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UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

In re	Chapter 11
AMR CORPORATION, *et al.*,	Case No. 11-15463 (SHL)
Debtors.	(Joint Administration Pending)

<u>APFA'S PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW</u>

PROPOSED FINDINGS OF FACT

The APFA is the certified, exclusive collective bargaining representative of the craft or class of Flight Attendants employed by American Airlines, Inc. ("American" or the "Company"). *American Airlines, Inc./TWA Airlines, Inc.*, 29 NMB 278, 280 (2002). There are currently approximately 16,400 American Flight Attendants: 15,500 who are active, 700 on leave, and approximately 200 on furlough status. AA Ex. 1000 (Vaughn Decl.) ¶ 5.

According to the Company, "the typical flight attendant receives about $45,000 in salary." AA Ex. 1000 (Vaughn Decl.) ¶ 21.

I. APFA BARGAINING HISTORY PRIOR TO BANKRUPTCY

The current collective bargaining agreement between APFA and American is the product of decades of bargaining and mutual compromise, often in the face of economic adversity. The most recent amendments to the agreement were made in 2003 in response to severe financial distress experienced across the industry in the aftermath of the 9/11 terrorist attacks. While other mainline carriers went through bankruptcy, American sought an out-of-court restructuring, including $1.6 billion in annual cost reductions from its employees. APFA Ex. 801 at 10.

American allocated concessions based on the industry-standard cost structure for each represented employee group, with the percentage reduction in labor cuts of each work group ranging from 10% to 30%. The $340 million in annual savings sought from Flight Attendants represented 26% of their labor cost, which was the second highest percentage of any work group. *Id*. at 10. As explained by AMR Chief Restructuring Officer Beverly Goulet: "those proposals [were] based on what we thought was necessary to move our employee compensation to what was then market." Tr. 4/24/12, 223:6-9 (Goulet). The Company explained to the labor groups that this method was "fair" because "allocations for all groups were based on market rates." APFA Ex. 852 at 14.

After independently analyzing the Company's finances, business plan and valuations, APFA along with the other unions agreed to the requested concessions. In April 2003 the collectively-bargained Restructuring Participation Agreements ("RPAs") provided the Company with $1.8 billion in annual savings. APFA Ex. 100 (Glading Decl.) ¶ 2; APFA Ex. 700 (Akins Decl.) ¶ 67.

The Flight Attendants' concessions were phased in to produce the annual average savings of $340 million over the RPA's five-year term. The value of the concessions increased over each year so that in 2008 they approached a value of $530 million annually to the Company. The labor costs of American's Flight Attendants will soon fall below those of its competitors. APFA Ex. 700 (Akins Decl.) ¶¶ 68-69.

The APFA CBA began negotiations again in June 2008. AA Ex. 100 (Glading Decl.) ¶ 3. Since January 2009, all negotiations have been under the auspices of the National Mediation Board. APFA Ex. 200 (Loew Decl.) ¶ 20.

During these negotiations, American maintained that there was a "labor cost gap" between it and its major competitors. In order to determine the size of the "labor cost gap," the Company engaged in a market-based labor benchmarking method that determined the amount by which American's labor costs exceed what such costs would be if they were determined based on other network carrier labor contracts. APFA Ex. 700 (Akins Decl.) ¶ 71. In other words, American estimated what the Company's labor costs would be if the terms and conditions of employment for its competitors' employees were applied to the demographics of American's workforce. This methodology was referred to as "convergence analysis." APFA Exs. 102, 802.

This benchmarking method is generally used by analysts when comparing employee costs in the restructuring setting, Tr. 4/24/12, 14:13-25, 82:13-17 (Glass), and was used by the Company as recently as March 2012 when describing its labor cost disadvantage in a presentation to the PBGC. APFA Ex. 805 at 3-4.

American also consistently defined its competitors as the other "network" carriers. APFA Ex. 803 at 20. Currently, these airlines are United Airlines, Continental Airlines (which is in the process of integrating with United), Delta Air Lines, and US Airways. AA Ex. 800 (Glass Decl.) ¶ 14. The Company has excluded other, "low-cost carriers" from its analysis. APFA Ex. 806 at 5; AA Ex. 800 (Glass Decl.) ¶ 14; *see also* Tr. 4/24/12, 23: 2-8 (Glass).[1]

In an early 2011 SEC filing, American estimated that the "labor gap" for all employees was "approximately $600 million per year." APFA Ex. 851 at 29. In April of 2011, American estimated that Flight Attendant costs accounted for [redacted] of this gap. APFA Ex. 808 at 7. American has consistently recognized, and explained to its investors and the SEC, that "convergence" between its labor costs and those of its network carrier rivals would occur naturally "as open industry labor contracts [were] settled." APFA Ex. 851 at 29.

These predictions regarding convergence made in early 2011 have proved correct with respect to Flight Attendants. Every other network carrier will be improving the terms of employment of their Flight Attendants, thereby increasing their Flight Attendant labor costs. *See* APFA Ex. 700 (Akins Decl.) ¶ 82 (United Airlines); ¶ 83 (US Airways); ¶ 84 (Delta). Under the terms of the current contract, the Company's cost disadvantage would thus become a $90 million annual cost *advantage* by 2013. *Id.* ¶ 85.

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[1] The only other airline that could arguably be included in the comparator group is Southwest Airlines, which one American witness described as "in the range of a large network carrier." Tr. 4/25/12, 172:2-5 (Resnick). Southwest Flight Attendants are the highest paid in the industry. Tr. 4/24/12, 21:19-22 (Glass).

The parties' final pre-bankruptcy proposals were made in April 2011. American proposed contract terms that would have increased its costs by an annual average of $65 million over a three-year term, APFA Ex. 101 at 8 and APFA Ex. 200 (Loew Decl.) ¶ 22, and the APFA responded by narrowing the average annual gap between the parties to $23 million. After over three years and over 120 sessions of negotiations, the average annual gap between APFA's and American's proposals was just 2% of the Company's annual Flight Attendant labor costs. APFA Ex. 200 (Loew Decl.) ¶¶ 22-23.[2]

America's final table position would have preserved the APFA's pension plan for existing employees, provided a signing bonus, and increased wages. According to American's own valuation, the Flight Attendant labor costs would "nearly converge" with the projected costs of other carriers by [redacted] and would provide a [redacted] advantage by [redacted] APFA Ex. 804 at 40, 50.

