

15 MR. GALLAGHER: I'm sure we can get that number for  
16 Your Honor.

17 THE COURT: But that's what I'm saying. I mean, if it  
18 only costs you \$100,000 a year, then that's no big deal, but if  
19 it costs you a billion dollars a year, then we start to be  
20 talking some real money here. And you're, you know, shutting  
21 it down 100 percent on December 31st and you're not doing  
22 anything to look at longevity.

23 For example, what is a person who has been working for  
24 you for, say, forty years and is sixty years old, going to do  
25 for the balance of their pension? You've got some employees

1 that, it doesn't matter to them whether you're pension-free or  
2 not because they're only twenty-five years old, but you have  
3 some older employees who have many years of service.

4 MR. GALLAGHER: That's why we're working very hard to  
5 preserve the pension plan, Your Honor. Freezing it is  
6 different from terminating it.

7 THE COURT: Well, but I don't understand --

8 MR. GALLAGHER: They will get their accrued benefit.

9 THE COURT: -- what you mean by trying to preserve it,  
10 as opposed to freezing it. You mean the ball of assets that  
11 aren't big enough?

12 MR. GALLAGHER: Yes, Your Honor, and that can grow  
13 bigger with additional contributions in future years.

14 THE COURT: Or perhaps this year, if I decide that's  
15 what you're supposed to do.

16 MR. GALLAGHER: Also true, Your Honor. But that's why  
17 Delta and ALPA together have been working very hard in Congress  
18 to support legislation and --

19 THE COURT: No. Okay. But what I'm saying to you is  
20 you talk to me about equity and I'll talk to you about equity.  
21 How equitable is it to terminate somebody's pension, that's  
22 been getting credits for thirty years and is five years from  
23 retirement?

24 MR. GALLAGHER: Well, we're -- as I say, Your Honor,  
25 we're hopeful that will never happen.

1 THE COURT: No. I mean, I'm saying to you, even if  
2 you could save the plan, you might decide to terminate the plan  
3 for everyone under fifty. Everyone under the age of forty-  
4 five.

5 MR. GALLAGHER: Well, we couldn't do that, Your  
6 Honor --

7 THE COURT: Why?

8 MR. GALLAGHER: Because under ERISA, those benefits  
9 are protected by law.

10 THE COURT: What I'm saying to you -- their future  
11 benefits are?

12 MR. GALLAGHER: Yes, Your Honor. The benefits they  
13 have already accrued for their forty years of service in the  
14 example you have, that individual has accrued invested --

15 THE COURT: I understand that. What I'm asking you  
16 is, does ERISA require that you offer a plan for 44,000  
17 employees, or could you sort them out into an age and service  
18 group that kept a pension, but other people didn't?

19 MR. GALLAGHER: We certainly could stop offering  
20 pension benefits accruing in the future, Your Honor. Yes.  
21 With new hires --

22 THE COURT: I still don't think you understand what  
23 I'm asking.

24 MR. HUEBNER: Your Honor, can I help for one second?

25 THE COURT: Yes.

1 MR. HUEBNER: Exactly what you just said, we've  
2 already done. New hires are not accruing pension, just like  
3 you suggested, and the plan is already frozen, so people are  
4 not continuing to accrue benefits --

5 THE COURT: I still don't think you understand what  
6 I'm suggesting.

7 I am suggesting that, for you to freeze the plan as to  
8 certain of your employees is to breach faith with them in the  
9 largest way possible. Let us take your sixty- or fifty-five-  
10 year-old employee who has worked for you for thirty or thirty-  
11 five years and counted on that pension being available and  
12 counted on earning through the age -- earning more credits to  
13 that pension through the age of sixty-five. You've taken no  
14 account of that. Okay? You want to talk about equity?

15 MR. HUEBNER: Yes, we do, because we --

16 THE COURT: I mean, I'm saying to you, you know, I'm  
17 sure you told these people every single year, this is a gift,  
18 we don't have to continue it, whatever. But you do have some  
19 people -- and it's not a question of just age; you have some  
20 people with many, many years of service who are reasonably  
21 close to retirement, for whom it might be appropriate to leave  
22 the pension plan in place.

23 MR. HUEBNER: And, Your Honor, just to be clear for a  
24 minute, because I think -- you come back to the pensions a lot,  
25 frankly, as do we every day in the conference room, and I want

1 to make sure you understand something because it is desperately  
2 important to us that you understand for this hearing and for  
3 all of our hearings.

4 In the view of Delta, the way to try to preserve the  
5 pension plan, so that it is actually there to pay very  
6 substantial accrued benefits for the very person you're focused  
7 on: The one who's already worked for thirty years, is to stop  
8 the liabilities of the plan from continuing to grow. I  
9 understand, Your Honor --

10 THE COURT: What I'm saying to you is I don't even  
11 have a clue as to how many of your employees are of what age,  
12 what years of service, or anything of that sort.

13 MR. HUEBNER: And, Your Honor, if the day ever does  
14 come -- and we hope that it never does come -- that we need to  
15 commence an ERISA pension plan termination proceeding, that's -  
16 -

17 THE COURT: But what I'm saying to is: You're telling  
18 me your computers aren't capable of sorting and saying, I have  
19 so many employees with thirty years of service?

20 MR. HUEBNER: Your Honor, quite the contrary. I don't  
21 quite know of a context in which it would have been useful or  
22 appropriate to give you the very voluminous pension information  
23 that we worry about every day --

24 THE COURT: But --

25 MR. HUEBNER: Please give me one minute, if I may.

1 THE COURT: Yes.

2 MR. HUEBNER: Because this is very important to us.

3 Because we have not yet sought, and we hope not to

4 ever seek relief from this Court about the pension plan.

5 Obviously we, as always, will give you whatever information you  
6 want.

7 THE COURT: Okay. You don't -- you're not getting  
8 what I'm getting.

9 MR. HUEBNER: I'm sorry, Your Honor. I'm trying hard  
10 to.

11 THE COURT: Two days ago, I was told that I had to  
12 make a decision here that was equitable.

13 MR. HUEBNER: Yes, Your Honor.

14 THE COURT: Okay? And I was told that I had to look  
15 at the employees of Delta who had lost their pensions, and that  
16 was part of the equities. And I'm saying, if it's part of the  
17 equities, well, then why don't I try to look at it. And you're  
18 saying to me, there's nothing to look at because you're not  
19 going to give me any information, it doesn't give me anything  
20 to look at.

21 MR. HUEBNER: Your Honor, I'm not saying that at all.  
22 I now understand the context of your question.

23 THE COURT: Okay. But I mean, I don't care, but I'm  
24 saying, you know --

25 MR. HUEBNER: Right. If we're asking to weigh

1 relative pain, more information about the pain taken by the  
2 other forty-four would be useful.

3 THE COURT: Well, I mean, I was definitely asked to do  
4 that two days ago.

5 MR. HUEBNER: Your Honor, I now understand perfectly  
6 what you're saying, and we will provide additional information  
7 in that regard.

8 THE COURT: I mean, I don't know whether it will -- I  
9 will find it material, but I'm saying to you, you know, without  
10 information about it, I can't weight it at all.

11 MR. HUEBNER: All right. It's a fair point, and I  
12 apologize. I think it's fair to say we have actually tried  
13 very hard since the 14th of September to be responsive to your  
14 information requests. Now that I understand the context, you  
15 can be quite confident we will move on that one forthwith.

16 THE COURT: Well, you know, look. I mean, you have a  
17 huge amount of information; and, as I told you at the outset, I  
18 am not familiar with the internal workings of airlines. I know  
19 how to get from Point A to Point B, I know how to get my  
20 luggage marked so I hopefully will get it. But --

21 MR. HUEBNER: It's a --

22 THE COURT: You know, I mean, you -- you know, I don't  
23 know whether I will find that pension relevant, I don't know --  
24 you know. Maybe it was just me, but I didn't even realize that  
25 the \$116 million we were talking about would have gone only

1 into the pilots' pension fund because I thought the two funds  
2 were one fund.

3 MR. SIMON: Yeah. No, that's right, it was a hundred  
4 and six in evidence (sic).

5 THE COURT: This is -- what I'm saying to you is: You  
6 people have to recognize that you're all working and getting  
7 little pieces and -- and you get all this information. And I  
8 don't have it; and, if I don't have it, I can't use it.

9 MR. HUEBNER: Your Honor, we agree. Our job is to  
10 bring you the fact; your job is to apply them to the law.

11 THE COURT: I mean, you know, I guess these little  
12 violin -- my little violin. I only have a little violin  
13 because I can't play at all; and I figure, if I have a little  
14 one, it won't sound so bad.

