4-28-2017

How to Get Away with Merger: The American Airlines Bankruptcy

Kelsey Cunningham Osborne
Christopher K. Coleman

Follow this and additional works at: http://trace.tennessee.edu/utk_studlawbankruptcy
Part of the Bankruptcy Law Commons

Recommended Citation
http://trace.tennessee.edu/utk_studlawbankruptcy/46

This Article is brought to you for free and open access by the College of Law Student Work at Trace: Tennessee Research and Creative Exchange. It has been accepted for inclusion in Chapter 11 Bankruptcy Case Studies by an authorized administrator of Trace: Tennessee Research and Creative Exchange. For more information, please contact trace@utk.edu.
How To Get Away with Merger:
The American Airlines Bankruptcy

By:
Kelsey Cunningham Osborne
&
Christopher K. Coleman
Table of Contents

Cast of Characters .................................................................................................................. 4

I. Introduction .......................................................................................................................... 6

II. The Debtor’s Business ......................................................................................................... 7

III. Events Leading to Filing for Chapter 11 ....................................................................... 13
    A. Historical Market Changes ......................................................................................... 13
    B. Factors Affecting American Airlines’ Decision to File for Chapter 11 ...................... 15

IV. Financing Issues ............................................................................................................... 20

V. First Day Motions ............................................................................................................. 22
    A. Orders Facilitating Administration of the Estate ....................................................... 22
    B. Orders That Smooth Day-to-Day Operations ............................................................ 26
    C. Orders Authorizing AMR to Honor Prepetition Obligations ...................................... 27

VI. Appointment of Committees ........................................................................................... 32
    A. The Unsecured Creditor’s Committee ........................................................................ 32
    B. The Ad Hoc Committee .............................................................................................. 32

VII. Union Disputes and Rejection of Collective Bargaining Agreements ......................... 36
    A. Labor Costs, History, and Lead Up ............................................................................ 36
    B. Section 1113 Proceedings ........................................................................................... 38
       1. Section 1113 Requirements ................................................................................. 38
       2. AMR’s Specific Proposals ..................................................................................... 41
          b. Association of Professional Flight Attendants ..................................................... 44
          c. Transport Workers Union ................................................................................... 46
       3. Unions’ Objections ................................................................................................. 48
          b. Association of Professional Flight Attendants’ Objection ..................................... 51
          c. Transport Workers Union’s Objection ................................................................. 52
       5. AMR’s Renewed Motion ........................................................................................... 54

VIII. The Plan .......................................................................................................................... 58
    A. The Initial Plans ........................................................................................................... 58
       1. Objections ................................................................................................................ 58
       2. Support ...................................................................................................................... 60
          3. Amendments ......................................................................................................... 61
    B. The Confirmation Hearing ........................................................................................... 64
       1. Objections ................................................................................................................ 64
    C. The Final Plan ............................................................................................................... 66
       1. Administrative Expenses and Priority Tax Claims .................................................. 73
       2. Secured Claims ......................................................................................................... 73
       3. Priority Non-Tax Claims ........................................................................................ 74
       4. General Unsecured Guaranteed Claims .................................................................... 75
       5. Other General Unsecured Claims ............................................................................ 76
       6. Union Claims ............................................................................................................ 76
       7. Convenience Class Claims ....................................................................................... 77
       8. Equity Interests .......................................................................................................... 77
       9. Other Equity Interests ............................................................................................... 77
D. The Merger Agreement and The Plan .......................................................... 78
E. Additional Provisions of the Plan ............................................................... 78

IX. The Merger .................................................................................................. 82
   A. Negotiations ............................................................................................. 83
   B. Antitrust Issues ....................................................................................... 87
   C. The Merger Agreement ........................................................................... 91
      1. The Basic Structure .......................................................................... 91
      2. Key Benefits ....................................................................................... 91
      3. Significant Structural Details ............................................................. 92

X. Conclusion ................................................................................................... 94
Cast of Characters

Ad Hoc Committee (“AHC”) – the Ad Hoc Committee was an unofficial committee composed of claimants against AMR Corporation and its subsidiaries.

Allied Pilots Association (“APA”) – One of AMR’s three major labor unions.

American Airlines Group, Inc. – American Airlines Group is the new company that resulted from the merger between US Airways and AMR.

AMR Corporation – AMR Corporation was the parent company of American Airlines, along with several other subsidiaries, and the predecessor company to American Airlines Group Inc.

Association of Professional Flight Attendants (“APFA”) – One of AMR’s three major labor unions.

Clayton Plaintiffs – The Clayton Plaintiffs were a group of individuals that brought a private antitrust action against the proposed AMR-US Airways merger and objected to the confirmation of the plan.

David J. Cook – Mr. Cook, an attorney with Cook Collection Attorneys, PLC, represented the Clayton Plaintiffs in their objections to the confirmation of the plan.

Douglas Parker – Mr. Parker was the Chief Executive Officer of US Airways until the company merged with American Airlines. Following the merger, he became the Chief Executive Officer of American Airlines Group.

Harvey Miller – Mr. Miller, an attorney with Weil, Gotshal, & Manges LLP, was the lead attorney representing AMR’s bankruptcy and restructuring process.

Jack Butler – Mr. Butler, an attorney with Skadden, Arps, Slate, Meagher, & Flom LLP, represented the Unsecured Creditors’ Committee and played an essential role in the merger of American Airlines and US Airways.

The Honorable Sean H. Lane – Judge Sean Lane was the bankruptcy judge in the Southern District of New York who presided over the AMR bankruptcy and restructuring process.
Thomas Horton – Mr. Horton became the Chief Executive Officer of AMR the day after his company filed for bankruptcy protection in November 2011. Following the merger, he became Chairman of the Board of Directors of American Airlines Group.

Transport Workers Union (“TWU”) – One of AMR’s three major labor unions. TWU represented seven separate employee groups.

Tracy Hope Davis – Ms. Davis was the United States Trustee for the Southern District of New York during the time of AMR’s Chapter 11 restructuring.

Unsecured Creditors’ Committee (“OCC”) – The Unsecured Creditors’ Committee was a committee of creditors, appointed by the United States’ Trustee, who were instrumental in the successful reorganization and merger of American Airlines.

US Airways – US Airways, one of the historic network carriers, merged with AMR Corporation to become American Airlines Group Inc.
I. Introduction


This paper seeks to outline, broadly, the steps that AMR Corp. took in order to achieve a successful reorganization of its company. Early negotiations with the company’s labor unions proved to be an essential component of the merger and ultimate success of the reorganization. An active Unsecured Creditors Committee became instrumental in the negotiations with US Airways and greatly influenced the decision to merge. An unexpected lawsuit, filed by the Department of Justice, which looked as if it might destroy the efforts of all affected parties, was ultimately a minor setback. Finally, a merger between two major airlines resulted in recoveries for all stakeholders and ended the two-year process.

This paper provides information regarding the process of a Chapter 11 Bankruptcy and tells the story of perhaps the most successful reorganization of a major airline.
II. The Debtor’s Business

Before 2013, AMR Corporation (“AMR”) was the publicly-traded parent corporation of American Airlines, a globally-recognized, legacy airline headquartered in Fort Worth, Texas. The airline traces its history to when Charles Lindbergh flew the first American Airlines flight from St. Louis to Chicago in 1934. After a corporate reorganization in 1982, American Airlines became AMR’s principal subsidiary. American Airlines is a “network carrier,” a term that refers to "the surviving set of large [United States airline] carriers, most of which were established long before deregulation, that operate on a 'hub and spoke' traffic model, service a wide variety of both domestic and international destinations using multiple aircraft types, and have workforces relatively more senior than the newer entrants." In 2000, American Airlines was the largest passenger airline in the world in terms of revenue and capacity, yet by the time of filing for bankruptcy it ranked fifth globally (and fourth domestically) among passenger carriers. Shortly before the time of AMR’s bankruptcy filing, American Airlines had a fleet of over 600 jet aircraft, providing over 1,800 daily flights to destinations across North America, the Caribbean, Latin America, Europe, and Asia.


2 Affidavit of Isabella D. Goren, Case 11-15463, Doc. No. 4, p. 3. American Airlines reorganized in 1982, creating AMR Corporation as its parent company. Id.