Even on the eve of bankruptcy, the Company continued to endorse the goal of reaching market-based labor contracts. In the fall of 2011, American entered into market-based tentative agreements with two TWU workgroups. AA Ex. 1123 (Fleet Service Clerks); AA Ex. 1124 (Dispatchers). And in a November 2011 "Financial and Strategic Update" presentation made to the AMR Board of Directors, American reaffirmed the goal of reaching market-based contracts in negotiations with the Flight Attendants. APFA Ex. 804 at 39 & 47. In total, the Company would have increased its annual labor costs by [redacted] under its pre-petition proposals to its unions. Tr. 4/24/12, 140:2-12 (Goulet).

[2] The Company's assertion that the APFA simply sought to "restore" the contract to pre-2003 levels in pre-bankruptcy negotiations, *see* AA Mem. Supp. Mot. Reject, Part One at 56, is simply not the case. *See* Tr. 4/27/12, 75:15-18 (Vaughn).

II. DEVELOPMENT OF AMERICAN'S BUSINESS PLAN

After filing for bankruptcy, the Company's bargaining position changed by $1.55 billion annually, so that it now seeks $1.25 billion in average annual cost reductions from employees. AA Ex. 507. More fundamentally, American's methodology has changed. The Company's current positions are derived entirely from a top-down methodology based on an EBITDAR target, rather than the bottom-up benchmarking or market-based approach that it utilized pre-bankruptcy. Tr. 4/24/12, 101:12-14 (Goulet); APFA Ex. 818 at 54 & 62.

A. American's Pre-Petition Business Plan.

Until 2008, the Company was the world's largest airline and its network could compete in what was a fractionalized industry. However, the recent Delta/Northwest, United/Continental, and US Airways/America West mergers reduced the Company's market share and exposed its network deficiencies. APFA Ex. 700 (Akins Decl.) ¶ 16; AA Ex. 1 (Kasper Decl.) ¶ 61; AA Ex. 100 (Goulet Decl.) ¶ 36.

As CRO Goulet testified, American has experienced a disadvantage because of the difference in the size of its network by virtue of the mergers of the other legacy carriers. Tr. 4/24/12, 146:16-20 (Goulet). Likewise, "the lack of network breadth compared to Delta and United-Continental has made it increasingly difficult for AA to maintain and win the high value customer." Tr. 4/25/12, 263:4-8 (Vahidi). One of the Company's expert witnesses also explained that it will be "important for American to increase its network" because "a larger footprint … enables the carrier to attract highly valued business customers." Tr. 4/23/12, 236:14-25 (Kasper).

Since 2009, American developed and pursued a "cornerstone strategy" (in response to these developing challenges), which concentrated the network in five "cornerstone" hubs –

DFW, MIA, JFK, LAX, and ORD. APFA Ex. 700 (Akins Decl.) ¶¶ 19-21. The strategy has been unsuccessful particularly in those hubs where American is not dominant (JFK, ORD, and LAX). *Id.* ¶¶ 22-25. Additionally, in July 2011, the Company placed an order for 460 mainline aircraft, the largest aircraft order in aviation history and 35% larger than the entire fleet of US Airways.[3] APA Ex. 160A (Yearley Decl.) ¶ 29.

In addition to pursuing the "cornerstone strategy," American has also long acknowledged that a merger may be a better approach than remaining a stand-alone airline. AMR explained recently in an SEC filing that:

> We regularly assess and explore the potential for consolidation in our industry and changes in airline alliances, our strategic position and ways to enhance our competitiveness, including the possibilities for our participation in merger activity.

APFA Ex. 827 at 16-17.

AMR CEO Tom Horton has also long acknowledged the potential benefits of a merger. In April 2010, Horton stated that "[t]he industry needs to evolve into a more rational structure, and consolidation may be part of that outcome." APFA Ex. 823. In the month before filing for bankruptcy, CEO Horton observed that "further consolidation" could enable American to grow. APFA Ex. 824; *see also* Tr. 4/24/12, 120:4-7 (Goulet). And in August 2011, American's then-top executives advised the APA negotiators that a merger with US Airways was a possibility if no agreements were reached. Tr. 5/14/12, 34:8-35:14 (Roghair).

[3] The Company developed a comprehensive business plan when evaluating and implementing these strategic decisions yet produced only BOD presentations in response to APFA's request for same. *See* Tr. 4/24/12, 214:13-20 (Goulet); *see also* Tr. 4/24/12, 38:10-19 (Resnick) (testifying that the Company had a comprehensive business plan when he began his engagement in late October, 2011); APFA Ex. 804 (requesting all business plans since 2007); APFA Ex. 850 (document provided in response). These presentations do not explain how the Company arrived at its financial targets or how American planned to achieve those goals.

Since filing for bankruptcy, Horton has reiterated to the press that merger scenarios will be considered: "It's not hard to envision how we could be a force in the industry and, potentially, a consolidator." APFA Ex. 825; *see also* APFA Ex. 826 ("We're not opposed to consolidation in the industry, and I wouldn't rule it out for American as things develop"); APFA Ex. 822.

The merger alternative has also been discussed among the AMR officers and advisors post-petition, and will eventually be pursued. CRO Goulet testified that she agreed with financial advisor David Resnick that:

> Mr. Horton has always said that he believes consolidation is something that *has to occur in the industry* and something *where American needs to participate*, and that there are a number of options available and the *question really is when to pursue consolidation* and then, also, to analyze with whom and where there would be the most value.

Tr. 4/24/12, 176:7-13 (Goulet) (emphasis added); *see also* Tr. 4/24/12, 188:12-14 (Goulet) (conversations with Horton about pursuing a combination). Exploration of merger scenarios will occur during bankruptcy "in collaboration with the Creditors' Committee" APFA Ex. 005 (Message from CEO Horton).

B. America's Current Stand-Alone Business Plan.

Despite the AMR CEO's belief that American "needs to participate" in consolidation and that the "question really is when" to pursue that option, Tr. 4/24/12, 176:7-13 (Goulet), the Company developed its business plan without evaluating whether a merger in bankruptcy was a better alternative. As Ms. Goulet confirmed, American "did not undertake any analysis of potential mergers as part of developing the business plan underlying its current labor proposals." Tr. 4/24/12, 120:20 – 121:2 (Goulet).

Nor did the Company request that its advisors engage in this analysis. McKinsey was not asked to analyze any potential merger-based business plans prior to making the 1113 proposal.

Tr. 4/26/12, 69:15-18 (Dichter). Likewise, Rothschild was not instructed to conduct a financial analysis comparing the current stand-alone plan to any merger alternatives. While American has engaged Rothschild generally to analyze options, as of the 1113 hearing, the restructuring team's "focus to date has been on the stand-alone plan." Tr. 4/25/12, 36:22-24, 111:22-23, 144:18-20 (Resnick).