15 You know, I mean -- you know, but I'm supposed to take  
16 account of this; I'm supposed to take account of that, and I'm  
17 supposed to feel sad about this and feel sad about that. And I  
18 mean, you know, then there's the person who told me that, well,  
19 you know, all of our employees just absolutely love us, but  
20 we're letting 7,000 of them go.

21 MR. HUEBNER: Your Honor, again, especially given your  
22 own prior juris prudence and that of the Second Circuit, that  
23 the relative contribution and the pain, frankly, and sacrifice  
24 of all the work groups; union and non-union, is the touchstone,  
25 it is certainly our burden to give you the facts that will help

1 you weigh the sacrifices made by those who are not in court  
2 today.

3 THE COURT: Well, but what I'm --

4 MR. HUEBNER: And we will do that.

5 THE COURT: What I'm saying somebody tell me that  
6 you'd let 7,000 people go, as if they had been let go --

7 MR. HUEBNER: Well --

8 THE COURT: -- not that there was a plan to let 7,000  
9 people go over the next year or two years, but that they had  
10 been let go.

11 Now how am I supposed to, you know, rely on what  
12 people say to me when -- you know, this is one of the reasons  
13 why I keep asking questions, because I want to make sure I  
14 understand I understand what somebody thinks they have told me.

15 MR. HUEBNER: Your Honor, just to give you an example  
16 of how seriously, at least I take that, I was so upset  
17 yesterday when you said that you thought that I told you that  
18 we downsized DFW to one flight a day. I had people stay up the  
19 entire night and read every single transcript since the day I  
20 met you, to find that exchange. We take our credibility with  
21 you with the utmost seriousness. We will give you the facts  
22 that you need, and we will not misspeak.

23 THE COURT: Well, you know, some --

24 MR. HUEBNER: And here is the --

25 THE COURT: -- there certainly are cases where I am

1 going to misremember. Okay? I have never found it useful to  
2 take notes in the courtroom. Occasionally. But I don't find  
3 that they can give me the full picture that I need; and,  
4 therefore, what I rely on is my memory. I have a very good  
5 memory for what happened at prior hearings. It doesn't mean  
6 that, on occasion, I won't have misheard something or have  
7 remembered some particular part of it that makes some other  
8 part of it wrong. But basically, you know, I go on what I  
9 remember has happened at the prior hearings and, you know,  
10 that's worked for me for the last twenty years, and I expect it  
11 to continue to be what I will do here.

12 MR. HUEBNER: And, Your Honor, to be emphatically  
13 clear about this, I and we are very well aware that, for the  
14 next two years or year and a half or year, essentially the  
15 livelihoods of 80,000 are in your hands, and that the  
16 credibility of the people who present facts to you is going to  
17 determine the fates and the livelihoods of those people. We  
18 don't undervalue that.

19 Frankly, there were whoops and screams and Davis Polk  
20 when they found the transcript. I actually did not say that we  
21 were down to one flight, and if there ever are --

22 THE COURT: I'm sorry. Down to what?

23 UNIDENTIFIED: One flight.

24 MR. HUEBNER: One flight a day at DFW.

25 If there ever are occasions where we misspeak or

1 misstate --

2 THE COURT: Well, I mean, what did -- what was it that  
3 you did say?

4 MR. HUEBNER: Would you like -- would you like --

5 THE COURT: Well, I mean, it's -- why did it come  
6 across to me that way?

7 MR. HUEBNER: Honestly, to be honest, Your Honor, I'm  
8 not sure. I could give you the excerpt, if you'd like.

9 THE COURT: No, that's all right. It's all right.

10 MR. HUEBNER: But the point I want to make is: As it  
11 was useful during the hearing prior to the commencement of  
12 this, when you listed for all of us the things you thought you  
13 needed to know, we are learning with you as you go; we are  
14 learning what you feel you need to know, and you can be sure  
15 that we will continue to try be as responsible as we can.

16 THE COURT: Yeah, okay. And a lot of times, I am not  
17 -- I am not very comfortable taking a fact and not knowing  
18 anything that's around it because I really think facts can be  
19 misrepresented unless you know more about the context.

20 MR. HUEBNER: And the law.

21 THE COURT: Well --

22 MR. HUEBNER: We agree, Your Honor.

23 THE COURT: Now let me just make a little comment on  
24 that. I actually think that in a case like this, the facts are  
25 much more important than the law. I mean, you know, I don't

1 look at my Bankruptcy Code very often, okay, because you pretty  
2 well have memorized everything it says. I mean, and so what's  
3 really important is: What are the facts that make this case  
4 like some other case, make this case fit into this pattern, not  
5 fit into this pattern, whatever?

6 MR. HUEBNER: And that --

7 THE COURT: And so, to me, I don't really see why  
8 people need to be fighting about the facts. They can be  
9 fighting, they can come to the view that they want to have a  
10 different conclusion, which is clear to me you do. But either  
11 we have agreed on the facts or we haven't agreed on the facts.  
12 If we haven't agreed on the facts, then you need to get  
13 together and figure out what the problem is.

14 MR. HUEBNER: And the good news here, Your Honor, the  
15 reason you are even more right than right is because you wrote  
16 one of the three cases -- there are two others, Carey  
17 (phonetic) and Century Brass -- that govern. There's no  
18 confusion, there's no complexity. We all know what the law is,  
19 and the question is: How do these facts apply to them? This  
20 isn't a case where, as you sometimes know, we're in a remote  
21 jurisdiction and looking for someone's case somewhere. There  
22 are three Second Circuit cases --

23 THE COURT: No. You're in a remote jurisdiction, and  
24 the judge is in a panic and will not do anything except  
25 something that's absolutely, straightforwardly set forth in the

1 code.

2 MR. HUEBNER: Right. And we have Carey and we have  
3 Royal Composing Room (sic), and we have Century Brass.

4 THE COURT: Yeah. That's what I'm saying. What I'm  
5 saying is, I think that, you know, I think all of the judges  
6 here are pretty well -- you know, don't get upset at bankruptcy  
7 cases as being something you have to do exactly according to  
8 some map. I mean, I can remember somebody called me up and  
9 said, well, I mean, what am I going to do with these employees,  
10 they haven't been paid for this week in a case filed today. I  
11 said, you're going to get them paid, you're going to get the  
12 bank to advance the money. And he says, but how can I do that,  
13 there's nothing in the code that says I can do that. And I  
14 said, well, actually, you know, they're priority claims, and I  
15 don't think priority creditors ought to be held to the outcome  
16 of the case; I said, but in addition to which, you know, you  
17 just have to do it because it's the right thing to do.

18 MR. HUEBNER: And, Your Honor, as you probably know,  
19 Congress just validated you by making the changes to 507(a)(4)  
20 and (a)(5) among the very only changes in the entire new Code  
21 that were effective on April 17th, and not October 20th. They  
22 felt strongly enough when presented with the priorities (sic)  
23 that they singled them out among hundreds of sections to say,  
24 this is what's important.

25 THE COURT: I mean, what do I -- I can't have a whole

1 room of people who haven't been paid, and who are owed three  
2 and \$400.

3 MR. HUEBNER: And, Your Honor, that's why --

4 THE COURT: They have to be paid because they need the  
5 money, nobody needs to be spending their time talking to them.

6 MR. HUEBNER: And, Your Honor, that's why everybody  
7 from our highest-paid captain to our lowest-paid employee  
8 benefitted from your first day, allowing us to pay all wages in  
9 the ordinary course, once you were satisfied that, unlike some  
10 cases --

11 THE COURT: Like one particular case I had where the  
12 principal did me in.

13 MR. HUEBNER: Right. The twelve people that took the  
14 \$6 million. Exactly.

15 THE COURT: Now I mean, and I'm just saying I think  
16 that those are the sorts of things that you just have to, you  
17 know -- I mean, how can you do that? Well, oh, you know, well,  
18 but where does it go, and why don't people take an appeal? And  
19 they don't take an appeal because they know it's the right  
20 thing to do.

21 MR. HUEBNER: We agree, Your Honor.

22 THE COURT: You know, and I'm just saying I think that  
23 that's, you know, a lot about a lot of things that's going to  
24 go on in this case, is, you know, it's the right thing to do.

25 You know, and the other thing I have to tell you is,

1 you know, one of the articles said, oh, but she never decides  
2 anything. It's not true I never decide anything. It is true  
3 that I sometimes don't write opinions on a timely basis. I  
4 decided after about ten years of writing decisions that nobody  
5 cared about --

6 MR. HUEBNER: Your Honor, we read all 122 of your  
7 written decisions, and we care about them a great deal.

8 (Laughter.)