4 Id.

5 Id. (Based on 11/1/2011 figures).
Additionally, AMR’s wholly-owned subsidiary, AMR Eagle Corporation (“Eagle”) owned two regional airlines that do business as “American Eagle”: American Eagle Airlines, Inc., and Executive Airlines, Inc.6 Pursuant to a capacity purchase agreement, an independent carrier operated the 300-aircraft American Eagle fleet as “American Connection” and fed passenger traffic to American Airlines with approximately 1,500 daily departures to over 175 destinations.7 In exchange for receiving all passenger revenue from those flights, American Airlines paid Eagle and American Connection for the services provided.8

Altogether, AMR carriers provided over 3,000 daily flights to over 180 cities within the United States.9 AMR’s primary domestic markets were the New York, Los Angeles, Chicago, Dallas/Fort Worth, and Miami metropolitan areas.10 By focusing on smaller, regional markets, Eagle and American Connection connected fliers to American Airlines’ primary markets.11 To compete in the international flights market, American Airlines was a founding member of the Oneworld Alliance, where member airlines were able to provide a broader route network along with other perks


8 Id.

9 Id. at 4.

10 Id.

11 Id. American Connection only provides connecting service to Chicago O’Hare Airport.
and benefits. At the time of filing, the member airlines of the Oneworld Alliance provided 8,400 daily departures in over 750 destinations across approximately 150 countries. In 2010, international operations accounted for approximately 40% of AMR’s total operating revenue, with the greatest share coming from Caribbean and Latin American flights. Altogether, airfare composed approximately 87% of AMR’s total revenue.

At the time of filing, AMR employed more than 88,000 people across the globe with a majority of U.S. employees belonging to labor unions and subject to collective bargaining agreements. American Airlines alone had 65,000 employees, 70% of whom were represented by one of three labor unions operating under nine separate collective bargaining agreements negotiated pursuant to the Railway Labor Act.

AMR’s “AAdvantage” frequent flyer program maintained approximately 67 million members, providing mileage credits and related services in exchange for continued patronage of the airline and its affiliates. Approximately 11% of AMR’s total revenue came from marketing services, membership fees, service charges, and baggage handling fees. In addition to passenger flight services, AMR also provides

12 *Id.*

13 *Id.* MARKET REALIST, https://perma.cc/44ZH-89BN. By contrast, international flights in Asia only accounted for a considerably smaller share of AMR’s international presence.


16 In re AMR Corp., 477 B.R. 384, 395-96 (Bankr. S.D.N.Y. 2012) (“American's management and support staff employees, which include office and clerical employees, as well as its passenger service agents, representatives, and weight and balance planners, are excluded as they are not unionized”).

17 Affidavit of Isabella D. Goren, Case 11-15463. Doc. No. 4, p. 5.

18 *Id.* Based on 2010 figures. Membership fees came from AMR’s Admirals Club operations. Marketing services were in connection with the AAdvantage program.
over ninety million pounds of cargo weekly to cities across four continents. Cargo represented approximately 3% of AMR’s total operating revenue.


19 Id.
22 Id. PMA Investment Subsidiary, Inc. ("PISI") holds a membership interest in Parts Advantage, LLC.
23 Id. at 9. SC Investment holds an ownership interest in Aerolineas Argentinas.
24 Id. at 6. Executive Ground Services is wholly-owned by Executive Airlines, which is wholly-owned by AMR Eagle, which is wholly-owned by AMR.
25 Id. Eagle Aviation is a wholly-owned subsidiary of AMR Eagle.
26 Id. Admirals Club is a wholly-owned subsidiary of American Airlines.
27 Id. Business Express Airlines is a wholly-owned subsidiary of AMR Eagle.
28 Id. Reno Air is a wholly-owned subsidiary of American Airlines.
29 Id. AA Real Estate Holding GP is a wholly-owned subsidiary of American Airlines.
30 Id. at 8. 99.5% of AA Real Estate Holding L.P. is owned by American Airlines. COS paragraph 16, page 6. AA Real Estate Holding GP, LLC holds a general partnership interest in AA Real Estate Holding L.P.
Services LLC, American Airlines Vacations LLC, American Aviation Supply LLC, and American Airlines IP Licensing Holding, LLC. AMR also maintained varying levels of direct and indirect equity interest in Aerodespachos Colombia; S.A. AERCOL S.A.; Aerolineas Pacifico Atlantico, S.A.; Aerosan Airport Services S.A.; Aerosan S.A.; Airline Tariff Publishing Company; American Airlines de Mexico, S.A.; American Airlines de Venezuela, S.A.; American Airlines, Division de Servicios Aeroportuarios (R.D.), S.A.; American Beacon Advisors, Inc.; Avion Assurance, Ltd.; Caribbean Dispatch Services Limited; International Ground Services, S.A. de C.V.; Oneworld Alliance, LLC; Oneworld Management Company, Inc.; OMZ Venture, LLC; and Texas Aero Engine Services, LLC.

________________________

31 Id. at 6. American Airlines Marketing Services is a wholly-owned subsidiary of American Airlines.

32 Id. American Airlines Vacations is a wholly-owned subsidiary of American Airlines.

33 Id. at 6-7. American Aviation Supply is a wholly-owned subsidiary of American Airlines.

34 Id. at 7. American Airlines IP Licensing is a wholly-owned subsidiary of American Airlines.

35 Id. at 8 (“Americas Ground directly holds 100% of the ownership interests in Aerodespachos Colombia, S.A. AERCOL S.A.; American Airlines Division de Servicios Aeroportuarios (R.D.), S.A.; Caribbean Dispatch Services Limited; and International Ground Services, S.A. de C.V.”).

36 Id. American Airlines de Mexico is a wholly-owned subsidiary of American Airlines.

37 Id. American Airlines de Venezuela is a wholly-owned subsidiary of American Airlines.
III. Events Leading to Filing for Chapter 11

A. Historical Market Changes

“Deregulation changed everything.” 38 Prior to the passage of The Airline Deregulation Act of 1978, 39 the U.S. airline industry “faced little market competition” due to federal regulation of licensing, ticket prices, airline routes, and market participants. 40 Consequently, industry regulation prevented and otherwise disincentivized competitive airline ticket prices and discounts. 41 Deregulation “transformed the entire landscape of the airline industry,” by allowing airlines to “set prices and establish flight schedules based on market forces.” 42 This led to the “hub and spoke” business model of large network airlines like American Airlines but also allowed low-cost carriers like Southwest Airlines to enter the market as well. 43 The growth of the low-cost carriers created an increase in air travel demand, allowing them to reap the benefits and increase their market share. 44 From 1998 to 2012, the market share of low-cost carriers almost doubled. 45 At the same time, large network

38 In Re AMR Corp., 477 B.R. at 396. This section of the paper relies heavily upon Judge Lane’s summary of the events because several of the documents upon which he relies are filed with the court under seal.

39 Pub.L. No. 95-504, 92 Stat. 1705

40 In Re AMR Corp., 477 B.R. at 396.

41 Id.

42 Id.

43 Id.

44 Id. As the opinion points out, in 1993 the Department of Transportation coined the term the “Southwest Effect” in reference to the new increase in air travel demand. See OFFICE OF AVIATION ANALYSIS, U.S. DEP’T OF TRANSP., THE AIRLINE DEREGULATION EVOLUTION CONTINUES: THE SOUTHWEST EFFECT (1993).

45 In Re AMR Corp., 477 B.R. at 398.
carriers like American Airlines suffered from the competitive pricing due to bloated business infrastructure and high overhead costs.46

Unable to compete with low-cost carriers on pricing, network carriers have sought to remain competitive by simultaneously “lowering their costs and prices as much as possible” while “offering more destinations, additional frequencies, and increased amenities.”47 A cornerstone of this strategy includes going after so-called “high value” customers (e.g., “business travelers and other frequent fliers”) who are willing to pay higher prices for additional benefits and convenience.48 The airline industry has also been subjected to further competition within the international air travel market as the United States has entered into “Open Skies Agreements” with 105 countries since 1993.49 In line with related trade deals, these international agreements have allowed for market-driven competition alongside foreign airline companies, adding increased pressure on domestic airlines to lower costs and ticket prices.50 Moreover, internet-based ticket pricing and booking companies have increased price transparency by allowing consumers to compare ticket prices across all airlines.51 This has led to further downward pressure on ticket pricing.52

Following the terrorist attacks on September 11, 2001, the airline industry saw a dramatic decline in demand which has been “further compounded by the increased inconvenience resulting from changes in passenger screening.”53 Significant increases in security and fuel prices—along with natural disasters (e.g., Hurricane Katrina),

46 Id. at 396.

47 Id.

48 Id.

49 Id. at 397.

50 Id.

51 Id.

52 Id.

53 Id.
health epidemics (e.g., the outbreak of the SARS virus), and ongoing concern regarding military action in the Middle East (e.g., Iraq, Afghanistan, and Syria)—all further distressed the airline industry, too.\textsuperscript{54}

\textbf{B. Factors Affecting American Airlines’ Decision to File for Chapter 11}

In addition to the market forces affecting the airline industry, American Airlines suffered a series of setbacks from 2001-2011. Following the industry downturn following 9/11, US Airways,\textsuperscript{55} United Airlines, Northwest Airlines, and Delta Airlines each filed for bankruptcy protection and reorganization from 2002 to 2005.\textsuperscript{56} This allowed American Airlines’ closest competitors to reduce their operating costs by renegotiating their collective bargaining agreements. In the years that followed, Delta merged with Northwest in 2008 and United Airlines merged with Continental in 2010, reducing the number of “legacy carriers” from six to four.\textsuperscript{57} At the time, American Airlines was able to avoid bankruptcy in part because of significant labor concessions from its unions in 2003.\textsuperscript{58}

Beginning in 2001, AMR started incurring major net losses each year until finally filing for bankruptcy in 2011. In 2008 and 2009, AMR recorded losses of $2.1 billion and 1.5 billion, respectively.\textsuperscript{59} After another round of cost-saving measures in 2010, AMR recorded a $451 million net loss.\textsuperscript{60} Finally, in 2011, the company recorded

\textsuperscript{54} Id.