The Company's stand-alone business plan is essentially a continuation of its pre-petition cornerstone strategy. Although the new business plan uses the term "key hub" instead of "cornerstone," it is predicated on the same concentrated growth model in the same five markets. American projects that it will be able to grow its revenue by [redacted] over six years by doubling down on this strategy. Virtually all of the growth in its capacity, [redacted] APFA Ex. 700 (Akins Decl.) ¶¶ 29-32. Notably, the plan does not project an increase in its share of capacity relative to its competitors. Tr. 4/26/12, 35:6-11 (Dichter). As is the case today, in 2017 United and Delta will still be 50% larger than American. APFA Ex. 700 (Akins Decl.) ¶ 26.

Industry analysts have responded negatively to American's stand-alone business plan. Rodman and Renshaw analyst Daniel McKenzie concluded: "AMR's plan to grow 20% over 5 years … is problematic … threatens industry pricing - bad for AMR & the industry." APFA Ex. 701. J.P. Morgan analyst Jamie Baker concluded: "We are underwhelmed with AMR's standalone restructuring plan, insofar as it fails to adequately address the decade-long marginalization of its domestic network." APFA Ex. 702. Wolfe Tranhan analyst Hunter Keay concluded: "We view AMR's restructuring plan, founded on the idea of 'growth and renewal,' as unlikely to succeed." APFA Ex. 705. These views reflect the consensus opinion, as explained by Analyst Baker: "Most airline's management and clearly the majority of investors feel that American's stand-alone plan represents a clear and present danger." APFA Ex. 706.

Expert testimony at trial established that the stand-alone plan is not likely to succeed, as discussed more fully below, Tr. 5/17/12, 95 (Akins); Tr. 5/14/12, 293:22-294:2 (Yearley), and that a merger is inevitable. Tr. 5/14/12, 244; 330:7-20 (Yearley); Tr. 5/17/12, 129 (Akins).

Notably, the Unsecured Creditors Committee has also not provided an assessment or endorsement of the business plan.

C. The Stand-Alone Plan Is Untested and Flawed

In a case as complex as AMR, investors would generally expect the business model to be stress-tested by considering different assumptions such as fuel costs, competitive response, and macro economic conditions, as well as evaluating the effects of various "downside scenarios." Moreover, investors would expect the model to reflect the effects of various codeshare alternatives and different network scenarios. APFA Ex. 600 (Szlezinger Decl.) ¶ 17-18; *see also* Tr. 5/14/12, 253:9-12 (Yearley) ("I have to be candid. I don't think we've seen a single sensitivity analysis on the company's business plan since it was produced. Not a single one.").

A prudent investor would also not invest in American's business plan until the Company had fully considered a merger alternative. As various industry analysts have opined, there is a widely held view that a strategic transaction such as a merger would be better for American than the stand-alone plan. The investment community, therefore, should be expected to wait for these alternatives to be fully developed and considered before committing any funds. *Id.*, ¶¶ 25-28. Even the Company's witnesses could not testify that the stand-alone plan was superior to alternatives, including a merger. Mr. Dichter did not endorse a stand-alone plan as providing a better option than a merger. He and his team did not analyze that alternative, *see* Tr. 4/26/12, 69:15-18 (Dichter), and he merely testified that in his opinion the operational plan was the optimal stand-alone option. AA Ex. 400 (Dichter Decl.) ¶¶ 6b, 20, & 30. Mr. Resnick testified likewise. Tr. 5/22/12, 193:2-6, 248:6-13 (Resnick).

But even the stand-alone plan has not been "stress-tested" by evaluating the effects of any downside scenarios on its projections. APFA Ex. 600 (Szlezinger Decl.) ¶¶ 17-24; Tr. 5/14/12, 254 (Yearley). Mr. Dichter testified he had not modeled the effect of fuel price changes, GDP changes, or demand changes being worse than the business plan assumes. Tr. 4/26/12, 95:22-24 (Dichter); *see also* APFA Ex. 820 at 11 (confirming no analysis of "downside scenarios"). Nor has the Company adequately explored alternatives to the planned massive and rapid addition of new aircraft to its fleet. APA Ex. 100A ¶¶ 31-35 (Yearley).

In addition to being untested, American's current business has severe flaws. First, it does not sufficiently address the deficiencies of the Company's network. The Company has not developed a solution to its lack of feed from cities along the east coast. Nor has the company addressed its problems in the three markets that were failing under the cornerstone strategy. American is the second largest carrier at Chicago-O'Hare behind United, but in the current market, airlines have not succeeded in operating a hub profitably as the number two airline. The Company's solution for New York City relies entirely on a speculative codeshare relationship with [redacted] which has stated it is not interested in expanding its relationship with American. There is no evidence that any potential codeshare partner is in fact interested in American's planned arrangement. Moreover, an expanded relationship with [redacted] is unlikely to be successful for a number of reasons. Finally, the Company's plans for LAX rely on a speculative [redacted] compound annual growth rate to [redacted] where American does not operate an extensive network. APFA Ex. 700 (Akins Decl.) ¶¶ 33-41 and APFA Ex. 8.

The Company's plan is also flawed because it is predicated on highly volatile rates of growth that falls far short of or greatly outstrips the market demand, a problem which is unaccounted for in the model. In the first three years of the plan American increases its capacity by [redacted] while the rest of the industry grows by about [redacted] AA Ex. 700 (Akins Decl.) ¶ 50; AA Ex. 1720. As its competitors grow faster than American, they will capture more of the demand and American will lose market share. Tr. 5/23/12, 77:3-79:3 (Dichter). In the last three years of the plan American's growth greatly exceeds the projected increase in the industry's supply. For example, American projects an [redacted] growth rate for [redacted] but only [redacted] growth in the market. American's model assumes that it will be able to achieve this above-market growth without suffering a reduction in unit revenue. There is no evidence that American has ever increased its revenue at the rates projected in the plan, and its assumptions are contrary to the basic economic principle of supply and demand: if the rate of growth in a market exceeds demand, then unit revenue will decrease. APFA Ex. 700 (Akins Decl.) ¶¶ 50-61. American's evidence showed that when an airline's supply outstrips industry demand, there is at least a 50% chance its revenue will suffer and greatly underperform its competition. AA Ex. 1777.