9 THE COURT: Yeah. Did you read In Re: Edwards?  
10 That's the one on 707(b).

11 MR. HUEBNER: I have to --

12 THE COURT: I thought it was brilliant.

13 MR. HUEBNER: Well, I have to confess, in the area of  
14 personal Chapter 7 bankruptcies, we gave those a fairly light  
15 scan.

16 (Laughter.)

17 THE COURT: Okay. You know, that one said, you know,  
18 all 707(b) is there for is to tell you whether, in fact, the  
19 petition is valid as a complaint.

20 MR. HUEBNER: In fact --

21 THE COURT: But it --

22 MR. HUEBNER: You know, I don't know how many other  
23 people in the world can say that they read every opinion you've  
24 ever written. But there are 122 of them, and we read them all.

25 THE COURT: And what I concluded was that most people

1 didn't care about them, and that, in most instances, there was  
2 nothing about the act of writing them that in any way changed  
3 what I thought.

4 MR. HUEBNER: Yeah, although -- and this is kind of a  
5 weird dialogue, but I guess --

6 (Laughter.)

7 UNIDENTIFIED: No. Why do you say that?

8 MR. HUEBNER: I could go on, but, you know --

9 (Counsel confer.)

10 (Laughter.)

11 MR. HUEBNER: I mean --

12 THE COURT: Well, because actually, I wanted to say  
13 some things, and this is a good forum to do it in. What were  
14 you going to say?

15 MR. HUEBNER: Well, as Mr. Simon would say: At the  
16 risk of leading with my chin, I thought you made some pretty  
17 interesting law in a lot of the earlier opinions, and you  
18 repeatedly issued the philosophy you just said, which is: The  
19 fact that some court a long time ago once said something like  
20 this in a different fact pattern is not going to constrain me.  
21 And even in Royal Composing, you had a key on to creative  
22 thinking (sic) that I think is actually very important.

23 THE COURT: Well, I think what I came to conclude was  
24 that nobody appreciated what I wrote. I mean, for example,  
25 when there was that fuel oil case and there was the other one,

1 as to whether or not the committee could intervene in an  
2 adversary proceeding under 1109, I had a case that didn't  
3 involve the committee; it involved the United States Government  
4 for Medicare. And I held that their right under 1109 was not a  
5 right to intervene, it was a right to appear and be heard.

6 MR. HUEBNER: And two months ago -- less than two  
7 months ago in American Medical Technologies, the Second Circuit  
8 resounding adopted that view, saying that the committee --

9 THE COURT: Oh, I'm so glad. I didn't see their  
10 decision.

11 MR. HUEBNER: It's a very important new decision, a  
12 ringing endorsement of the fact that debtors are the ones who  
13 are the stewards of the estate. In this case, a committee had  
14 taken control of and settled a cause of action under 9019 --

15 THE COURT: And what my decision said, it's in -- what  
16 was it -- it was a doctor. And you know, what I said was they  
17 are not a true party; they're a phantom party. Okay? They get  
18 their rights when, after you try to settle it, you have to make  
19 a 9019 motion.

20 MR. HUEBNER: And that's exactly what the Second  
21 Circuit said. It rejected and reversed on appeal the finding  
22 that the committee's 9019 motion, which was approved as being  
23 inappropriate because the committee had a right to object or  
24 support a debtor 9019, but no right to settle a cause of action  
25 on its own, instead of the debtor.

1 THE COURT: Well, at any rate, I mean, it would seem  
2 to me, you know, you shouldn't get discouraged when you write  
3 decisions like that. And you know, you get reversed by a  
4 District Court that you know perfectly well had their law clerk  
5 write the decision and never bothered to give you any thought  
6 about why you might be right.

7 MR. HUEBNER: Yeah. When I clerked on the Second  
8 Circuit, Your Honor, frankly, people would call and say --  
9 because I was already going to be a bankruptcy lawyer -- we all  
10 hate the bankruptcy stuff, no one understands it, can you take  
11 these bankruptcy cases. The reality is we have a different  
12 juris prudence that is not, frankly, often understood on  
13 appeal.

14 THE COURT: But what I came to conclude was that I  
15 actually have a very good ability to issue oral decisions, and  
16 that I do not need to have twenty-five case books on my desk,  
17 and that I can explain orally why I want to go one way or the  
18 other, and we can move on.

19 MR. HUEBNER: And, Judge Wedoff has done a very  
20 similar thing in United.

21 THE COURT: What?

22 MR. HUEBNER: Judge Wedoff -- Chief Judge Wedoff has  
23 done a very similar thing in United, was to read many of his  
24 rulings orally from the bench, as opposed to writing long  
25 opinions.

1           THE COURT: Yeah, I mean, I -- so the other reason why  
2 I do that is I don't like decisions that are what I call "one-  
3 offs;" that is, something that I will do in a single case, to  
4 be written because then they get passed around and everybody  
5 thinks that you'll do it. And you want to say, no, I did it in  
6 this case because on these facts with these people, it was the  
7 right thing to do. And I don't really want you taking that  
8 case to some other judge and saying, oh, look what she did. So  
9 you may get some written ones, but probably you'll get more  
10 oral ones, particularly if they have a time pressure. It's a  
11 sort of long way of saying this one is going to be an oral one.

12           (Laughter.)

13           MR. GALLAGHER: Your Honor, may I inquire about your  
14 pleasure about how late we go today? I have quite a bit more  
15 for this witness, it's clear we'll probably --

16           THE COURT: It's 5:20. How much more do you think it  
17 would take you to do?

18           MR. GALLAGHER: At least an hour and a half to two  
19 hours, Your Honor.

20           THE COURT: I hate to say, would all those who would  
21 like to stay here for two hours raise their hand?

22           (Laughter.)

23           (Counsel confer.)

24           THE COURT: Would all those people who would like to  
25 stay here until six o'clock raise their hand? That's not any

1 better.

2 (Laughter.)

3 THE COURT: They seem to want to leave, but I seem to  
4 think that we should take another five or ten-minute break, and  
5 then come back and stay until 6 to 6:15, and get you well  
6 started on it. But everybody needs to stretch their legs.

7 MR. GALLAGHER: Thank you, Your Honor.

8 (Recess taken at 5:17 p.m.)

9 (Proceedings resume at 5:31 p.m.)

10 THE COURT: I am going to sit down. Anybody else that  
11 wants to sit down can sit down. This is one of those reminders  
12 that you probably don't need, but the reason why we don't have  
13 water fountains that work and why you have that little bottle  
14 of water is that they have been unable to get the city water to  
15 come in through the pipes in this building so that it's clean  
16 enough to drink. So we have a cooler.

17 So try to stick to the cooler or bottled water of your  
18 own, because you might find it unpleasant to have had a drink  
19 of the other.

20 MR. GALLAGHER: Thank you, Your Honor. May I proceed?

21 THE COURT: You may.

22 MR. GALLAGHER: Thank you.

23 BY MR. GALLAGHER:

24 Q Mr. Coleman, before we broke, you had talked about your  
25 desire to check during the break on what was actually the

1 situation vis-a-vis Comair.

2 A Right.

3 Q Have you learned any information over the break?

4 A I have.

5 Q And would you describe for the Court what clarifications  
6 you'd like to make?

7 A Sure.

8 THE COURT: Okay. Go ahead.

9 A I've caused quite a stir on one topic, which is frankly not  
10 relevant to anything I'm talking about, but it nevertheless has  
11 caused a stir in the audience. So I'd like to clear it up.

12 The issue with Comair, which was really Cincinnati, there  
13 was a major snow storm at that time that I was talking about  
14 which caused a -- really, a collapse of a computer system which  
15 left people and bags and pilots and everyone else stranded. I  
16 mixed it up a little bit with a USAir situation where they lost  
17 a lot of bags.

18 As I said --

19 THE COURT: Oh, good. A competitor who can't keep  
20 their bags in line?

21 THE WITNESS: But, as I said, you had had no impact on  
22 our decision-making --

23 THE COURT: No, okay. What you're saying to me is the  
24 Cincinnati situation was --

25 THE WITNESS: Really weather-driven.

1 THE COURT: Yeah. Okay.

2 THE WITNESS: But it caused a big stir in the  
3 courtroom, so I just wanted to make sure I cleared that up.

4 THE COURT: No, okay. I always like to have these  
5 things cleared up.

6 THE WITNESS: Right.

7 BY MR. GALLAGHER:

8 Q Now, Mr. Coleman, I'd like to turn to 2005, to when you and  
9 your Blackstone team came back to Delta. Did you have a role  
10 in the development of Delta's in-court business plan?

11 A Yes, I did with my team.

12 Q And what was your role?

13 A We worked with the company as it developed its strategic  
14 plan and its business plan to develop what would also be an in-  
15 court plan.