\textsuperscript{55} That event was US Airways’ second Chapter 11 filing.

\textsuperscript{56} Genevieve Shaw Brown, American Airlines: Timeline of Troubles, ABC NEWS (Oct. 2, 2012), \url{https://perma.cc/9HXQ-XSXE}.

\textsuperscript{57} Id.

\textsuperscript{58} Andrew B. Dawson, Labor Activism in Bankruptcy, 89 AM. BANKR. L.J. 97, 118 (2015). Labor costs alone were reduced by $1.8 billion. By 2004, the annual cost reduction was $4.1 billion. Affidavit of Isabella D. Goren. Case 11-15463. Doc. No. 4, p. 7.

\textsuperscript{59} Brown, American Airlines: Timeline of Troubles, \url{https://perma.cc/9HXQ-XSXE}.

\textsuperscript{60} Id.
a $1.06 billion net loss. Overall, AMR lost $10 billion since 2001. Due to the company’s weakening financial position, AMR addressed its liquidity needs with secured lending against “virtually all of its unencumbered assets,” leaving no additional assets to pledge as collateral for further financing. At the time of filing, most of AMR’s financing required interest rates that far exceeded the market rates of the low-interest post-recession environment. AMR’s financial position relative to its profit-earning competitors placed it in an additionally precarious position by preventing it from expanding its route network to keep up with competitors and by making investment in innovative products and services cost-prohibitive.

Of the network carriers, American Airlines faced the stiffest competition from low-cost carriers as at least one low-cost carrier operated in 49 of American Airlines’ top 50 routes. As a result, AMR discontinued several non-stop flights where airfare revenue decreased significantly (i.e., 60%) due to fierce competition, such as the route between Boston and San Francisco. Moreover, American Airlines incurred a significant financial blow when low-cost carriers began making inroads into the Latin American and Caribbean markets—two regions where AMR derived a significant portion of its revenue. While average ticket prices for this region decreased 9% from 1998 to 2011, jet fuel prices were five times higher over the same period. Finally, American Airlines’ average negative net margin from 2003-2011 was -3.6%. In Re AMR Corp., 477 B.R. at 397.


63 Id.

64 In Re AMR Corp., 477 B.R. at 397-98.

65 Id. at 398. That number has gone up from 39 in 2003.

66 Id.

67 Id.

68 Id.
several foreign airlines with terminals in “key international gateways” began cutting into American Airlines’ “high value” customer-base by offering “levels of in-flight service quality that exceed those offered by American.”

A common industry metric for the airline industry is the cost per available seat mile (“CASM”). American Airlines’ labor CASM exceeded that of its network airline competitors by 24% and low-cost carrier competitors by 79%. Consequently, American’s net CASM also exceeded all of its competitors. American’s high unit labor cost stemmed from its “relatively high wage scale for employees, pilots, and flight attendants; generous benefits; and a more senior workforce.” This problem was compounded by American having particularly low productivity among its employees and pilots. American’s pilot labor costs alone were $1.8 billion per year and made up nearly a third of total labor costs—a fact even the Allied Pilots’ Association (AMR’s in-house pilot union) conceded was “unsustainable.”

Finally, beginning in 1986, American Airlines suffered from a series of unsuccessful mergers. In 1986, AMR paid $225 million to acquire low-cost carrier AirCal in order to give the company a foothold in San Jose and the infrastructure needed to be competitive throughout California. In 1987, AirCal was integrated into American’s operations. Unfortunately, this strategic acquisition occurred precisely during the same period that US Airways and low-cost carrier Southwest Airlines were also moving to compete along the West Coast. American and US Airways were not

69 Id. at 399. Foreign airlines have also increased competition with Oneworld Alliance, of which American Airlines is a charter member.

70 Id.

71 Id.

72 Id. at 400.

73 Id.


75 Id.
able to compete with Southwest along the California corridor because of Southwest’s superior cost structure.\textsuperscript{76} By 1993, American had completely terminated its presence in medium and minor California hubs.\textsuperscript{77}

By the late 1990s, however, the Silicon Valley “bloom of soaring stock values” and IPOs led to a resurgence of “high value” customers demanding air travel. American sought to reenter the market with the late 1998 purchase of Reno Air, a low-cost carrier begun just six years earlier.\textsuperscript{78} Within three months of the acquisition, the pilots’ union staged a “sickout” to protest the ongoing debate over integrating Reno Air’s pilots into the larger AMR workforce.\textsuperscript{79} The sickout ended up costing AMR $200 million in lost revenue, which was more than the company paid for Reno Air.\textsuperscript{80}

In January 2001, Trans World Airlines (“TWA”) and American announced they had reached a $2.8 billion deal where TWA would file for bankruptcy and American would purchase TWA’s assets in bankruptcy court, assume its obligations, and hire its employees.\textsuperscript{81} The acquisition was motivated by United Airlines’ announced merger with US Airways. However, due to antitrust concerns and Justice Department opposition, the United-US Air merger collapsed shortly thereafter while AMR was allowed to proceed with the purchase of TWA.\textsuperscript{82} Five months after the merger, terrorists hijacked and crashed two American and two United jets. This had a devastating effect on the entire airline industry and on the economy—causing a rapid decline in the high-value customers on which network carriers depended.\textsuperscript{83}

\textsuperscript{76} Id.
\textsuperscript{77} Id.
\textsuperscript{78} Id.
\textsuperscript{79} Id.
\textsuperscript{80} Id.
\textsuperscript{81} Id.
\textsuperscript{82} Id.
\textsuperscript{83} Id.
many attribute the failure of the TWA merger to these unforeseen external shocks, other industry experts assert that American Airlines based the strategic acquisition on a mistaken belief that TWA—particularly the St. Louis hub—gave American something it lacked.\textsuperscript{84} In actuality, the acquisition failed to offer American any breadth or depth in new markets or target areas and by 2009 AMR had laid off a plurality of former TWA employees along with closing the former-TWA hub in St. Louis and Kansas City maintenance base.\textsuperscript{85}

\textsuperscript{84} Id.

\textsuperscript{85} Id.
IV. Financing Issues

According to the affidavit of Isabella Goren, AMR’s Chief Financial Officer, AMR came into bankruptcy with over $4.1 billion in unrestricted cash.\(^{86}\) As a result, AMR did not pursue cash collateral or other financing as debtors-in-possession. Initially, the U.S. Trustee raised its concerns with the court that AMR’s cash position was not in compliance with 11 U.S.C. § 345 (i.e., had not secured bonds for the unrestricted cash) insofar as AMR had not repatriated all of its cash—raising the issue whether such funds needed to comply with § 345.\(^{87}\) Judge Lane took a decidedly pragmatic view, making it clear to the U.S. Trustee that full compliance was unrealistic and that both the debtor and the Trustee should find a realistic, although incomplete, solution to the problem.\(^{88}\)

Several analysts have pointed out that the eventual success of the AMR restructuring is in no small part due to the wisdom of AMR going into bankruptcy protection with $4.8 billion in unrestricted cash and short-term investments. That strategy paid dividends (so to speak) by allowing both the Unsecured Creditors Committee and the Ad Hoc Committee to focus solely on AMR’s long-term problems without any consideration of any creditors’ short-term profit positions from DIP financing. Moreover, the $4.8 billion appeared to give AMR greater bargaining power since it entered bankruptcy protection “early,” and thus preventing any vendor, creditor, or competitor from placing AMR in a further precarious position. AMR went on to renegotiate financing on more than four hundred aircraft,\(^{89}\) nine thousand


\(^{88}\) *Id.* at 59.

vendor contracts, and five hundred real estate leases. The debtors also restructured aircraft leases, thereby reducing annual rent payments by over one billion dollars, and eliminated a total of $2.5 billion in unsecured and tax exempt debt. It appears fair to say that AMR derived its success in these renegotiations and restructurings from entering bankruptcy protection from a position of strength.