Additionally, the current business plan also naively assumes that American's competitors will not respond to the Company's planned growth. American assumes there will be no competitive response to regauging its fleet, enhancing its product, or introducing new routes. APFA Ex. 700 (Akins Decl.) ¶ 62. The Company recognizes that the airline industry is highly competitive. AA Ex. 1 (Kasper Decl.) ¶ 6; Tr. 4/25/12, 253:21-24 (Vahidi). American should therefore assume that other airlines will attempt to prevent it from achieving its goals. APFA Ex. 700 (Akins Decl.) ¶ 62. The failure to properly account for such a response is a significant flaw in the plan. Tr. 5/18/12, 15:15-16:4 (Szlezinger).

Finally, the Company has not yet developed a targeted route structure, the principle element of an airline's operations. American's business plan merely projects growth rates from each of its five hubs to two continents [redacted] two sub-continents [redacted] and two countries ('[redacted]). APFA Ex. 819 at 12. In response to a request for information regarding the particular routes that American intends to add in order to achieve the projected growth, the Company explained that it "cannot provide this level of response" because a "route profitability model" had not been constructed. APFA Ex. 820 at 1. The lack of a specific growth plan forecloses any detailed analysis of the profitability of the projected route development. APFA Ex. 700 (Akins Decl.) ¶ 57.

III. BANKRUPTCY NEGOTIATIONS

In its final pre-motion proposal to APFA, American seeks concessions from Flight Attendants averaging $230 million annually. The final proposal would reduce the average Flight Attendant's take-home pay by 16.9%; significantly increase contributions for medical benefits; freeze their pension plan and replace it with a far less generous 401(k) plan; and shift the entire cost of retiree medical benefits to Flight Attendants. Many of these changes were never discussed in pre-petition negotiations. APFA Ex. 200 (Loew Decl.) ¶ 31. The proposal was not formulated using market-based analysis and would place the Company's Flight Attendants costs 30% below those of its competitors. The sole source of American's proposal is the business plan described above and the related EBITDAR target selected by the Company during its Chapter 11 case.

To establish its labor cost reduction targets, American first "worked with [its] financial advisors at Rothschild to determine what the financial metrics might be." Tr. 4/24/12, 100:19-23 (Goulet). The Company "also looked at what the company's revenue generating opportunities were in order to determine that we in fact were deploying those assets in a manner to maximize the revenue generating capability of the company." *Id.* at 100:24-101:2. American also examined possible reductions in non-labor costs, as well as opportunities to restructure those costs through bankruptcy. *Id.* at 100:24-101:11. "And then finally [the Company] looked at what kind of labor costs would be necessary in order for us to generate those kinds of financial metrics that we had established." *Id.* at 101:12-14; *see also* Tr. 4/24/12, 115:14-116:1 (Goulet) (American looked at revenue projections and non-labor cost reductions "in the context of the financial metric that we had established and then used that as a means of determining the amount of the labor costs that we believe we need to remove from the business."); APFA Ex. 818 at 54.

The resulting target for labor cost reductions was $1.5 billion on a steady-state 2017 measurement, which translates to an average $1.25 billion annually over the course of the next six years. Tr. 4/24/12, 116:4-9, 113:22-25, & 114:1 (Goulet).

In order to determine the financial metrics targeted in the business plan, particularly the key metrics of EBITDAR and liquidity, American's advisors at Rothschild presented a range of targets based on the current projections of other airlines, both network carriers and low-cost-carriers. AA Ex. 305A; Tr. 4/25/12, 162:7-25 (Resnick). A range of "reasonable" EBITDAR data was presented, including a middle range consisting of several large network carriers (United, Delta, and Southwest), and a higher range consisting of several LCC carriers (Spirit, Alaska, Allegiant, JetBlue). Only US Airways was within the lower range of reasonableness. Tr. 4/25/12, 163:11-23 (Resnick). Among this wide range of possible targets, the lowest and highest EBITDAR levels were separated by [redacted] basis points. AA Ex. 305A.

Rothschild did not recommend a specific EBITDAR target to American. Tr. 4/25/12, 95: 9-14 (Resnick). Ultimately, Ms. Goulet chose an EBITDAR target. Tr. 4/24/12, 245:21- 246:17

(Goulet). There was no evidence as to why that particular target was selected, [redacted] AA Ex. 305A; *see also* Tr. 5/14/12, 222:6-9 (Yearley) ("we're not exactly clear where [the EBITDAR] number was derived from"). Each percentage point reduction in targeted EBITDAR translates into [redacted] less needed by the Company in improved earnings. APFA Ex. 700 (Akins Decl.) ¶ 27.

Rothschild's inclusion of LCC's in the comparator set for determining EBITDAR is unreasonable. The included LCCs operate under business models that are not comparable to the business models of large network carriers. APA Ex. 100A (Yearley Decl.) ¶ 17. In presentations to Wall Street analysts, American has consistently defined its comparators as Delta, United, and US Airways. *Id.* ¶ 17 & n.21; *see also* APFA Ex. 806 at 5. In the United Airlines' bankruptcy, Rothschild also excluded LCCs as comparators due to their fundamentally different business models. APA Ex. 10. Although American competes with LCCs (as do all the network carriers), the Company's own expert concedes that LCCs have a lower cost structure that even the successful network carriers do not expect to match. Tr. 4/23/12, 166:18-167:7 (Kasper). Rothschild's reliance on LCC comparators has caused American to target unprecedented and unnecessary profit margins. APA Ex. 100A (Yearley Decl.) ¶¶ 10-18.

Once the target amount of labor cost reductions was determined based on the business plan and its target financial metrics, the target number was given to Senior Vice President of Human Resources Jeffrey Brundage. Tr. 4/26/12, 195:6-24 (Brundage). Then, Mr. Brundage and his labor relations staff identified contract changes that, taken together, would satisfy the target. *Id.*, 197:10-17. The $1.25 billion target represented a 20% reduction overall in labor costs. The 20% reduction was then applied to the labor costs attributable to each employee group, resulting in an average annual reduction for Flight Attendants of $230 million. AA Ex. 507.

There was no evidence that American's overall flight attendant labor costs are 20% above market. To the contrary, American's proposed contract changes would place its Flight Attendant costs well below market. The Company's Section 1113 proposal would place its Flight Attendant costs $176 million below other network carriers in the contract's first year. This cost advantage over competitors would grow to $347 million by 2015. This would place American 30% below the industry standard in overall flight attendant costs. APFA Ex. 700 (Akins Decl.) ¶ 86.

By contrast, there is no evidence that American is seeking below-market terms from any vendor or other outside party doing business with the Company. Moreover, American seeks only reductions to market rates for its American Eagle employees. TWU Ex. 1 (Roth Decl.) ¶ 17. Similarly, every other major carrier which went through bankruptcy in the last decade used a market-based approach to labor concessions from each work group. *Id.*, ¶¶ 10-18.