16 Q And are you aware of --

17 THE COURT: When you say an "in-court plan," I'm not  
18 sure quite what you mean.

19 THE WITNESS: It would be a plan, Your Honor, that  
20 would assume that the company has filed for Chapter 11 versus a  
21 plan where you're assuming the company does not file for  
22 Chapter 11. As part of --

23 THE COURT: Okay. So it would just be assuming the  
24 limitations that come as part of the Chapter 11?

25 THE WITNESS: The limitations and the benefits. As

1 you know, in the \$3 billion --

2 THE COURT: I'm sorry. What I meant was you weren't  
3 thinking in terms of, oh, we've also got our plan of  
4 reorganization all set out?

5 THE WITNESS: No. This was purely just the business  
6 plan and we were working on an out-of-court plan and an in-  
7 court plan since, obviously, with the environment that I  
8 described to you, things were a lot worse. There was still a  
9 hope we might be able to do something out of court, but if not,  
10 then we needed to be in a position, especially if we needed to  
11 seek debtor-in-possession financing, that we had a plan that  
12 could show the debtor-in-possession financing lenders what the  
13 company would look like in a Chapter 11, not having exited,  
14 just while it was in Chapter 11.

15 THE COURT: Right. Okay.

16 BY MR. GALLAGHER:

17 Q And when did you actually -- did you and Blackstone at some  
18 point in the process begin to -- were you authorized by Delta  
19 to have discussions with DIP lenders about potential debtor-in-  
20 possession financing?

21 A Did you ask when or --

22 Q Yes.

23 A Yes, we were authorized, and we began in the month of  
24 August to have conversations with potential DIP lenders.

25 Q And, at that point, was the in-court business plan final?

1 A No. The in-court plan really started in August, about the  
2 same time that we started seeking -- started the process of  
3 seeking debtor-in-possession lenders.

4 Q And what was the deadline for the expiration of the credit  
5 card processing agreement?

6 A The deadline for that agreement I believe was the end of  
7 August. August 31st, I think.

8 Q And that -- it was increasingly evident that would be a  
9 significant impact on Delta's liquidity?

10 A Well, there was -- a deal was not done at that time and the  
11 deal that was under consideration was going to have, as I said,  
12 a five-hundred-fifty-million-dollar approximate higher  
13 holdback.

14 Q What level of cost reductions -- you've already heard Mr.  
15 Bastian's testimony, as the Court has. Briefly, can you  
16 briefly describe the business plan, the in-court business plan,  
17 that you helped Delta develop?

18 A Sure. The plan is the one that Mr. Bastian talked about,  
19 which is the three-billion-dollar cost-save and revenue  
20 enhancement plan. It has a billion-one related to revenue  
21 enhancements. It has \$970 million related to benefits that  
22 would come from the Chapter 11 rejection of leases and things  
23 like that -- pardon me -- and it has the \$930 million in labor  
24 savings.

25 Q And what was the role that you played and your Blackstone

1 team played in the development of that business plan?

2 A We worked carefully with the company, really, in a combined  
3 effort to come up with those numbers and then implement them  
4 into a forecast, which is the forecast we've been talking  
5 about.

6 Q So it wasn't that the company served these up on a silver  
7 platter and you took them to sell them to Wall Street?

8 A No. This was a process that we were intimately involved  
9 in. I will always emphasize it is the company's plan. They  
10 are more expert on their business than we are, there is no  
11 question. But we were obviously there assisting, questioning,  
12 critiquing and being part of the whole process.

13 Q So your role is to dig in --

14 A Yes.

15 Q -- at least to some extent, to make judgments about what is  
16 the reasonable outcome. Is that fair?

17 A I think that's fair.

18 Q So you knew about the breakout of revenue and in-court  
19 savings and labor savings.

20 Did you believe that each element was as --

21 THE COURT: Can I ask a question? What are these in-  
22 court savings that you keep talking about?

23 THE WITNESS: Well, they would be things that we  
24 couldn't do outside of Chapter 11. So, for instance, rejection  
25 of plane leases. Planes that the company no longer wants are

1 not profitable planes to fly. They would be rejection of other  
2 kinds of leases, anything that the Bankruptcy Code allows a  
3 company to do to reduce its overall burden. And that amounted  
4 to \$970 million.

5 BY MR. GALLAGHER:

6 Q And does part of that relate to unsecured debt?

7 A Yes. Obviously, we were paying interest, Your Honor, on  
8 unsecured debt. And that would include that interest.

9 Q And if any other contracts --

10 THE COURT: Okay. But what unsecured debt were you  
11 planning on?

12 THE WITNESS: I would describe it as mostly the bond  
13 debt, Your Honor. It's about \$4 billion of unsecured bond  
14 debt.

15 BY MR. GALLAGHER:

16 Q So that would yield a fairly substantial --

17 THE COURT: Okay, wait, wait. What bond debt is  
18 unsecured?

19 THE WITNESS: There is a large amount of debt that is  
20 not collateralized that was on the balance sheet, that is still  
21 on the balance sheet.

22 THE COURT: Okay. But it wasn't sold in connection  
23 with buying airplanes or sold to do terminals. It was just --

24 THE WITNESS: Just financing that was used to raise  
25 cash for the company --

1 THE COURT: Okay.

2 THE WITNESS: -- company usage.

3 BY MR. GALLAGHER:

4 Q Did you and your team from Blackstone look at the 1.1-  
5 billion-dollar revenue enhancements from network and revenue  
6 management activities that the company proposed?

7 A It was part of the overall effort, yes.

8 Q And did you determine that was an appropriate and  
9 attainable level of revenue enhancements?

10 A It appeared to us to be logically thought out and  
11 strategically thought out.

12 Q And did you look at the \$970 million of in-court savings  
13 and look at these various pieces as the Court has just asked,  
14 what are the real numbers, what is attainable?

15 A Yes. Now, some of those had to do with the strategic plan  
16 and what airplanes would be used and, therefore, whether they  
17 were planes that could be rejected or not rejected. Obviously,  
18 the unsecured debt was a little easier to consider. But, yes,  
19 we looked at all aspects of that.

20 Q And did you also --

21 THE COURT: Okay. Let me ask you a question. Does  
22 the \$970 million include any of the airport situations where  
23 there is a bond issue and lease and where there is not yet a  
24 decision, as far as I know, in the United case as to whether or  
25 not those bonds must be paid because they were associated with

1 that lease?

2 THE WITNESS: My recollection of the number, Your  
3 Honor, and it's obviously a lot of components, but my  
4 recollection of the number was things that we had I think more  
5 control over, and that is one that I don't think was in there.

6 THE COURT: Okay.

7 THE WITNESS: Again, a recollection. But I believe --

8 THE COURT: I just would like to make sure that, you  
9 know, we haven't been counting on things that quite possibly  
10 might not happen.

11 MR. GALLAGHER: And I've told Your Honor that we can  
12 confirm that the 970 million did not include those airport  
13 bonds.

14 THE COURT: Okay. That decision in United hasn't been  
15 issued yet?

16 MR. GALLAGHER: No, Your Honor, it hasn't.

17 THE COURT: Okay. I assume you'll let me know when it  
18 has been?

19 MR. GALLAGHER: We will be happy to do so, Your Honor.

20 BY MR. GALLAGHER:

21 Q Mr. Coleman, did you and your Blackstone team also look at  
22 the \$930 million of labor savings that the company had proposed  
23 and assess whether it was appropriate and necessary?

24 A We did look at it, obviously, in the context of the \$3  
25 billion saved that was needed to make this company a cost

1 competitive airline, a viable airline. And, yes, we did look  
2 at that in that context.

3 Q So I take it you -- who reached the conclusion about  
4 needing \$3 billion? Did you reach that conclusion first, did  
5 the company, or did you reach it together?

6 A I would -- I haven't thought about that question in that  
7 way, but my guess is we thought about it together because the  
8 teams were working together. Obviously, this is driven by the  
9 company. But it was, as I said, a very cohesive process.

10 Q How did you end up with a three-billion-dollar target for  
11 the combination effect of cost reductions and revenue  
12 initiatives?

13 A Well, what we're really looking at is the viability of the  
14 airline. The cost structure of Delta is not in line with the  
15 people it's competing with, which means that those people can -  
16 - pardon me one second. Excuse me. Which means that those  
17 people can lower their prices on tickets and Delta can't keep  
18 up with that without losing money.

19 So the \$3 billion was aimed -- it is aimed at putting Delta  
20 in a position where it will be able to compete with what I call  
21 all the carriers. We call them low-cost carriers, but they're  
22 really the competitors. And it will allow Delta to compete  
23 with the competitors in the industry.

24 Q Because if it gets its cost to competitive levels, then  
25 they cannot underprice it and make a profit any more than Delta

1 can?