90 Id.

91 Id.

92 Id.

93 Id.
V. First Day Motions

At the same time that AMR filed for bankruptcy protection, the company also filed a series of first day motions intended to enable the corporation and its subsidiaries to continue doing business while the bankruptcy restructuring process unfolded. Using the categories provided in Bankruptcy in Practice, “first-day motions” fall under one of three categories: (i) Orders that facilitate the administration of AMR’s estate; (ii) Orders that smooth the day-to-day operations; and (iii) Orders authorizing AMR to honor its prepetition obligations.94 It should be stated from the outset that only a few objections were raised to these motions, many of which were withdrawn or resolved before the court held a hearing on the matter.

A. Orders Facilitating Administration of the Estate

AMR filed its voluntary petition in the Southern District of New York, using its New York real estate holding company as the link for venue purposes.95 As debtors in possession (under §§ 1107(a) and 1108 of the Bankruptcy Code), AMR and its subsidiaries moved for and were granted joint administration of the Chapter 11 cases under Rule 1015(B) of the Federal Rules of Bankruptcy Procedure.96 Joint administration allowed AMR and its subsidiaries to file joint motions and other documents under the lead bankruptcy case for each company’s bankruptcy cases, thereby reducing administrative expenses.

AMR also requested that Judge Lane use the Bankruptcy Court’s powers under § 105 to allow AMR not to file the list of creditors as required under § 521(a)(1)

94 Bernstein & Kuney, Bankruptcy in Practice (5th Ed.) 273-75.

95 It is notable that AMR elected to proceed through bankruptcy in New York rather than Texas. Analysts have pointed out that it is commonplace for large public corporations to file for bankruptcy in Delaware or the Southern District of New York because of the sophistication of the judges in those districts. See, e.g., Andrew B. Dawson, Labor Activism in Bankruptcy, 89 Am. Bankr. L.J. 97, 118 (2015).

because the debtors planned to employ a claims and noticing agent. This common procedure (allowed under 28 U.S.C. § 156(c) and supported by local court order M-409) requires debtors to retain a claims and noticing agent in cases with one thousand or more creditors and/or equity security holders. Because the claims and noticing agent receives all of the pertinent information regarding creditors and equity stakeholders, filing such lists with the court had no further utility. In the same motion, AMR provided the court with its proposed procedures for serving the notice of commencement in lieu of contacting each potential claimant. AMR’s procedures included publishing notices in each of the following: the *New York Times*, *Wall Street Journal*, *Financial Times*, *USA Today*, *Chicago Tribune*, *Dallas Morning News*, *Miami Herald*, and the *Los Angeles Times*.

In addition to providing the court with a plan for giving notice of commencement, AMR also filed a motion requesting that the court authorize the debtors to establish procedures for protecting the value of the company’s tax attributes. Essentially, AMR asked the court for the authority to protect itself from hostile investors or claims traders who might take advantage of AMR’s vulnerable position in a way that would be harmful to the restructuring process.


98 Under Fed. R. Bankr. P. 2002(a), the claims agent is required to provide all creditors and indenture trustees twenty-one days’ notice of the § 341 creditors meeting.


AMR filed a motion to extend the time from fourteen to seventy-five days to file schedules of its (and its subsidiaries’) assets and liabilities, executory contracts and unexpired leases, along with its financial statements.101 The same motion requested that AMR not be required to file a list of all of its equity holders with the court or provide them with notice of the § 341 meeting in addition to the public advertisements the debtors would pursue. Because of the enormity and complexity of the debtors, it appeared to be an obvious request that the court would definitely grant. Moreover, in the CFO’s affidavit, AMR provided the court with the list of its five largest equity security holders, which served as a good faith effort by the debtors to comply.

In order to keep the company running, AMR filed a motion to grant administrative expense status to AMR’s critical vendors.102 In doing this, the company sought the Court’s blessing for the uninterrupted continuation of its current business—a vital aspect of the restructuring process. Because administrative claimants are given priority over other creditors, several suppliers such as BAE Systems and FADEC International objected on grounds that their companies should be included among the “critical vendors,” too. Along those same lines, in another motion AMR sought court authorization to continue using its existing cash


102 Motion of Debtors for Entry of Order Pursuant to 11 U.S.C. §§ 363(c)(1) and 504(b)(1)(A) Granting Administrative Expense Status to Undisputed Obligations to Vendors Arising from Postpetition Delivery of Goods and Services Ordered Prepetition and Authorizing Debtors to Pay Such Obligations in Ordinary Course of Business. Case 11-15463. Doc. No. 7, pp. 2-3. The motion divided the critical vendors into categories: (1) safety and security providers, (2) airline parts suppliers, (3) maintenance service providers, (4) flight training providers, (5) customer and cargo handling, (6) flight navigation systems providers, and (7) crew and employee-related providers.
management systems and to maintain existing bank accounts. Moving all of the estate’s property (including all of the money and accounts receivable) is an onerous requirement for multinational corporations such as AMR. As a result, judges (including Judge Lane here) are inclined to use their “necessary or appropriate” powers under § 105(a) to allow the debtor to continue using its existing bank accounts and cash management system.

In an effort for certain proprietary information to remain private, AMR filed a motion to file its executory credit card and payment agreements under seal. This allowed AMR to keep private its business (i.e., incentive-based credit cards) with Citibank, Diners Club International, Discover Financial Services, PayPal, and several others. In doing this, AMR was protecting any competitive edge it may have had or might gain in the future.

Approximately six weeks later, AMR sought court authorization for three final matters related to the ongoing business of the company. AMR sought and the court authorized the debtors to set up procedures for the payment of professionals (i.e., attorneys, tax professionals, financial advisors, and investment bankers) employed in connection with the bankruptcy and restructuring process. Included in this list

103 Motion of Debtors for Entry of Order Pursuant to 11 U.S.C. §§ 105(a), 345(b), 363(b), 363(c), and 364(a) and Fed. R. Bankr. P. 6003 and 6004 (A) Authorizing Debtors to (i) Continue Using Existing Cash Management System, (ii) Honor Certain Prepetition Obligations Related to the Use Thereof, and (iii) Maintain Existing Bank Accounts and Business Forms; (B) Extending Time to Comply with 11 U.S.C. § 345(b); and (C) Scheduling a Final Hearing. Case 11-15463. Doc No. 8, pp. 2-3.


105 Id. Exhibit A at p. 7.

of professionals, AMR sought approval to employ five separate law firms and three separate bankruptcy/financial consulting firms. Additionally, the Creditors Committee retained its own law firms and financial advisors, which were included in this list of professionals. Along those same lines, the court granted approval for AMR to employ accounting firms used in the ordinary course of business for tax and other accounting matters. Overall, AMR employed forty-five separate tax and accounting firms to handle both its domestic and international business. Lastly, the court granted AMR the authority to continue employing professionals used in the ordinary course of business.

B. Orders That Smooth Day-to-Day Operations

AMR filed three separate motions seeking the court’s authorization to establish procedures for the treatment of claims brought under § 503(b)(9), the Perishable Agricultural Commodities Act, and reclamation claims brought under § 546(c). There were several initial objections to these procedures but were withdrawn or resolved consensually before the court held the hearing on the motion.

107 Motion of Debtors for Entry of Order Pursuant to 11 U.S.C. §§ 105(a), 327, 328, 330, and 363(c) for Authorization to Employ Certain Firms and Individuals Used in the Ordinary Course of Business to Handle Tax and Other Matters Nunc Pro Tunc to the Commencement Date. Case 11-15463. Doc. No. 589, pp. 5-6.

108 Motion of Debtors for Entry of Order Pursuant to 11 U.S.C. §§ 105(a), 327, 328, and 330 for Authorization to Employ Professionals Used in the Ordinary Course of Business Nunc Pro Tunc to the Commencement Date. 11-15463. Doc. No. 319, pp. 5-6.