This below-market proposal would significantly reduce Flight Attendants' quality of life. American seeks changes in work rules that would result in the furlough of 2,064 Flight Attendants, APFA Ex. 400 (Rohan Decl.) ¶ 4, over 13% of that workforce. Unlike every other work group, Flight Attendants would not receive severance. APFA Exs. 830 & 836.

Those Flight Attendants who are not laid off would incur a 16.9% reduction in take-home pay under the Section 1113 proposal. In addition, the proposed replacement of the defined benefit plan with a defined contribution plan would necessitate that Flight Attendants contribute up to 5.5% of their income in order to receive a matching employer contribution. APFA Ex. 700 (Akins Decl.) ¶ 88.

Under the Section 1113 proposal, many Flight Attendants would also have to work more than ten years longer to make up for the lost level of employer-provided retirement benefit. American's proposal to freeze the Flight Attendant defined benefit plan and replace it with a defined contribution plan means that Flight Attendants with significant service will have to retire with substantially less retirement income or else work significantly longer in order to make up for the loss of what they would have accrued. APFA Ex. 300 (Condrick Decl.) ¶ 6. American also seeks to eliminate subsidization of retiree medical care. APFA Ex. 200 (Loew Decl.) ¶ 42.

And although the Company offered a profit-sharing plan in its Section 1113 proposal, this possibility, even in the best case scenario, would not begin to restore the concessions that the Company seeks to impose. Even a successful post-bankruptcy Company would not return a significant portion of what the Flight Attendants are being asked to sacrifice. APFA Obj. Mot. Reject at 25. Moreover, if rejection is ordered by the Court, American has stated that not only will it not implement this change in the profit sharing program, but, in addition, the Company will take away the existing profit-sharing plan. Tr. 4/26/12, 219:1-11 (Brundage).

American has repeatedly made clear to the APFA that any agreement would have to provide $230 million in annual cost savings over a six-year term. These two issues, the overall target and contract duration, were non-negotiable. AA Mem. Supp. Mot. Reject, Part Three at 37 n.34; AA Ex. 500 (Brundage Decl.) ¶ 28.

The APFA's goal throughout post-petition negotiations has been to protect its members while also providing the Company with market-based operational flexibility and labor costs. Recognizing the realities of bankruptcy, the APFA has been willing to agree to concessions in those specific areas of the contract that American has flagged as outliers when compared to terms of other Flight Attendant contracts.

These concessions can be grouped into work rules and productivity provisions, health benefits, and pension benefits.

Work Rules and Productivity. The APFA has been willing to align Flight Attendant work rules and productivity provisions with those of the other network carriers. The Flight Attendant provisions highlighted by American in its Section 1113 filing were agreed to in whole or part by the APFA before the Company filed its motion. APFA Ex. 202 at 3-4, 8 (agreement to minimum hours, vacation schedule provisions and increase in the "monthly maximum" to 100 hours a month).

Medical Benefits. The APFA agreed to eliminate the current retiree medical plan contingent on replacing it with a Voluntary Employee Beneficiary Association. Tr. 5/16/12 242:14-16 (Loew); APFA Ex. 200 (Loew Decl.) ¶ 43. American projected that APFA's proposal on retiree medical would provide them with $28 million in annual savings. AA Ex. 1043. The APFA also agreed to a change in the active Flight Attendants' medical plan. APFA Ex. 203; APFA Ex. 200 (Loew Decl.) ¶ 41.

Pension Benefits. Finally, the APFA has proposed a change to the Flight Attendants' pension plan that would align the Company's costs in that area with its competitors. The APFA agreed to a freeze of the Flight Attendant defined benefit plan, and to replace it with a defined contribution plan that included higher employer contributions for Flight Attendants depending on their age. The escalating rates are designed to offset the substantial reduction in pension benefits that senior Flight Attendants would suffer as a result of the freeze. APFA Ex. 300 (Condrick Decl.) ¶ 10.

Early Out Proposal. The APFA also proposed an "early out" program that would incentivize top-of-scale Flight Attendants to retire, and would reduce the Company's costs associated with having a senior Flight Attendant workforce that is concentrated at the top of the contractual pay scale, while eliminating or reducing the 2,064 furloughs projected by American. APFA Ex. 400 (Rohan Decl.) ¶¶ 7-11; APFA Ex. 401 (Suppl. Rohan Decl.) ¶¶ 5-18. But American refused to seriously entertain APFA's early out proposal, withheld information necessary to progress towards a jointly beneficial program, and made no real attempt to reach consensus on this issue. APFA Ex. 401 at ¶¶ 21-35.

By contrast, American has now implemented an early-out program for its non-union Passenger Service employees. Capasso Suppl. Decl. ¶ 7 (Doc. No. 2605), Ex. D (American Letter Dated May 1, 2012).

APFA was approached by US Airways regarding that airline's interest in merging with American, and after negotiations, APFA and US Airways arrived at a term sheet outlining terms of employment for American Flight Attendants in the event of a merger. This term sheet provides for $153 million in cost savings and is fundamentally superior to what the Company seeks to impose by way of its Section 1113 proposal and motion. APFA Ex. 100 (Glading Decl.) ¶¶ 18-21. The US Airways term sheet would not require any furloughs, includes an early out program, and commits the APFA and US Airways to a binding arbitration process resulting in a market-base contract if a complete agreement cannot be reached between the parties. APFA Ex. 106.

During the course of negotiations, American failed to provide the APFA with key information needed to analyze its proposals. American failed to provide its pre-bankruptcy business model. Compare APFA Ex. 850 (pre-petition plan) with APFA Ex. 818 (post-petition plan). American also failed to provide information regarding the valuation of cost reductions among non-union employees. See supra n. 3; APFA Exs.8, 817 at 6, 818 at 52, 842.

The APFA declined to accept American's 1113 proposal based on its financial advisors' recommendation. In light of the weaknesses in the business plan and the prospect of a merger which would likely involve fewer concessions, they advised that it would be imprudent to agree to the current proposal. Tr. 5/18/12, 37:11-38:8 (Szlezinger). In addition, American failed to demonstrate that the requested below-market concessions, which would be destructive to Flight Attendants personally and in their working lives, were necessary for the Company to achieve its goals. Tr. 5/16/12, 200:15-16; 206:24 - 207:6; 208:8 (Glading); APFA Ex. 100 (Glading Decl.) ¶ 13.