2 A It means that if somebody is going to lower price that  
3 Delta should be able to lower price in the same vein that that  
4 party can, and have the same burden effected upon them. It  
5 still may be below cost, but that may be something that party  
6 chooses to do.

7 But what it doesn't -- what it absolutely saves Delta from  
8 --

9 THE COURT: You mean that's the old bankruptcy thing.  
10 You know, sure, I'm losing ten cents on every one, but I'm  
11 making it up on the volume.

12 THE WITNESS: Well, if you look at Southwest Air, the  
13 one they just announced in Denver that was talked about  
14 yesterday, what the paper said is they had fifty-eight-dollar  
15 fares that they were introducing in Denver. And while I  
16 haven't studied that, my guess is nobody is making money with a  
17 fifty-eight-dollar fare.

18 THE COURT: Well, it depends on where you're going to.

19 THE WITNESS: Well, it depends on how short a distance  
20 it is and what your cost structure is. But what I can assure  
21 you is that the structure that Delta has right now, if somebody  
22 came into our markets and started putting \$58 out, Delta would  
23 be losing, you know, pick a number, \$100 while that other party  
24 might be losing \$20. The other party has a lot more staying  
25 power because their balance sheet is a different balance sheet

1 than Delta's. And, essentially, Delta goes out of business.

2 And the premise on that is that that party drives  
3 price to the point where Delta leaves that marketplace or  
4 leaves that route and then they can bump the price back up to  
5 something a little more profitable. But that is exactly what's  
6 happening in the airline business today.

7 THE COURT: But we don't know how you get -- how far  
8 you get to fly for \$58.

9 THE WITNESS: My recollection is --

10 THE COURT: And we know that you don't get to get a  
11 return for that.

12 THE WITNESS: Without this being something under oath,  
13 I believe that it was Phoenix and Chicago that were fifty-  
14 eight-dollar fares from Denver, which are not insignificant  
15 distances, further than most people -- my guess is --

16 THE COURT: But how many people want to go from  
17 Phoenix to Chicago?

18 THE WITNESS: This was Denver to Chicago and Denver to  
19 Phoenix.

20 THE COURT: Oh, Denver to Chicago.

21 THE WITNESS: And in today's market with most cars, my  
22 guess is you couldn't fuel your car up for \$58 and get that  
23 far.

24 THE COURT: No, I can understand that because it's  
25 getting to be winter and most people fly into Denver and then

1 fly from there.

2 THE WITNESS: Right. A lot of people do that. It's a  
3 hub for -- obviously, it's a hub for United and Frontier.

4 THE COURT: Well, I mean, it's a hub for the snow.

5 THE WITNESS: It's -- you asked about Utah earlier.  
6 It's the same kind of hub in the winter which is it is a feeder  
7 into the ski resorts in Colorado, just like Salt Lake is a  
8 feeder into the ski resorts.

9 THE COURT: Okay. Is Eagle a low-cost carrier or is  
10 it a regional carrier?

11 MR. GALLAGHER: American Eagle, Your Honor?

12 THE COURT: Well, I guess it must be American Eagle.

13 THE WITNESS: Right. American Eagle is a regional  
14 carrier. But, because of the contracts they have with those  
15 pilots and the cost of running those planes, they're  
16 effectively like a low-cost carrier because their costs are  
17 lower.

18 THE COURT: Okay.

19 THE WITNESS: And they have much lower revenues, but  
20 their cost structure allows them to fly those planes  
21 profitably.

22 THE COURT: Okay.

23 BY MR. GALLAGHER:

24 Q Now, Mr. Coleman, you've told us that you agreed with the  
25 three-billion-dollar goal of the in-court business plan. How

1 did you view that? Did you view that as the -- a bonanza, that  
2 this is what will make Delta the most profitable or most  
3 successful in history? What criteria did you use to arrive at  
4 three billion is enough, not more and not less?

5 A Well, this is a changing environment, as we've just talked  
6 about and Mr. Kasper talked about. I see the \$3 billion as the  
7 bare minimum. It's what should get Delta into a position where  
8 they are cost competitive with the competitors in the  
9 marketplace, which includes AirTran, Southwest, Jet Blue,  
10 United, USAir, America West, et cetera.

11 So the goal of the \$3 billion is not to make them a plush -  
12 - it would be nice -- a plush over-liquid airline, but purely  
13 one that will be able to compete on a cost-level basis with the  
14 others.

15 Q So will it make Delta -- if the bare minimum is survival,  
16 the next step is successful and the top rung is robust, where  
17 does this \$3 billion get Delta?

18 A I stand by bare minimum. I think it puts them in the game.  
19 It puts them with a cost structure that is one that can be  
20 viable and I think will be viable, but it certainly doesn't put  
21 them as the lowest cost carrier in the marketplace in any way.

22 Q Do you know or do you have a view on whether Delta Air  
23 Lines today has any other alternatives to find other cost  
24 savings in the company to take the place of or in lieu of  
25 getting \$930 million of labor cost savings?

1 A I don't think so. There are people at Delta that spend  
2 their lives trying to find additional cost-saves and I have no  
3 doubt they'll find more as time goes on, whether they're, you  
4 know, technological changes that allow for cost-saves or  
5 something like that.

6 But I think they've turned up every rock, every stone,  
7 every opportunity there is, and this is the amount that they  
8 have found.

9 Q All right. And this \$3 billion of cost reductions and  
10 revenue enhancements is on top of the \$5 billion previously  
11 worked out in -- from 2002 through 2005. Is that right?

12 A That's correct. The total will be ultimately, when it's  
13 all put into place, an eight-billion-dollar annual save.

14 Q Now what if -- ALPA's proposal hasn't been definitively  
15 valued, but assume for discussion purposes that ALPA has  
16 offered \$100 million a year in cost reductions and the company  
17 accepted that, so the total reductions were 705 million instead  
18 of 930 million. In your view, would that be sufficient for the  
19 successful reorganization of Delta?

20 A No. I think that Delta needs to be a cost competitive  
21 carrier. This is not about emotion or passion. This is about  
22 whether their cost to put a plane in the air is the same as the  
23 other people that they're competing with in the context of the  
24 revenues that each of them are able to garner.

25 So this is a company that needs \$3 billion. I describe it

1 as a bare minimum.

2 Q Okay. And in your view, will Delta be able to obtain exit  
3 financing if it does not --

4 THE COURT: I'm not interested in exit financing.  
5 We're, what, two years away? Three years away? One year away?

6 THE WITNESS: May I tell you I think why it's  
7 important right now?

8 THE COURT: Great. That would be a good reason.

9 THE WITNESS: Okay. The ability of this airline to  
10 get the 2.2-billion-dollar debtor-in-possession financing,  
11 which was significantly above what most lenders would look at  
12 in terms of an asset-based airline financing, their ability was  
13 because of their success at taking the \$5 billion of costs out  
14 and actually doing what they said they would do, and the  
15 lenders looking at the \$3 billion and saying, okay, if you get  
16 the five billion out and the three billion out, this is an  
17 airline that will be viable and this is an airline that  
18 somebody will finance coming out of bankruptcy; therefore, I'm  
19 willing to lend the money now with the protection of a judge,  
20 super priority court knowing I can run into court if they're  
21 not doing what they say they're supposed to do, they'll breach  
22 their covenants, but that, ultimately, if they do what they say  
23 they're going to do, that there will be people either with debt  
24 financing or equity financing that will stand there and take  
25 out my debtor-in-possession loan.

1           Very few people will make a debtor-in-possession loan if  
2 it's not an asset-based loan unless they believe that there is  
3 an ability to get it repaid by other capital sources at the  
4 end. So while it's way down the road, maybe -- hopefully, not  
5 too far down the road in terms of time, it is absolutely  
6 critical up front with the debtor-in-possession lender.

7           THE COURT: Okay.

8 BY MR. GALLAGHER:

9 Q   Were you personally involved in the discussions with the  
10 debtor-in-possession lenders?

11 A   Yes, I was. My whole team was.

12 Q   And did you discuss with them various aspects of the  
13 business plan?

14 A   They scrubbed it extremely hard. It, obviously, was a very  
15 iterative process because the plan was being -- the in-court  
16 plan was being finalized while they were in the middle of doing  
17 their research and due diligence on Delta.

18 Q   And did they come in and do due diligence for a period of  
19 time?

20 A   They scrubbed this company up and down.

21 Q   All right. And I presume, then, they asked you a lot of  
22 questions about the business plan, either of you or of the  
23 company?

24 A   Not just me. The management of the company was front and  
25 center in front of the underwriters, and then, ultimately, the

1 parties who were thinking of investing in this debtor-in-  
2 possession loan. So it was a lot of different kinds of parties  
3 scrubbing the numbers.