The debtors’ proposed form of assurance to pay utilities, however, ignited stronger disagreement than the claims procedures. Four separate entities filed objections to the motion but the court saw to it that each utility received adequate assurance and preserved the right to seek additional assurance in the future if conditions changed.\footnote{Transcript of Hearing on December 22, 2011, Case 11-15463. Doc. No. 465, p. 54.\ See also Motion of Debtors for Entry of Order Pursuant to 11 U.S.C. §§ 105(a) and 366 (i) Approving Debtors’ Proposed Form of Adequate Assurance of Payment to Utilities, (ii) Establishing Procedures for Resolving Objections By Utility Companies, and (iii) Prohibiting Utilities from Altering, Refusing, or Discontinuing Service. Case 11-15463. Doc. No. 21.}

C. Orders Authorizing AMR to Honor Prepetition Obligations

In this category, AMR sought court approval to continue honoring the company’s prepetition obligations. These motions covered wages (along with other compensation & benefits),\footnote{Motion of Debtors for Entry of Order Pursuant to 11 U.S.C. §§ 105(a) and 363(b) Authorizing (i) Payment of Prepetition Wages, Salaries, and Other Compensation and Benefits, (ii) Maintenance of Employee Benefit Programs and Payment of Related Administrative Obligations, and (iii) Applicable Banks and Other Financial Institutions to Receive, Process, Honor, and Pay All Checks Presented for Payment and to Honor All Fund Transfer Requests. Doc. No. 9, pp. 2-3.} insurance programs and obligations,\footnote{Motion of Debtors for Entry of Order Pursuant to 11 U.S.C. §§ 105(a), 362(d), 363(b), and 503(b) (i) Authorizing, But Not Directing, Debtors to (a) Continue Their Insurance Programs, and (b) Pay All Insurance Obligations, (ii) Modifying the Automatic Stay with Respect to Workers’ Compensation Claims, and (iii) Authorizing and Directing Financial Institutions to Honor and Process Related Checks and Transfers. Doc. No. 18, pp. 2-3.} shipping and
delivery charges, obligations to foreign creditors, customer programs, obligations to critical vendors, taxes and assessments, fuel supply


114 Motion of Debtors for Entry of Order Pursuant to 11 U.S.C. §§ 363(b) and 105(a) (i) Authorizing Debtors to Pay Prepetition Obligations Owed to Foreign Creditors, (ii) Authorizing and Directing Financial Institutions to Honor and Process Related Checks and Transfers, and (iii) Scheduling Final Hearing. Doc. No. 11, pp. 2-3.

115 Motion of Debtors for Entry of Order Pursuant to 11 U.S.C. §§ 105(a) and 363(c) (i) Authorizing the Debtors to Pay and Honor Prepetition Obligations to Customers and to Otherwise Continue Customer Programs and Practices in the Ordinary Course of business, and (ii) Authorizing and Directing the Disbursement Banks to Honor and Process Related Checks and Transfers. Doc. No. 12, pp. 2-3.


117 Motion of Debtors for Entry of Order Pursuant to 11 U.S.C. §§ 105(a), 363(b), 507(a)(8), and 541 (i) Authorizing, But Not Directing, Debtors to Pay Prepetition Taxes and Assessments, and (ii) Authorizing and Directing Financial Institutions to Honor and Process Related Checks and Transfers. Doc. No. 19, pp. 2-3.
arrangements, letter of credit and surety bond programs, assumption certain executory credit card and payment agreements, interline agreements, and independent contractors and improvement projects. As is stated earlier, the only objections to these motions were either withdrawn, resolved, or filed as limited


119 Motion of Debtors for Entry of Order Pursuant to 11 U.S.C. §§ 363, 364 and 365 Authorizing Debtors to (a) Continue and Renew Their Letter of Credit and Surety Bond Programs, (b) Continue Corporate Credit Card Program, and (c) Assume a Certain Executory Contract. Doc. No. 27, pp. 2-3.


objections so as to reserve the rights of the objecting parties to be able to object in the future.123

123 See generally Transcripts of Hearings on 11/29/11, 12/13/11, 12/22/11, & 2/3/12.
First Day Motions

Orders Facilitating Administration of AMR’s Estate
  - Joint Administration
  - Authorization to Use Preexisting Cash Mgmt System
  - Waiving List of Creditors
  - Establishing Notice Procedures
  - Extending Time to File Schedules
  - Granting Administrative Expense Status
  - File Certain Agreements Under Seal
  - Approving Interim Compensation of Professionals
  - Approving Employment of Accounting & Tax Professionals
  - Approving Employment of Professionals in Ordinary Course of Business

Orders That Smooth Day-to-Day Operations
  - Exclusive & Global Procedures for Treatment of Reclamation Claims
  - Procedures for Claims under Section 503(b)(9)
  - Procedures for Claims Under P.A.C.A.
  - Providing Assurance for Utilities

Orders to Honor Prepetition Obligations
  - Independent Contractors
  - Interline & Carrier Service Agreements
  - Credit Card Payment Agreements
  - Letter of Credit & Surety Bonds
  - Fuel Supply Contracts
  - Taxes
  - Critical Vendors
  - Customer Programs
  - Foreign Vendors
  - Shipping Charges
  - Wages, Salaries, & Other Compensation
  - Insurance

Cash Collateral & DIP Financing
  - None
VI. Appointment of Committees

A. The Unsecured Creditors’ Committee

On December 5, 2011, the United States Trustee appointed the Official Committee of Unsecured Creditors (“the OCC”), which consisted of nine members. These nine members consisted of the Allied Pilots Association, the Association of Professional Flight Attendants, Bank of New York Mellon, Boeing Capital Corporation, Hewlett Packard Enterprises Services, LLC, Manufacturers and Traders Trust Company, the Pension Benefit Guaranty Corporation, the Transportation Workers Union of America, and the Wilmington Trust Company.

Unlike in smaller cases, where there may be no unsecured creditors’ committee or the unsecured creditors’ committee plays an insignificant role in the chapter 11 process, the OCC in this case sought “to work the debtors to achieve a feasible and expeditious transformation of American Airlines . . . and effectively fulfill the [OCC’s] fiduciary and oversight responsibility.” Thus, the OCC intended to, and ultimately did, play an essential role in the successful reorganization of American Airlines.

B. The Ad Hoc Committee

In April 2012, certain holders of American Airlines’ unsecured debt contacted counsel in order to secure representation with respect to the unsecured debt. By December 2012, these holders of unsecured debt formed the Ad Hoc Committee, which was comprised of parties who held a claim or managed accounts that held claims against American Airlines, as represented in the charts below:


125 Id.

126 Id. at 4. See also 11. U.S.C. § 1102(a)(3) (2016) (“On request of a party in interest, in a case in which the debtor is a small business debtor and for cause, the court may order that a committee of creditors not be appointed”); BERNSTEIN & KUNEY, BANKRUPTCY IN PRACTICE (5TH ED.) 20-21.

## ANNEX A

(All information provided herein is as of December 1, 2012 unless otherwise noted)