IV. THE MERGER ALTERNATIVE

The merger alternative to the current stand-alone business plan, which the Company has consistently stated it will eventually "pursue" and which it "regularly … explores," is now being evaluated by American and other stakeholders.

A. American and the UCC Are Now Evaluating the Merger Alternative.

On April 20, 2012, US Airways announced that it would pursue a merger with American while the Company is in bankruptcy. APFA Ex. 829. Following this development, American's financial advisor David Resnick testified that reviewing merger alternatives "would be likely because the debtor's obligation is to maximize value for stakeholders, and … the stakeholders would want to insure that they are getting the highest possible value." Tr. 4/25/12, 134:10-22 (Resnick). Mr. Resnick described this as "the company's fiduciary obligation." Tr. 4/25/12, 111:16 (Resnick).

Likewise, in a letter mailed to American's employees, CEO Horton explained that:

> what's best for our company, our people and our financial stakeholders will be determined by the facts in a disciplined manner and process. And this includes whether American will choose to pursue any combination down the road. This is

> the charge of the board of directors and the leadership team to be done in close collaboration with the creditors committee.

APFA Ex. 5. This process of "close collaboration" is currently underway. Tr. 4/25/12, 156:17-18 (Resnick). Indeed, beginning in mid-April, 2012, McKinsey's engagement with American was expanded to specifically include "evaluat[ing] alternative business plans." Suppl. McKinsey Retention App. (May 10, 2012) (Doc. 2695), ¶ 10, and Rothschild's fee statements from April 2012 show that the firm has begun work on "M&A" and "strategic alternatives." Rothschild Fee Statement (Doc. 3017) (May 30, 2012) at 29, 31, 34-35, 38, 40, 45-46.

Alternatives to the stand-alone plan that are considered may well require less in labor cost reductions from the Flight Attendants and other employees than the current business plan. Tr. 4/25/12, 177:20-23 (Resnick).

A prospective merger can be evaluated without having first rejected its labor contracts. Tr. 4/25/12, 183:2-19 (Resnick); Tr. 4/26/12, 69:24-70:2 (Dichter). The Company's stated rationales for seeking 1113 relief under a stand-alone plan while also contemplating a merger are to increase the "value" of a merger, and to provide a "valuation benchmark" in a merger. Tr. 5/23/12, 5:20-6:17 (Dichter). Neither of these rationales require contract rejection in order to evaluate or undertake a merger.

B. The Company's Sought Implementation Date Is Arbitrary.

"AMR is not in crisis. It has nearly $5 billion of cash, no DIP financing agreements that subject AMR to covenant or liquidity tests, and … will apparently not need exit financing or seek a revolving credit facility upon emergence from bankruptcy." APA Ex. 100A (Yearley Decl.) ¶ 9. Such self-financing is atypical in large bankruptcies in general, Tr. 4/26/12, 129:2-4

(Dichter), and airline bankruptcies in particular, Tr. 4/26/12, 185:3-6 (Brundage). As Mr. Brundage testified, because AMR "filed with a reasonable amount of liquidity and we didn't have DIP financing, so there were no restraints … put on us in terms of what we needed to do kind of day one." Tr. 4/26/12, 185:3-6 (Brundage).

Nonetheless, the Company seeks contract rejection by no later than June 2012 and to implement its proposed changes by July 1, 2012. This date is not dictated by any external requirement, but rather was simply chosen by the Company. AA Ex. 100 (Goulet Decl.) ¶ 62 n.25. American is not reliant on outside financing contingent on rejection, and is still formulating its plan of reorganization. The Company's exclusivity period ends on September 28, 2012.

With respect to a plan of reorganization, since filing its motion, the Company has materially changed its position regarding the amount of equity financing needed to execute its business plan, most recently suggesting that it may not need any. When the Company filed its Section 1113 motion, the business plan assumed [redacted] in equity financing. The UCC advisors and the unions noticed significant errors in that model which prompted the Company to correct its business plan. As a result, AMR's projected total debt balance at the end of 2013 has been reduced by [redacted] and its projected cash balance at the end of the six-year business plan is [redacted] higher than previously projected. Rather than revisit the amount of concessions sought from employees, AMR reduced the amount of its planned equity raise to [redacted] APFA Ex. 600 (Szlezinger Decl.) ¶¶ 14-15.

Moreover, the company now indicates that equity financing may not even be necessary at all. AA Ex. 300A (Updated Resnick Decl.) ¶ 23. Thus, it is too soon to determine the financial picture of American when it exits bankruptcy. American may need some "equity raise" and that amount may be [redacted] or it may be zero. Similarly, Ms. Goulet testified that she was not sure whether there will be an equity raise because "that's several months from now, and, you know, in the airline business a lot can change in a handful of months." Tr. 4/24/12, 262:23-263:3 (Goulet).

PROPOSED CONCLUSIONS OF LAW

I. SECTION 1113 REQUIREMENTS AND BURDEN OF PROOF.

American must satisfy the following nine Section 1113 requirements:

1. The debtor in possession must make a proposal to the union to modify the collective bargaining agreement.
2. The proposal must be based on the most complete and reliable information available at the time of the proposal.
3. The proposed modifications must be necessary to permit the reorganization of the debtor.
4. The proposed modifications must assure that all creditors, the debtor and all of the affected parties are treated fairly and equitably.
5. The debtor must provide to the union such relevant information as is necessary to evaluate the proposal.
6. Between the time of the making of the proposal and the time of the hearing on approval of the rejection of the existing collective bargaining agreement, the debtor must meet at reasonable times with the union.
7. The debtor must confer in good faith in attempting to reach mutually satisfactory modifications of the collective bargaining agreement.
8. The union must have refused to accept the proposal without good cause.
9. The balance of the equities must clearly favor rejection of the collective bargaining agreement.

See, e.g., *In re Lady H Coal Co.*, 193 B.R. 233, 241 (Bankr. S.D. W.Va. 1996) (collecting cases).

"Congress enacted Section 1113 … to substitute the elaborate set of subjective requirements in Section 1113(b) and (c) in place of the business judgment rule." *In re Delta Air*

Lines, Inc., 359 B.R. 468, 476 (Bankr. S.D.N.Y. 2006); *see also In re Pierce Terminal Warehouse, Inc.*, 133 B.R. 639, 645-646 (Bankr. N.D. Iowa 1991) ("Generally, in order to obtain rejection of an executory contract, the debtor-in-possession must satisfy a 'business judgment test,' …. The standards for rejecting collective bargaining agreements are more stringent"); *In re Banco Nacional de Obras y Servicios Publicos, S.N.C*, 91 B.R. 661, 665 (Bankr. S.D.N.Y. 1988) ("Congress established a specific procedure to be followed before a debtor may reject a collective bargaining agreement …. By way of contrast, a contract to manufacture widgets may be rejected with court approval if the debtor's sound business judgment so dictates."); *In re Old Carco LLC*, 406 B.R. 180, 192-193 (Bankr. S.D.N.Y. 2009) (under "business judgment standard," court simply determines "whether rejection will benefit the Debtors' estates," and consideration of "fairness" is reversible error).