4 Q And did those parties scrubbing the numbers question the  
5 sufficiency of the proposed labor cost savings?

6 A Yes. They looked very carefully at the entire cost  
7 competitiveness of this company. And, obviously, labor is a  
8 very big component. And they wanted to make sure that that  
9 package was such that it would allow the company to compete and  
10 have similar grounds as the competitors in the industry.

11 Q In your discussions with the prospective DIP lenders, did  
12 they have any commentary on the management team at Delta Air  
13 Lines?

14 A Right. The answer is yes. And I referred to it earlier.  
15 But with the change in a number of spots, the CFO, the COO, the  
16 treasurer, and many other parties within Delta, and that is the  
17 team that, other than the CFO who was controller and then came  
18 back, thank God, they felt strongly that this was the team that  
19 was delivering on the five billion and it was a team that they  
20 could trust to continue to deliver on those cost-saves as well  
21 as the \$3 billion of enhancements and cost-saves.

22 Q Does Delta, after having gotten the DIP, does Delta have  
23 any assets left to pledge today?

24 A I wish we did. No. The -- as I said, the -- when --

25 THE COURT: It's always the way, you know? The pigs

1 (sic) come in and they say they'll give you the money, but you  
2 have to give us a lien on all your assets.

3 THE WITNESS: Let me give you a couple of numbers  
4 because --

5 THE COURT: Well, now, I mean it happens every time.

6 THE WITNESS: Right. If you look at the way that some  
7 people value airline collateral, which is current market value,  
8 Delta has about \$2.2 billion of current market value of its  
9 collateral. And, as you know, Your Honor, it is a 2.2 billion-  
10 dollar loan.

11 Lenders, as you know from many years on this bench,  
12 don't like to be in a one-to-one position with current market  
13 value --

14 THE COURT: Oh, I understood that was their favorite  
15 choice.

16 THE WITNESS: Certainly not with any loan, but an  
17 airline loan is one that would make them very nervous in that  
18 position. So the question is is there more collateral that  
19 could be gotten, is there more liquidity that could be gotten  
20 as a consequence of going back out into the marketplace. I  
21 feel extremely comfortable to tell you I think the answer is  
22 no.

23 BY MR. GALLAGHER:

24 Q Does that differentiate --

25 THE COURT: Oh, I know where you've got collateral.

1 But you don't agree with me. You've got Mesas at many, many  
2 airports that even if you can't sell the landing rights, which  
3 there's always been some question about lately, the right to  
4 that space is something that I think you have the right to  
5 transfer.

6 Now, then, we have a little bond issue that's sort of  
7 a problem.

8 MR. HUEBNER: Just so you know, to the extent  
9 permitted by law, those leases are already pledged to the DIP  
10 lenders.

11 THE COURT: I -- look, that's not the point. The  
12 point isn't whether they're already pledged. The point is  
13 whether they do represent a type of collateral because there  
14 certainly are people who would want to go into some airports  
15 and would prefer to take over your space than to have to build  
16 something else.

17 MR. HUEBNER: Agreed.

18 THE COURT: And would find that the cost of taking  
19 over your space was reasonable.

20 THE WITNESS: I think that factored into the thinking  
21 of the underwriter, especially since the underwriter, General  
22 Electric, is somebody that knows quite a bit about aircraft and  
23 the business generally.

24 Having said that, the other parties that we were  
25 trying to get to underwrite this loan would not look at those

1 as assets. They were looking specifically at aircraft, gates,  
2 slots, things that they could touch and --

3 THE COURT: Well, I'm talking about gates and slots,  
4 too. But I'm talking about you can't -- no gate is worth  
5 anything if you can't walk to it.

6 THE WITNESS: Right.

7 THE COURT: I mean, you got to be able to get to it.  
8 And that's what this other stuff that I'm talking about is, is  
9 how do you get to it.

10 THE WITNESS: I don't have this number firmly in my  
11 head, but my recollection is the order of liquidation value was  
12 something more like \$845 million. And a lot of lenders look at  
13 that number instead of --

14 THE COURT: Oh, you know, they know perfectly well  
15 that they're trying to sucker you.

16 THE WITNESS: I will say this, Your Honor, and I said  
17 it before under oath on the DIP hearing. I could not be  
18 prouder of this facility. It is way more money than we thought  
19 was possible, way more money than the company thought was  
20 possible, the lawyers thought was possible, all of us thought  
21 was possible. And I think it took some people's breath away in  
22 the industry that we were able to achieve this number. But it  
23 does leave us in a position where we don't have access to  
24 additional liquidity.

25 THE COURT: Well, no, I understand that. I'm just

1 saying it is -- it seems to be quite common these days not to  
2 want to share the collateral with anybody else, I think because  
3 you don't want anybody else having any control, but -- okay.

4 So now we're up to the \$973 million?

5 MR. GALLAGHER: Nine hundred and thirty in labor  
6 savings, Your Honor.

7 THE COURT: Oh, it's nine hundred and thirty. Okay.

8 THE WITNESS: The nine seventy came from the  
9 bankruptcy saving, things related to --

10 THE COURT: Oh, okay.

11 THE WITNESS: -- events in bankruptcy.

12 BY MR. GALLAGHER:

13 Q And, Mr. Coleman, you told us that Delta doesn't have any  
14 unpledged assets left to pledge. Does that distinguish Delta  
15 from any of the other carriers in reorganization?

16 THE COURT: Oh, I'm sure it does. I mean, you know,  
17 not -- usually what I would say is this. Anybody that's in  
18 bankruptcy has got a hundred percent loan -- I mean, or a  
19 hundred percent security, unless it's a small item. And when  
20 you get out of bankruptcy, you take assets back.

21 I mean, what's Northwest got? Probably got the same  
22 thing.

23 THE WITNESS: They don't have a debtor-in-possession  
24 loan. They have not utilized any collateral at this point.

25 And United, with their exit facility, is on about a

1 seventy percent loan to value against the same current market  
2 value of their assets.

3 I think I would differ with you a little bit. When we  
4 take a company into bankruptcy that has not pledged its assets  
5 previously, there is typically room in that debtor-in-  
6 possession loan for more lending because it's a lot of  
7 collateral and an easier loan.

8 When you've already borrowed money, which we had done,  
9 \$980 million that we repaid as part of this new facility, we  
10 were then taking and getting another essentially billion-two --

11 THE COURT: All I'm saying is it's not uncommon to see  
12 the lenders want liens on all of the assets in a bankruptcy  
13 case, even though, when you get out of bankruptcy, you don't  
14 have to give them that much and that -- I know there are people  
15 that probably hold very careful hearings on what is the value  
16 of the collateral and I have decided it really doesn't matter  
17 because if you can't get somebody to give you the money without  
18 giving them the collateral, it doesn't matter what it's worth.

19 THE WITNESS: And that happens to have worked in our  
20 favor here because if you really looked at the value of the  
21 collateral, we shouldn't have gotten \$2.2 billion and I think,  
22 for once, that worked.

23 THE COURT: Oh, but you got \$2.2 billion because you  
24 have those captains over there and because you have the Delta  
25 name.

1 THE WITNESS: Well, we didn't pledge the captains, so  
2 maybe --

3 THE COURT: You didn't pledge the captains?

4 THE WITNESS: Maybe we've got one last asset to  
5 pledge.

6 BY MR. GALLAGHER:

7 Q Well, let me ask you a wrap-up question on this segment,  
8 Mr. Coleman. With -- now that you've got \$2.2 billion in  
9 debtor financing and you were so spectacularly successful,  
10 what's the rush? Aren't we in -- now in fat city? Why is  
11 Delta here before this Court now, seeking to reject the pilot's  
12 contract?

13 A I think that's a very critical question. This is it. This  
14 is what we have to seek for money. What we have in our bank  
15 accounts now is what the company has to spend, so --

16 Q All borrowed money?

17 A All borrowed money. So every day that goes by where we are  
18 continuing to make payment on anything, whether it's a plane  
19 that we haven't rejected yet, whether it's a, you know, the  
20 pilot contract, whether it's the rest of our employees, any of  
21 the aspects of the \$3 billion or even the \$5 billion, any piece  
22 of it that is delayed from when we have put into the business  
23 plan when we wanted to actually achieve that number, that is  
24 just more deduction from the liquidity of this company.