<table>
<thead>
<tr>
<th>NAME</th>
<th>ADDRESS</th>
<th>NATURE AND AMOUNT OF DISCLOSABLE ECONOMIC INTEREST</th>
</tr>
</thead>
<tbody>
<tr>
<td>Avenue Capital Management II, L.P.</td>
<td>399 Park Avenue 6th Floor New York, New York 10022</td>
<td>$137,900,000 of lease rejection claims</td>
</tr>
<tr>
<td>Barclays Asset Management Group LLC</td>
<td>1620 26th Street Suite 2000N Santa Monica, California 90404</td>
<td>$638,175 of 7.875% notes due 7/13/39 $2,000,000 of 9.0% debentures due 8/1/12 $5,590,000 of 6.6% bonds due 11/1/14 $2,000,000 of 6.3% bonds due 6/1/23 $45,330,797 of lease rejection claims 4,511,000 shares of common stock in AMR Corporation</td>
</tr>
<tr>
<td>Carlson Capital, L.P.</td>
<td>2100 McKinney Avenue Suite 1800 Dallas, Texas 75201</td>
<td>$40,000,000 of 7.5% senior secured notes due 3/15/16</td>
</tr>
<tr>
<td>Claren Road Asset Management, LLC</td>
<td>900 Third Avenue New York, New York 10022</td>
<td>$38,000,000 of 6.25% notes due 10/15/14 $2,500,000 of 6.9% bonds due 8/1/24 $34,700,000 of 5.5% bonds due 11/1/30 $34,000,000 of 5.25% bonds due 12/1/29 $25,000,000 of 5.75% bonds due 12/1/29 $30,000,000 of 6.25% bonds due 6/1/26 $9,000,000 of 5.5% bonds due 12/1/30</td>
</tr>
<tr>
<td>Credit Suisse Securities USA LLC</td>
<td>11 Madison Avenue New York, New York 10010</td>
<td>$12,000,000 of 6.25% notes due 10/15/14 $1,500,000 of 9.0% debentures due 8/1/12</td>
</tr>
<tr>
<td>Credit Value Partners, LP</td>
<td>777 Third Avenue Suite 19A New York, New York 10017</td>
<td>$10,000,000 of 6.25% notes due 10/15/14 $7,500,000 of claims against American Airlines Inc. relating to a certain promissory note $10,911,580 of lease rejection claims</td>
</tr>
<tr>
<td>CSS, LLC</td>
<td>175 West Jackson Boulevard Suite 440 Chicago, Illinois 60604</td>
<td>$11,000,000 of 7.875% notes due 7/13/39 $135,000,000 of 10.55% notes due 3/1/21 $450,000 of 10.0% debentures due 4/15/21 $250,000 of 9.88% debentures due 6/15/20 $2,000,000 of 6.375% bonds due 5/1/35 AAMRQ 1/19/13 c.3.0; 448 contracts AAMRQ 1/19/13 c.3.5; 250 contracts AAMRQ 1/19/13 c.4.0; 200 contracts AAMRQ 1/19/13 c.4.0; 861 contracts AAMRQ 1/19/13 c.5.0; 400 contracts AAMRQ 1/19/13 c.7.5; 308 contracts AAMRQ 1/19/13 c.10.0; 466 contracts AAMRQ 1/18/14 c.4.0; 50 contracts</td>
</tr>
<tr>
<td>Cyrus Capital Partners, L. P</td>
<td>399 Park Avenue New York, New York 10022</td>
<td>$24,404,000 of 6.25% notes due 10/15/14 $34,815,000 of 5.75% bonds due 12/1/29 $3,000,000 of 5.5% bonds due 11/1/30 $2,175,000 of 10.62% 1999-Ms ETC due 3/4/12 $1,473,000 of 10.68% 1999-Ms ETC due 3/4/13 $56,147,905 of lease rejection claims</td>
</tr>
<tr>
<td>GoldenTree Asset Management LP</td>
<td>300 Park Avenue New York, New York 10022</td>
<td>$14,000,000 of 6.25% notes due 10/15/14 $102,617,618.82 of lease rejection claims</td>
</tr>
<tr>
<td>NAME</td>
<td>ADDRESS</td>
<td>NATURE AND AMOUNT OF DISCLOSABLE ECONOMIC INTEREST</td>
</tr>
<tr>
<td>----------------------------------------------------------------------</td>
<td>--------------------------------------</td>
<td>-----------------------------------------------------</td>
</tr>
</tbody>
</table>
| Goldman, Sachs & Co. (solely with respect to the Distressed Products Group) | 200 West Street, 6th Floor New York, NY 10282 | • $4,139,000 of 8.625% senior secured notes due 10/15/2021  
  • Short $7,491,000 of 10.375% senior secured notes due 7/2/2019  
  • $44,767,000 of 6.977% EETC 2001-1 A due 5/23/2021  
  • $21,690,254 of 7.377% EETC 2001-1 B due 5/23/2019  
  • $38,500,000 of 13% senior secured notes due 8/1/2016  
  • $8,210,000 of 7.379% EETC 2001-1 C due 5/23/2016  
  • Short $4,670,000 of 10.5% senior secured notes due 10/15/2012  
  • Short $4,425,000 of 5.25% EETC 2011-1 A due 1/31/2021  
  • $3,489,000 of 7.5% senior secured notes due 3/15/2016  
  • $4,780,000 of 7% EETC 2011-1 B due 1/31/2018  
  • $3,970,000 of 6.9% bonds due 8/1/2024  
  • $3,520,000 of 6.375% bonds due 5/1/2035  
  • Short $5,000,000 of 6.25% notes due 10/15/2014  
  • $3,471,000 of 10% debentures due 4/15/2021  
  • $4,657,000 of 10.2% debentures due 3/15/2020  
  • $1,779,000 of 10.29% notes due 3/8/2021  
  • $2,320,000 of 10.32% bonds due 7/30/2014  
  • $804,000 of 10.55% notes due 3/12/2021  
  • $9,779,000 of 9% debentures due 9/1/2012  
  • $2,821,000 of 9% debentures due 9/15/2016  
  • $1,500,000 of 9.07% bonds due 3/11/2016  
  • $2,772,000 of 9.75% debentures due 8/15/2021  
  • $1,722,000 of 9.88% debentures due 6/15/2020  
  • $68,784,434 of lease rejection claims  
  • 4,051,365 shares of common stock in AMR Corporation |
| J.P. Morgan Securities LLC                                           | 383 Madison Avenue, New York, New York 10179 | • $5,000,000 of 5.25% bonds due 12/1/29  
  • $1,917,000 of 9.0% debentures due 8/1/12  
  • $237,000 of 9.88% debentures due 6/15/20  
  • $39,907,000 of 6.25% notes due 10/15/14  
  • $1,929,000 of 7.5% senior secured notes due 3/15/16  
  • $3,154,344 of 13% senior secured notes due 8/1/16  
  • $440,000 of 10.5% senior secured notes due 10/15/12  
  • $69,335,751 of lease rejection claims  
  • $4,323,161 of trade claims  
  • 7,070,000 shares of common stock in AMR Corporation  
  • 500 shares of 7.875% preferred stock in AMR Corp. |
| King Street Capital Management, L.P.                                | 65 East 55th Street, New York, New York 10022 | • $2,963,000 of 6.25% notes due 10/15/14  
  • $187,000 of 9.88% debentures due 6/15/20  
  • $4,000,000 of trade claims |
| Kingdom Capital Management, LLC                                    | 152 West 57th Street, New York, New York 10019 | • $20,500,000 of 6.25% notes due 10/15/14  
  • $6,000,000 of 6.375% bonds due 5/1/35 |
| Litespeed Management L.L.C.                                         | 237 Park Avenue Suite 900, New York, New York 10021 | • $26,742,000 of 6.25% notes due 10/15/14  
  • $6,000,000 of 5.5% bonds due 11/1/30  
  • $64,625,000 of 5.25% bonds due 12/1/29  
  • $22,500,000 of 5.75% bonds due 12/1/29  
  • $10,655,000 of 6.25% bonds due 6/1/26  
  • $1,980,000 of 6.3% bonds due 6/1/23 |
<table>
<thead>
<tr>
<th>NAME</th>
<th>ADDRESS</th>
<th>NATURE AND AMOUNT OF DISCLOSABLE ECONOMIC INTEREST</th>
</tr>
</thead>
<tbody>
<tr>
<td>Marathon Asset Management LP</td>
<td>1 Bryant Park 6th Floor New York, New York 10036</td>
<td>Short $23,494,000 of 6.25% notes due 10/15/14, $8,865,000 of 5.5% bonds due 12/1/30, $87,055,000 of 6.375% bonds due 5/1/35, $1,985,000 of 5.4% bonds due 7/1/19, $400,000 of 5.4% bonds due 7/1/20, $30,000 of 6.9% bonds due 8/1/24, $77,467,000 of 10.5% senior secured notes due 10/15/12, $11,624,000 of 11.0% 90-X ETC due 5/7/2013, $22,600,000 of 10.18% of 91A2 ETC due 1/2/13, $21,231,000 of 10.32% of 91B2 ETC due 7/30/14, $17,256,258 of lease rejection claims, 1,784,000 shares of common stock in AMR Corporation</td>
</tr>
<tr>
<td>MatlinPatterson Capital Management L.P.</td>
<td>520 Madison Avenue New York, New York 10022</td>
<td>$220,000 of 7.625% bonds due 8/1/25, $23,007,000 of lease rejection claims</td>
</tr>
<tr>
<td>Pentwater Capital Management LP</td>
<td>227 West Monroe Suite 4000 Chicago, Illinois 60606</td>
<td>$15,000,000 of 6.0% bonds due 11/1/14, $41,100,000 of 6.25% notes due 10/15/14, $18,518,900 of 7.875% notes due 7/13/39, $7,000,000 of 9.0% debentures due 8/1/12, $5,000,000 of 9.0% debentures due 9/15/16, $845,000 of 10.0% debentures due 4/15/21, $555,000 of 9.8% debentures due 10/1/21, $18,430,000 of 6.25% bonds due 6/1/20, $28,025,000 of 10.5% senior secured notes due 10/15/12, $13,100,000 of 7.5% senior secured notes due 3/15/16, $61,610,000 of 6.977% 2001-1 EETC A due 5/23/21, $7,988,000 of 9.980% 1990 ETC notes due 7/2/12, $6,367,093 of 10.52% 1990 ETC notes due 6/14/13, 2,000,000 shares of common stock in AMR Corporation</td>
</tr>
<tr>
<td>Taconic Capital Advisors L.P.</td>
<td>450 Park Avenue New York, New York 10022</td>
<td>$30,758,632 of lease rejection claims, $40,000,000 of claims against American Airlines Inc. relating to a certain promissory note</td>
</tr>
<tr>
<td>Tricadia Capital Management</td>
<td>780 Third Avenue New York, New York 10017</td>
<td>$9,250,000 of 5.25% bonds due 12/1/29, $3,000,000 of 5.5% bonds due 11/1/30, $7,225,000 of 5.75% bonds due 12/1/29, $13,470,000 of 6.25% bonds due 6/1/26, $3,000,000 of 6.3% bonds due 6/1/23, $3,000,000 of 6.375% bonds due 5/1/35, $2,000,000 of 9.125% bonds due 5/1/29</td>
</tr>
<tr>
<td>York Capital Management Global Advisors LLC</td>
<td>767 Fifth Avenue New York, New York 10153</td>
<td>$38,870,000 of 6.25% notes due 10/15/14, $23,000,000 of 7.5% senior secured notes due 3/15/16</td>
</tr>
</tbody>
</table>