Moreover, "[t]he debtor bears the burden of persuasion" for each requirement. *In re Northwest Airlines Corp.,* 346 B.R. 307, 320-21 (Bankr. S.D.N.Y. 2006); *see also In re Century Brass Prods., Inc. v. Int'l Union, United Auto., Aerospace & Agric. Implement Workers of Am.*, 795 F.2d 265, 276 (2d Cir. 1986) ("The debtor as the moving-party seeking rejection of its collective bargaining agreement has the burden of persuasion on the procedural requirements and substantive standards of [Section] 1113."); *In re Garofalo's Finer Foods, Inc.*, 117 B.R. 363, 370 (Bankr. N.D. Ill. 1990) ("The [d]ebtor has the burden of proof with respect to all nine elements and must demonstrate each element by a preponderance of the evidence.").

American has not proven that (1) the 1113 proposal is necessary for its reorganization; (2) the 1113 proposal is fair and equitable; (3) the 1113 proposal was based on complete and reliable information; (4) all relevant information was provided to the APFA; (5) the Company has acted in good faith; (6) the proposal was rejected without good cause; or (7) the balancing of the equities clearly favors rejection.

II. AMERICAN HAS FAILED TO MEET ITS BURDEN OF PROOF.

A. The Company's Proposals Are Not Necessary To Permit Its Reorganization.

The Company failed to satisfy the necessary requirement for four distinct reasons. First, American will likely engage in a merger in the foreseeable future, while the six-year 1113 proposal is based on a stand-alone plan. "[I]n virtually every case, it becomes impossible to weigh necessity as to reorganization without looking into the debtor's ultimate future and estimating what the debtor needs to attain financial health." *Truck Drivers Local 807 v. Carey Transp. Inc.*, 816 F.2d 82, 89 (2d Cir. 1987). American's CEO himself believes that "consolidation" "has to occur," that it is something the Company "needs to participate in," and that it is "really a matter of when." Tr. 4/24/12, 176:7-14 (Goulet). However, the 1113 proposal is entirely based on financial targets that purportedly must be reached in the sixth year of a stand-alone business plan. In addition, American concedes that an alternative business plan based upon a consolidation scenario might require less in labor savings, just as the agreements reached with US Airways require fewer concessions from employees. Thus, the Company has failed to prove that its business plan is necessary for its actual "ultimate future."

Second, American has failed to prove that the current stand-alone business plan could serve as the basis for a confirmable plan of reorganization. In *Hostess,* Judge Drain explained that if there is not "substantial agreement" between a union and debtor regarding "what needs to be done" to return to profitability, then the Court should apply the feasibility standard of Section 1129 when evaluating the necessary requirement. *In re Hostess Brands, Inc.,* No. 12-22052 (RDD) (Bankr. S.D.N.Y. May 14, 2012) (*"Hostess* 1113 Op.") at 127. Indeed, this is the natural implication of the Second Circuit's decision in *Carey* invoking Section 1129 when explaining why the "necessary" requirement must be evaluated by looking to the debtor's "ultimate future." *Carey Transp. Inc.*, 816 F.2d at 89; *see also* APFA Objection at 46-48. Here, there is a fundamental disagreement about whether a merger is necessary, and the current stand-alone business plan does not satisfy the feasibility standard. The motion thus must be rejected.

Third, American has failed to demonstrate that it could not reorganize with market-based labor costs. Absent a showing of tangible necessity or impending liquidation, courts have not authorized rejection where the company proposed below-market labor costs. *Compare In re Northwest Airlines Corp.*, 346 B.R. at 330 (finding it appropriate for Northwest to base proposals on comparison with US Airways/America West rather than previous comparison to with United Airlines), *and In re Mesaba Aviation*, 341 B.R. 693, 751, 757 (Bankr. D. Minn. 2006) (appropriate to propose cuts which would make union employees "very low-paid, as compared to their colleagues elsewhere in the industry," when evidence showed that the company "will not survive as an operating airline if it does not get the total reduction" it sought). In *Northwest* the debtor proved that it was proposing modifications in line with the relevant comparators, while in *Mesaba* the debtor proved that it could not reorganize with labor costs comparable to the relevant comparators. Here, the "primary comparator group is obvious," AA Ex. 800 (Glass Decl.) ¶ 14; the 1113 proposal would place Flight Attendant costs well-below that group; and the Company has failed to demonstrate that it could not reorganize with market costs. Before filing its motion, American should have projected its financial metrics using market-based labor costs, and then determined whether these metrics fell within the range that would allow the Company to successfully reorganize. Instead, the Company has chosen an unreasonably high EBITDAR target and seeks to back-fill the gap between this target and its current projections by reducing its

Flight Attendant labor costs well below market rates. American has thus not proven that reducing its costs below market is necessary for its reorganization.

Fourth, American's EBITDAR target is unreasonably high and was arbitrarily selected. A debtor cannot satisfy the necessary requirement if its post-rejection financial targets are unnecessarily high. *Hostess* 1113 Op. at 129-130. The necessity of the precise EBITDAR target is particularly probative here, because that financial metric is the sole determinant of the sought level of labor cuts. Nevertheless, the Company has provided no explanation or evidence of why and how the particular EBITDAR target was selected, and has failed to demonstrate that it could not reorganize with lower, industry-standard profit margins. Thus, the motion should be denied because American has failed to demonstrate that exceeding the profit margins of its competitors is necessary for a successful reorganization. *See In re Mesaba Aviation, Inc*., 341 B.R. at 713 (Section 1113 does not permit "a proposal that is cursory or arbitrary, or one whose specific terms are result-driven in isolation rather than process-derived and based on actual experience.")

B. The 1113 Proposal Does Not Treat All Parties Fairly And Equitably.

While the Company seeks to reduce its Flight Attendant costs below those of its competitors, American has failed to prove that any non-union stakeholder will be required to accept below market terms. Rather, American seeks to align its non-labor costs with its competitors. The Company has thus failed to satisfy the fair and equitable requirement. *See In re Century Brass Prods.*, 795 F.2d at 273.