25 And the one thing I think we can safely say about 9/11 and

1 about this recent fuel situation and SARS, which did have an  
2 impact on these airlines, is that airlines are subject to major  
3 swings in liquidity because of these external events. Delta  
4 has a pocket of security -- of liquidity that we believe is  
5 enough to get it through bankruptcy, make these changes,  
6 including the \$3 billion and the pilots' changes, and get it  
7 out of bankruptcy. But every day that passes that we are not  
8 implementing our plan on time is another day where we dip into  
9 that liquidity and reduce the company's chances, so it really -  
10 -

11 THE COURT: But basically, if you didn't get this \$930  
12 million, you got the money anyway?

13 THE WITNESS: With --

14 THE COURT: Didn't you just tell me that you had that  
15 kind of money in the bank?

16 THE WITNESS: The -- we have the liquidity, Your  
17 Honor. If we don't get the proper amount of cost-saves out of  
18 this airline, so that the cost to fly is roughly equivalent to  
19 the other parties' cost to fly with the variation of whatever  
20 premium there is on revenue and ticket sales, if you don't get  
21 that, then you're just dipping into your liquidity and what  
22 you'll find is, over time, we will be dipping, we will be  
23 dipping, we will be dipping. We will be living off of the  
24 principal of our liquidity and we will eventually be in a  
25 position where we cannot survive.

1           So you can't -- if we had other sources of liquidity,  
2 we might have more time. It wouldn't be so urgent. But since  
3 this is our only liquidity, it's really -- and it's borrowed  
4 liquidity. It's not free. It's not -- it doesn't come from  
5 equity sources or something like that. We have to pay it back  
6 and we have to pay it back to get out of bankruptcy. So every  
7 day that goes by that reduces this liquidity or every day that  
8 goes by where we don't get the full \$3 billion, I think it puts  
9 Delta in a very uncompetitive position and I don't think Delta  
10 survives long term on that basis.

11           MR. GALLAGHER: Your Honor, I'm about to shift into  
12 going through a bunch of exhibits, which will take a while.

13           THE COURT: How long will it take? I mean, we've got  
14 five minutes left. How many exhibits do you have?

15           MR. GALLAGHER: Only four, Your Honor.

16           THE COURT: That's not going to take a while, to put  
17 four exhibits in, is it?

18           MR. GALLAGHER: I hope not. We'll see, Your Honor.

19           THE COURT: Well, I mean, Exhibit 1, Exhibit 2,  
20 Exhibit 3, Exhibit 4.

21           MR. GALLAGHER: Well, let's start with the first, Your  
22 Honor, and we'll see how far we get.

23 BY MR. GALLAGHER:

24 Q   Mr. Coleman, will you turn to Exhibit 90, please?

25           THE COURT: I mean, it sounded to me like you were

1 just going to offer them.

2 MR. GALLAGHER: I'm sorry, Your Honor. These do  
3 require explanation.

4 THE COURT: So we're looking at Exhibit 90?

5 MR. GALLAGHER: Yes, Your Honor.

6 BY MR. GALLAGHER:

7 Q And Mr. Coleman, can you tell the Court what this is?

8 THE COURT: That would be a good idea. It's the 2006  
9 EBITDAR margin analysis.

10 THE WITNESS: All right. Let's start with that line,  
11 Your Honor. Obviously, it's 2006. It means it's a projection  
12 for 2006.

13 BY MR. GALLAGHER:

14 Q Is that what the E means?

15 A E means an estimate, meaning it's the forecasted number and  
16 this is actually a percentage calculation from the business  
17 plan, so I'll come back to all that in a minute. "EBITDAR"  
18 obviously stands for earnings before interest, taxes,  
19 depreciation, amortization, and the R is rent, any operating  
20 lease that would be in the company's financial statements.

21 And the reason you do that, Your Honor, is that some  
22 airlines have capital leases or own their aircraft. Some have  
23 operating leases. So if you're trying to compare one airline  
24 to another, which is what we bankers do, you need to add back  
25 the rent costs, so that the actual earnings ability of the

1 company are apples to apples when you compare the different  
2 airlines. Now this --

3 THE COURT: Okay. Now what does "margin analysis"  
4 mean?

5 THE WITNESS: Okay. What this is is looking at  
6 EBITDAR as a percentage of sales and it is --

7 THE COURT: Well, but I don't even see where you've  
8 got sales listed.

9 THE WITNESS: We don't. It's --

10 THE COURT: Well, then, how do I have something that's  
11 got a title to it, that's a percentage of sales, when what it  
12 is has nothing to do with sales?

13 THE WITNESS: Well, you don't have EBITDAR listed,  
14 either. What you have is the ratio, the percentage ratio of  
15 the two together, so that you have how much EBITDAR did you  
16 have? How much sales did you have? You do that division and  
17 then you see these percentages here and I've got to walk you  
18 through them.

19 THE COURT: That would be good because it seems to me,  
20 on the left side, their percentage non-pilot savings realized  
21 and on the top, it's percentage pilot savings realized.

22 THE WITNESS: Right. The goal of this chart is really  
23 a sensitivity analysis, Your Honor, and the goal is to say  
24 what, if we get all of the pilot savings and none of the non-  
25 pilot savings.

1 THE COURT: We get 6.6 percent.

2 THE WITNESS: That is actually if you get neither of  
3 them. If you don't get pilot savings and you don't get non-  
4 pilot savings.

5 THE COURT: Okay. I don't understand why the numbers  
6 go up so slowly, the percentages go up so slowly.

7 THE WITNESS: It's mathematics, Your Honor. That  
8 shows you, even though we're taking what appear to be large  
9 numbers out of this company's cost structure, it has, because  
10 of the \$16 billion of revenue in this company, it's obviously  
11 not a very high percentage impact.

12 So if you looked -- although on the top line, and you  
13 went over to the 100 percent and the zero percent on the  
14 column, the left-hand column --

15 THE COURT: Right.

16 THE WITNESS: So that gets to 8.6 percent.

17 THE COURT: Right.

18 THE WITNESS: This would be a scenario, not that any  
19 of these are realistic, they're meant to be a sensitivity  
20 analysis, but the 8.6 percent would reflect a situation where  
21 the pilots' 325 million was given in full and the non-pilots  
22 gave nothing.

23 THE COURT: Okay. So the --

24 THE WITNESS: Let me walk you --

25 THE COURT: Wait, wait, wait. I don't understand.

1 You're saying to me that the percentages that are walking  
2 across the top line, zero, twenty, forty, sixty, are pilot  
3 savings?

4 THE WITNESS: Right. And the result --

5 THE COURT: And the percentages that are walking  
6 across -- walking up and down are non-pilot savings?

7 THE WITNESS: Right. And there's one thing I think I  
8 skipped, so let me mention this. I think it will make it  
9 easier on you. When we say twenty percent of non-pilot  
10 savings, that has an impact on EBITDAR, obviously. It makes  
11 EBITDAR go up because you're not deducting the -- as much of  
12 the labor cost. So when EBITDAR goes up, obviously the EBITDAR  
13 margin goes up, since it's a higher number, and the denominator  
14 is staying the same.

15 THE COURT: Okay. But now, when you say percentage of  
16 pilot savings realized, you mean this is of the -- whatever  
17 number they were asked for, if they gave you sixty percent and  
18 the non-pilot savings weren't realized, the total savings  
19 realized would be 7.8 percent?

20 THE WITNESS: Well, your margin, your EBITDAR margin  
21 would go to a 7.8 percent. Your EBITDAR would go -- it would  
22 improve because you're getting some savings under that  
23 scenario.

24 THE COURT: But what I'm saying is, we're saying we go  
25 from, say, forty percent, at 7.4 percent, add a hundred

1 percent, it's 8.6 percent.

2 THE WITNESS: Correct. And --

3 THE COURT: Which isn't that much different.

4 THE WITNESS: As I said, if you think of EBITDAR in  
5 '05 at \$640 million against a sixteen-billion-dollar revenue,  
6 so as you're making these changes, if you take the \$435 million  
7 and you only do about twenty, thirty -- let's say thirty  
8 percent of it, that's around \$100 million, which is where the  
9 pilots are and that would be a relatively low percentage when  
10 you divide 100 million by 16 billion, which is essentially what  
11 you're doing, to change that EBITDAR percentage.

12 THE COURT: Okay. Now, what I don't understand is,  
13 okay, the next thing down says, "Projected EBITDAR margins of  
14 competitors."

15 THE WITNESS: Right. Let me --

16 THE COURT: But where is there an EBITDAR margin  
17 analysis for Delta? Is this the same -- I mean --

18 THE WITNESS: Do you want me to try to describe it,  
19 because I know it's complicated.

20 THE COURT: Yeah. I mean, are these margins for  
21 pilots versus non-pilots, or are they on something else?

22 THE WITNESS: Let me back up because I think -- I see  
23 why it's a little confusing. These are banker charts that look  
24 obvious to us and to most people, they look like gibberish.