128 Id. at 4-6.
VII. Union Disputes and Rejection of Collective Bargaining Agreements

A. Labor Costs, History, and Lead Up

One of the biggest reasons for AMR’s Chapter 11 bankruptcy had to do with its employees. In light of the reorganizations of fellow competitors, AMR acknowledged that its need to restructure was due, in part, to high labor costs. In Chief Financial Officer Isabella Goren’s affidavit, she said that the “airline industry is labor intensive,” and AMR had high labor costs and was simply unable to compete in that area. At the time the petition was filed, AMR employed 88,000 people. Though employees’ pay rates were comparable to those employed by other network carriers, AMR was losing money in labor costs, as measured per available seat mile, which gauges the productivity of an airline worker. At the time of filing, AMR’s labor costs per available seat mile were 24% higher than the other network carriers with which the company was competing. Specifically, AMR’s total labor costs for pilots was $1.8 billion per year, which constituted about 30% of American’s total labor costs. In light of such high, controllable costs, in February 2012, less than three months after the petition, AMR unveiled its new business plan and notified its unions that it planned to cut 13,000 of its 88,000 jobs.


130 Id.


133 Id. at 44.

134 In Re AMR Corp., 477 B.R. at 400.

AMR employees had become accustomed to the company’s employment flux and seeming disregard for its employees. In the 2001 merger with Trans World America (“TWA”), AMR acquired 20,000 new employees. Later that year, after the terrorist attacks on September 11, AMR eliminated 20,000 jobs from its workforce. Then again, in 2002, the airline company laid off 7,000 employees. In an effort to avoid bankruptcy and cut costs, AMR, the world’s biggest airline at the time, promised to cut 7% of its workforce by March 2003. In 2003, employees again “agreed to significant and painful cost reductions.” Employees were encouraged to accept pay cuts and were warned that, if AMR went into bankruptcy, the pay cuts would be even greater. AMR avoided bankruptcy by renegotiating new collective bargaining agreements with its employees, achieving labor cost reductions of about $1.6 billion from its union employees and $200 million from its non-union employees.

The response to AMR’s business plan was overwhelming. Current and former employees, both union members and non-union members flooded Judge Lane’s mailbox, imploring him to be “fair and equitable,” to consider what the company’s employees had already gone through with previous lay offs and cut-backs, and, to


138 Id.

139 Id.


141 In Re AMR Corp., 477 B.R. at 401.


consider what it would mean for customers’ safety if maintenance workers were outsourced. Additionally, anticipating negotiations and potential Section 1113 proceedings, one of the first motions filed after the presentation of the new business plan and the announcement regarding reducing the workforce came from the Committee of Passenger Service Agents (“PSAs”), which filed a motion to restrain AMR from making unilateral changes to the terms and conditions of employment contracts of PSAs. This motion sought to preemptively prevent AMR from reducing the wages, benefits, and working conditions of the PSAs, unless certain criteria were met. The specific criteria required the National Mediation Board (“NMB”) to certify the Communication Workers of America (“CWA”) as the exclusive bargaining representative of the PSAs. Additionally, if the CWA became certified, AMR must meet its obligations under Section 1113 of the Bankruptcy Code.

At the time this motion was filed CWA had already filed a petition with NMB that had yet to be heard. The PSAs anticipated that the NMB would certify the CWA by April of 2012 and thus compel AMR to bargain, in good faith, the terms and conditions of employment for the PSAs and to uphold its obligations under Section 1113.

**B. Section 1113 Proceedings**

1. **Section 1113 Requirements**

Section 1113 of the Bankruptcy Code allows a debtor in possession (“DIP”) to reject a collective bargaining agreement if they do so under certain circumstances.

---

144 [Employee Letter](Case 11-15463. Doc. No. 1299).

145 Doc 1253 Motion to Restrain Debtors...

146 Doc 1253 Para. 1

147 Doc 1253


149 Doc. 1253

Recognizing the gravity of the reorganization of a company, Section 1113 tries to “reconcile the public policy that favors collective bargaining with the reality of bankruptcy, recognizing that Chapter 11 is not merely business as usual but an extremely serious process that can lead to liquidation and the loss of the jobs of all the debtor’s employees as well as of the creditors’ opportunity for any meaningful recovery.”  

Section 1113 provides that, before filing a petition to reject the collective bargaining agreements, the debtor in possession must meet several requirements and follow certain procedural steps. The first procedural step a debtor must take under Section 1113 is to “make a proposal to the authorized representative of the employees” of the modifications to the agreement. Second, the proposal must be “based on the most complete and reliable information available at the time of such proposal.” Third, the modifications proposed must be “necessary to permit the reorganization of the debtor.” Lastly, the modifications must treat the debtor and all of the affected parties “fairly and equitably.” Additionally, during the period of time between making an initial proposal to the employees’ representatives and the hearing date set for determining the motion to reject, the DIP is required to continue to negotiate in good faith with the employees’ representatives, in an attempt to “reach mutually satisfactory modifications of such agreement.” The DIP bears the burden of proving that he or she has complied with all the elements of Section 1113.

The proposal made to the representative must be based on complete information that is available at the time of the proposal. The circumstances, such as the complicated nature of the debtor’s business and the work force, will determine the depth of the information, but the burden is on the DIP to gather all the information on which the proposal is based, and which it deems reliable. This does not include information that contains “hopeful wishes, mere possibilities and


speculation.” Lastly, the information must be sufficient to be evaluated by the employee representatives.

The modified terms of the proposal must also be necessary for the reorganization of the business. However, the Second Circuit has held that “necessary” does not mean the bare minimum that is required to keep the company going. Rather, the proposed terms must contain “changes that will enable the debtor to complete the reorganization process successfully.” The Second Circuit has noted that it is impossible to determine if modifications are indeed necessary, without looking “into the debtor’s ultimate future and estimating what the debtor needs to attain financial health.” Further, the proposal as a whole, rather than its individual terms, should be considered when determining if the proposal is necessary for reorganization.

Finally, the proposed modifications must treat all parties fairly and equitably. Fair and equitable treatment, however, does not require that all the parties receive the same collective bargaining agreements modifications. Additionally, courts are flexible when determining what constitutes fair and equitable treatment, as there are differing levels of sacrifice made by each party. Fair and equitable treatment simply requires that every affected party shares the “burden of saving the company . . . while ensuring that all sacrifice to a similar degree.”

155 *In re AMR Corp.*, 477 B.R at 409 (quoting *In re Karykeion, Inc.*, 435 B.R. 663, 678 (Bankr. C.D. Cal. 2010)).

156 *In re Royal Composing Room, Inc.*, 848 F.2d 345, 350 (2d Cir. 1988); *Truck Drivers Local 807 v. Carey Transp., Inc.*, 816 F.2d 82, 89 (2d Cir. 1987).

157 *Truck Drivers*, 816 F.2d at 90.

158 *Id.* at 90.

159 *Royal Composing Room*, 848 F.2d at 348.

160 *Truck Drivers*, 816 F.2d at 90.

161 *Id.*

162 *Id.*
2. AMR’s Specific Proposals

At the same time that it unveiled its business plan, AMR presented proposals for modifying the collective bargaining agreements that it had with the unions. These proposals reflected the business plan’s goal of reducing the company’s labor costs by about $1.25 billion, or about 20%, over six years, or by 2017.163 Specifically, the proposals asked for $370 million from pilots, $390 million from transport workers and $230 million from flight attendants, for a total of $990 million.164

a. Allied Pilots Association

AMR’s current collective bargaining agreement with the Allied Pilots Association (“the APA”) had been in effect since 2003, and, since 2006, the airline company had been in negotiations with the APA concerning labor cost reductions.165 However, no agreement came of those pre-petition negotiations. In fact, while AMR was continually seeking cost reductions, the APA was negotiating for wage and pension increases.166 Because of the differing viewpoints in relation to the collective bargaining agreements and because the parties were unable to reach agreements, AMR filed a section 1113 motion.