Separately, American has failed to satisfy this requirement because only the union members are being asked to forfeit any benefit from potential merger synergies. The unions are being asked to lock into six-year terms based on the stand-alone business plan, even though every other stakeholder will have the opportunity to benefit from potential strategic alternatives.

C. The 1113 Proposal Was Not Based On The Most Complete And Reliable Information.

American failed to prove that it based its proposal on the most complete and reliable information because it refused to consider the alternative of a merger in developing its Section 1113 proposal. *See In re Mesaba Aviation, Inc.*, 341 B.R. at 713 (this requirement "essentially bars a debtor-in-possession from making a proposal that is cursory or arbitrary"). The Company concedes that it will eventually participate in a merger, and, indeed, American (along with other stakeholders) is currently evaluating merger alternatives. Nevertheless, the Company specifically instructed its advisors not to consider this obvious alternative while developing the business plan underlying the Section 1113 proposal. This instruction is particularly remarkable given that its projections for stand-alone success require reducing its Flight Attendant labor costs well below those of its competitors, thereby suggesting that it cannot compete as an independent entity. American has thus arbitrarily excluded from consideration information material to what level of cuts are necessary for a successful reorganization, and the motion must be denied on this ground as well.

D. American Failed To Provide APFA With The Relevant Information Required To Evaluate Its Proposal.

Debtors seeking Section 1113 relief must prove that they have provided enough information to their unions to "convince them that the process of formulating the proposal was not arbitrary, not 'loaded' toward a particular result, not manipulated to produce an unfair allocation of burdens among the constituencies to the bankruptcy case." *In re Mesaba Aviation, Inc.*, 341 B.R. at 715. "[T]he breadth and depth of the requisite information will vary with the circumstances, including the size and complicacy of the debtor's business and work force." *Id* at 714. And "the timing clause in subsection (b)(1) limits review of a debtor's disclosure effort to the time period 'prior to filing an application seeking rejection.'" *Teamsters Airline Division v. Frontier Airlines, Inc.*, 2009 WL 2168851, *11 (S.D.N.Y. July 20, 2009).

American failed to satisfy this requirement because it failed to disclose information requested by the APFA. *See In re Appletree Mkts., Inc.,* 155 B.R. 431, 438 (S.D. Tex. 1993) (debtor must answer "specific questions" of a union). The Company withheld requested information regarding the burden that would be imposed on non-union employees. American also failed to provide sufficient information regarding the pre-bankruptcy business plan, which was necessary for the APFA to understand why the labor costs deemed necessary by the Company changed by over $1 billion annually after the Company filed for bankruptcy.

The Company also failed to satisfy this requirement by failing to provide sensitivity analysis, which was necessary to enable the APFA to evaluate the stand-alone business plan, and, thus, the Section 1113 proposal. *Cf. In re Mesaba Aviation, Inc.*, 341 B.R at 715-16 (denying Section 1113 motion because debtor failed to provide fully dynamic business plan model). Like the business plan model in *Mesaba*, sensitivity analysis (a fundamental element of any due diligence review of a business plan) was necessary here for the APFA to "attach some bedrock legitimacy" to the stand-alone business plan, and, thus, American's Section 1113 proposal. *See id.* at 715.

E. American Did Not Negotiate In Objective Good Faith.

American has failed to satisfy the "good faith" requirement by refusing to consider merger alternatives before filing its motion. In *Lady H Coal*, the court held that "the Debtors could not have bargained in good faith as the Debtors were, prior to any negotiations with the union, locked into an agreement where the purchaser was not assuming [the labor contract] …. Further, there is evidence … that the officers did not pursue a possible sale to another buyer who was willing to assume" the labor contract. *In re Lady H Coal Co.*, 193 B.R. at 242. Similarly, here the Company "locked into" the stand-alone option and refused to consider strategic alternatives as a basis for determining the necessary level of labor costs. Indeed, in the cases cited by American in its reply brief, the debtors had pursued and considered strategic alternatives before filing their Section 1113 motions. *In re Horsehead Indus., Inc.*, 300 B.R. 573, 579 (Bankr. S.D.N.Y. 2003) ("sale efforts have failed twice"); *In re Karykeion*, 435 B.R. 663, 667 (Bankr. C.D. Cal. 2010) ("the debtor proposed a plan that would assume the CBAs and continue operations…., and the debtor proved incapable of pursuing this particular plan of reorganization."). American has failed to negotiate in good faith by refusing to consider merger alternatives, and its motion should thus be denied.

F. APFA Had Good Cause To Refuse To Accept American's Proposal.

Because the good cause requirement is separate from the other criteria of the Code, good cause may exist even if all the other factors support allowing rejection. *See, e.g., Nken v. Holder*, 556 U.S. 418, 444 (2009) ("We should not lightly conclude that Congress enacted a provision that serves no function"); *Fid. Fed. Sav. & Loan Ass'n v. de la Cuesta*, 458 U.S. 141, 163 (1982) ("We decline to construe the Act so as to render these provisions nugatory, thereby offending the well-settled rule that all parts of a statute, if possible, are to be given effect.") (internal citations and quotations omitted). Good cause has been defined to mean a "well-founded reason." *In re U.S. Truck Co. Holdings*, 165 L.R.R.M. (BNA) 2521, 2540 (Bankr. E.D. Mich. 2000).

The APFA had good cause to reject the Company's six-year proposal, which is based on stand-alone projections, because the process of evaluating merger alternatives is ongoing and modification of the union contracts is not a necessary predicate for that process. The Company has conceded that it has a fiduciary duty to evaluate merger alternatives. These alternatives could provide materially better terms to the Company's union employees, and American's advisors have testified that this evaluation process does not require first rejecting the contracts. The APFA thus had a "well-founded reason" to refuse to agree to six years of sub-market terms, because the Company's business could fundamentally change imminently in a way that would allow for market-based costs.

G. The Balance of The Equities Does Not Clearly Favor Rejection.

"[T]he controlling question [in balancing the equities] is whether the hardships imposed [on employees] are outweighed by a reasonable expectation of successful reorganization." *Int'l Bhd. of Teamsters v. IML Freight, Inc.*, 789 F.2d 1460, 1462 (10th Cir. 1986).

Here, balancing of the equities does not "clearly favor[]" granting the motion. 11 U.S.C. § 1113(c)(3). Rejection of the collective bargaining agreement would have a significant negative impact on American's Flight Attendants and could be the unfortunate next step toward potentially disruptive and costly period of "self help" under the RLA, and, at the same time, would not advance the process toward a confirmable plan of reorganization. Denial of the motion, on the other hand, would not impair American's prospect for a successful reorganization.

Respectfully submitted,

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