25 This is assuming -- let's go to the hundred percent

1 and a hundred percent, that 11.4 percent?

2 THE COURT: Right.

3 THE WITNESS: Okay. In the bottom right there.

4 That's --

5 THE COURT: I don't see how you get 6.6 percent when  
6 you get zero-zero, but --

7 THE WITNESS: I'm going to come back to that. But  
8 the --

9 THE COURT: I'll accept that.

10 THE WITNESS: Okay. The 11.4 percent assumes we got  
11 the entire \$3 billion of savings. We got all the pilot money.  
12 We got all the non-pilot money. That's 930. We got 970 of the  
13 bankruptcy benefits and the billion one of enhancements to  
14 revenue.

15 BY MR. GALLAGHER:

16 Q Is it fair to say that's the goal, Mr. Coleman? That's  
17 what's contemplated by the business plan?

18 A Yeah. This is actually the motion, right here. This is  
19 the goal, to get the whole \$3 billion. Any time you don't get  
20 all of that \$3 billion, your EBITDAR will go down from that  
21 number because obviously, you're spending more. Your costs are  
22 higher. Therefore, your EBITDAR isn't as high.

23 THE COURT: You know, we've got to try again tomorrow  
24 because this is not making any sense to me.

25 THE WITNESS: I had a feeling this was more

1 complicated.

2 THE COURT: I mean, see, I don't understand the  
3 bottom.

4 THE WITNESS: Right.

5 THE COURT: The bottom doesn't seem to me, to be  
6 compared to anything that's on the top.

7 THE WITNESS: Right. I'll make one --

8 THE COURT: Is it supposed to?

9 THE WITNESS: Yeah. Let me make one comment and I  
10 think maybe I can think of some things tonight that might make  
11 this a little more obvious. The bottom is supposed -- the  
12 bottom is, in fact, what street analysts, Merrill Lynch, in  
13 this case, or Citibank are anticipating the earnings are going  
14 to be, in this case the EBITDAR.

15 THE COURT: Well, I understand that, but why don't we  
16 have a similar number estimated for Delta?

17 THE WITNESS: The --

18 THE COURT: Because without that, it's meaningless.

19 THE WITNESS: Well, the chart, the top half of the  
20 chart, the sensitivity analysis, that is Delta's number. So if  
21 you get --

22 THE COURT: But where is Delta's number? Which one is  
23 Delta's number? 10.8? 9.8? 9.2?

24 THE WITNESS: It's whatever happens as a consequence  
25 of this hearing, Your Honor, because let's be clear. The non-

1 pilot savings, those are already happening, so the hundred  
2 percent of those are going to be realized. So really, all you  
3 need to do is --

4 THE COURT: Okay. But nobody has really explained to  
5 me what they are, so okay.

6 THE WITNESS: Right. But if you look at that bottom  
7 line for a minute, 9.3 percent, 9.7, 10.1, 10.6, 11 percent and  
8 11.4, that is Delta's number, depending on what happens with  
9 the pilot contract. So the 11.4 percent is Delta's EBITDAR  
10 margin if the pilots give \$325 million of concessions. If you  
11 go all the way to the left, the 9.3 percent is Delta's EBITDAR  
12 margin if the pilots give zero. So each of the --

13 THE COURT: So is it better to be high or low?

14 THE WITNESS: EBITDAR over sales you want to be high.

15 THE COURT: Yeah, but -- okay.

16 THE WITNESS: EBITDAR is --

17 THE COURT: This is why I'm saying, I think this chart  
18 doesn't have enough information.

19 THE WITNESS: I think maybe, what we might be able to  
20 do tonight, is put together some dollar amounts that might be  
21 more helpful.

22 THE COURT: What I'm saying to you is you have these  
23 things at the bottom that don't tell me how they relate to the  
24 top and so, as I say, I don't see how, if you get zero savings  
25 from both groups, you end up with 9.8 percent.

1 THE WITNESS: You don't. If you -- let's try that  
2 example. If you get zero from both groups, so you get a 6.6  
3 percent EBITDAR margin with --

4 MR. GALLAGHER: That would be Delta Air Lines going  
5 forward without the changes that were announced in the business  
6 plan.

7 THE WITNESS: That's Delta Air Lines's EBITDAR margin  
8 and when you look at Delta Air Lines, you then say well, what's  
9 Southwest doing? Its EBITDAR margin is 19.4 percent and --

10 THE COURT: I'm afraid I do not understand and I think  
11 it's too late today --

12 THE WITNESS: Okay.

13 THE COURT: -- for you to explain it to me. I do not  
14 understand why the margins of the competitors, in any way,  
15 relate to the EBITDAR margins that are above it, that relate to  
16 Delta.

17 THE WITNESS: Okay. I'll work on that tonight, Your  
18 Honor, and walk you through that, hopefully.

19 THE COURT: I mean, unless you're telling me that -- I  
20 don't get it. Now --

21 THE WITNESS: Can I just try one?

22 THE COURT: No.

23 THE WITNESS: No? Okay. Everybody's tired.

24 THE COURT: I mean, I think you need to go for the  
25 whole -- you know, the whole thing because --

1 THE WITNESS: Okay.

2 THE COURT: I mean, I can read the numbers, but I  
3 can't relate the bottom of the -- the bottom picture --

4 THE WITNESS: Got it.

5 THE COURT: -- to the top picture. I can understand  
6 how this top thing of crossing lines works, but I can't  
7 understand how this bottom thing relates to that crossing  
8 lines.

9 THE WITNESS: I got it. I'll work on it tonight.

10 THE COURT: And you're going to have to explain to me  
11 how there could be 6.6 percent when there's no savings from  
12 either side.

13 THE WITNESS: Okay. I'll work on that tonight, Your  
14 Honor.

15 THE COURT: Okay.

16 MR. GALLAGHER: And, Your Honor, did we have a time  
17 set for Friday?

18 THE COURT: Let's try 1:15. I don't know. Whatever  
19 time we say, it doesn't seem to make any difference.

20 MR. GALLAGHER: Well, Your Honor, can we also inquire  
21 about the Court's schedule for next week?

22 THE COURT: I thought we had already told you that.

23 MR. GALLAGHER: There was some uncertainty, Your  
24 Honor. I think Your Honor said Monday and Wednesday, but we  
25 wanted to confirm that.

1 THE COURT: I have, for Monday, written Delta, not 11-  
2 13.

3 MR. HUEBNER: Is there another Delta? Your Honor,  
4 we'll --

5 THE COURT: I have written for Pearl Harbor  
6 Remembrance Day, Delta.

7 MR. HUEBNER: Your Honor, we'll --

8 THE COURT: So those two days I have for Delta and  
9 there's a trial scheduled for Friday that might not go on and I  
10 have the 12th, Virgin of Saint Guadalupe Day for you and I can  
11 give you the 16th.

12 MR. HUEBNER: Your Honor, we'll talk to Chambers  
13 tomorrow. The 5th is an Omnibus hearing date. As Your Honor  
14 knows, we sort of canceled the last one and we just have to  
15 move it forward, so we'll move off as much stuff as we can, yet  
16 again.

17 THE COURT: Well, I -- I have a lot of stuff on that  
18 Thursday. I don't know anything at all about this trial and on  
19 Tuesday, I have one matter in Quigley (phonetic) and I have  
20 Parkway Hospital and I can't remember what we were doing about  
21 Parkway Hospital. It seemed like there wasn't enough money.

22 MR. HUEBNER: Yeah. We'll check in with your clerk  
23 tomorrow.

24 MR. SIMON: Your Honor, I must confess. I'm unclear.  
25 So we do we have -- do we have a sense of what we do

1 have?

2 THE COURT: Well, I just gave it to you.

3 MR. SIMON: Yeah, but I missed it, but --

4 THE COURT: You're unclear. You were writing down the  
5 negatives.

6 MR. SPAN: The 5th is definite.

7 MR. SIMON: But if someone will tell me what they  
8 think they have.

9 THE COURT: Delta, Friday, the 2nd.

10 MR. SIMON: Yes.

11 THE COURT: Okay. Delta, the 7th.

12 MR. SIMON: Yes.

13 THE COURT: Delta, the 12th and potentially, Delta the  
14 16th.

15 MR. SIMON: All right. And, Your Honor, if I can  
16 clear some or all of the 5th, I assume the rest of that would  
17 be available for 11-13?

18 THE COURT: You can have the 5th.

19 MR. SIMON: And again, that's what I need to figure  
20 out.

21 THE COURT: And if I can move things that are on the  
22 6th or find out what they are -- well -- the 7th is very tight,  
23 so the 7th doesn't work.

24 MR. SIMON: I'm sorry, Your Honor. I thought you said  
25 the 7th was wide open for Delta.