Since February 1, 2012, AMR had been in negotiations with the APA until the filing of the Section 1113 motion, resulting in 65 separate negotiating sessions and daily communications between the airline company and the union.167 Though these negotiations, like the pre-petition negotiations, never resulted in an agreement between the parties, AMR admitted that the negotiations were not fruitless. Through these negotiations, AMR made fundamental modifications to their proposal to the

163 In re AMR Corp., 477 B.R. at 403. See also Goulet’s Declaration. Doc. No. 2236.

164 In re AMR Corp., 477 B.R. at 403.


166 Id.

167 Id. at 11
APA. Specifically, AMR initially proposed to terminate the pilots’ defined benefit pension plan. After negotiations, however, AMR proposed to freeze the plans, rather than terminate them.\textsuperscript{168} Thus, AMR reasoned that it had continued to negotiate with the APA until the time of the hearing, as required by section 1113.

AMR’s proposal included many more modifications to the collective bargaining agreement. One important proposed modification dealt with codesharing. Codesharing is a concept that allows one airline to book passengers’ flights on other airlines’ flights. This allows airlines to reach destinations other than those that the airline serves directly.\textsuperscript{169} The collective bargaining agreement that was in effect at the time of the negotiations required AMR to meet a certain amount of international hours of flying with its own pilots as a pre-condition to codesharing, referred to as the “baseline.”\textsuperscript{170} This baseline was measured by the number of hours that AMR flew outside the continental United States. As AMR added more international flights, the number of hours that pilots flew outside the United States rose, which created a new baseline. However, the baseline never decreased. Therefore, if AMR chose to reduce its number of international flights for any reason, it would still be required to meet the new baseline before codesharing with other airlines. AMR contended that this limitation disincentivized the airline company from adding new international flights that would increase the baseline, because if, for any reason, the company then reduced the number of international flights, it would still have to meet the higher baseline before utilizing its codesharing agreements with the other airlines.\textsuperscript{171}

Another important and highly disputed proposed modification had to do with pilot furloughs.\textsuperscript{172} AMR proposed to furlough about 400 pilots, with the

\begin{flushright}
\textsuperscript{168} Id.
\end{flushright}

\begin{flushright}
\textsuperscript{169} In re AMR Corp., 477 B.R. at 431.
\end{flushright}

\begin{flushright}
\end{flushright}

\begin{flushright}
\textsuperscript{171} Id.
\end{flushright}

\begin{flushright}
\textsuperscript{172} A furlough is a leave of absence that is either at a reduced or no pay.
\end{flushright}
expectation that they would all return to work. At the time of negotiations, the collective bargaining agreement allowed for “stand in stead” furlough, which allowed a pilot to voluntarily take the furlough of another, more junior pilot. Pilots are generally furloughed based on seniority, so more junior pilots were the first to get furloughed. If a pilot, who was planning to retire or take leave, took the furlough of a more junior pilot, then AMR argued that they would lose the economic benefit of the furlough. AMR, effectively, would not have a furloughed pilot in that situation. Additionally, the collective bargaining agreement did not permit AMR to furlough pilots above a certain seniority level. According to AMR, this agreement did not give the company the flexibility it needed to respond to catastrophes, nor did it allow the company to capitalize on the economic value of the furlough.

AMR also sought modifications in the areas of distance learning for pilots, which would give AMR the flexibility to train its pilots from virtually any location, rather than fly the pilots to Fort Worth, Texas, which was required by the then-current collective bargaining agreement. The company also sought reduction of pay guarantees to pilots who were not flying. Under the agreement at the time, pilots were guaranteed pay based on either a three-hour day or a five-hour day, even if the pilots were not flying. For instance, if a pilot had a rest day in between flights, she would still be guaranteed five hours of flight pay for the day she did not fly. Lastly, the company sought to implement pay groups based on equipment types, which would


174 Id.

175 Id.

176 Id.

177 Id.

178 Id. at 50.

179 Id. at 48.

180 Id.
assign aircraft to six different groups and pay employees according to the size and seat capacity of the aircraft on which they were working.181

**b. Association of Professional Flight Attendants**

AMR had been in negotiations with the Association of Professional Flight Attendants (“the AFPA”) to amend the collective bargaining agreement since 2008.182 Throughout these negotiations, AMR claimed that the APFA was solely focused on recovering the concessions that the flight attendants had made in 2003, which included a 26% reduction in labor costs, representing a $340 million deduction.183 The APFA claimed that it had “sacrificed enough.”184 Thus, unsurprisingly, due to the differing viewpoints on the outcome of the negotiations, the parties failed to come to a mutual, pre-petition agreement.

As with the APA, AMR presented its collective bargaining agreement proposals to the AFPA on February 1, 2012. AMR continued to negotiate, as required by section 1113, with the APFA until March 22, when the union presented a proposal that did not meet the competitive needs of AMR. Specifically, the proposal would have resulted in flight attendant labor cost reductions that AMR deemed to be “far short” of the $230 million that was being sought by the company.185

AMR sought to amend the collective bargaining agreement it had with the APFA in a number of ways. First, AMR proposed changes to flight attendants’ compensation.186 At the time of negotiations, flight attendants were paid on an hourly

181 Id.


184 Id.

185 Id. at 8.

186 Id. at 13.
basis, according to every “credit hour” they flew. Under the then-current collective bargaining agreement, a “credit hour” included the time spent actually flying, plus “credit” time created by a formula set out in the agreement. Credit hours begin when a flight attendant signs in, or about one hour before the flight, and credit hours end about 15-30 minutes after the final flight at the end of the day.\textsuperscript{187} AMR did not seek to reduce flight attendants’ pay. Rather, the company sought to modify how flight attendants were paid, by increasing the number of hours worked, while decreasing credit hours that were associated with non-flying hours.\textsuperscript{188} AMR claimed that this payment structure would be similar to its competitors. In addition, AMR sought to eliminate incentive pay, which was a per hour premium paid for credit hours worked, over 70 per month. AMR argued that eliminating incentive pay was crucial to achieve cost reductions.\textsuperscript{189} In fact, many of AMR’ proposals depended on the elimination of incentive pay. Further, AMR wanted eliminate pay for working in certain galley positions.\textsuperscript{190} This galley pay was a per hour premium for working positions that nominally involved food and beverage service. AMR argued that this premium was paid at a time when food and beverage service was more extensive and burdensome on planes, and today that is not the case.\textsuperscript{191} Lastly, AMR sought to create a single base pay rate for international and domestic flights and pay flight attendants for time spent at the gate, prior to departure.\textsuperscript{192}

Second, AMR sought to amend flight attendant work rules. This included increasing the maximum number of scheduled hours a flight attendant was required to work, increasing the flexibility in flight time scheduling, establishing a preferential

\textsuperscript{187} Id. at 13.

\textsuperscript{188} Id. at 14.

\textsuperscript{189} Id. at 15.

\textsuperscript{190} Id. at 17.

\textsuperscript{191} Id.

\textsuperscript{192} Id. at 16-17.
bidding system for flight schedules, modifying the sick leave policy, and giving the company greater discretion regarding staffing.193

Lastly, AMR sought to make modifications to flight attendants' benefits plans. The company's proposals would require flight attendants to contribute more to the cost of health insurance than the then-current 10% that flight attendants were contributing. Additionally, AMR sought to increase the minimum annual paid hours needed to qualify to participate in the health insurance plan. Finally, AMR sought to “freeze” the retirement plan, which would require AMR to continue to meet the obligations of the retirement plan, until the effective date of the freeze, whereby the company would incur no new obligations after that date.194 AMR argued that “freezing” the plan would save the company about $42 million per year.195 Again, AMR contended that these modifications were necessary in order to be competitive within the industry.

c. Transport Workers Union

The third and final union that AMR had been in negotiations with was the Transport Workers Union (“the TWU”), which represented seven different employee groups,196 and were each covered by separate collective bargaining agreements.197 AMR and the TWU had been in negotiations since 2006, renegotiating agreements that took effect in 2003.198 Since the beginning of those negotiations, only two of the agreements

193 Id. at 23-38.

194 Id. at 41.

195 Id. 39-41.

196 TWU represented Fleet Service Employees, Dispatch, Ground School and Simulator Instructors, Simulator Technicians, Mechanics, Stock Clerks, and Maintenance Control Technicians.

197 Debtors’ Motion to Reject TWU Collective Bargaining Agreements (Part 1). Doc. No. 2045, p. 1-2; Debtors’ Motion to Reject TWU Collective Bargaining Agreements (Part 2). Doc. No. 2046, p. 3.

198 Debtors’ Motion to Reject TWU Collective Bargaining Agreements (Part 1). Doc. No. 2045, p. 3.
seven different employee groups represented by TWU, the Ground School and Simulator Instructors and the Maintenance Control Technicians, had come to an agreement with AMR. However, by filing a section 1113 motion, AMR sought to reject those collective bargaining agreement as well.199

AMR began the post-petition negotiation process with the TWU on February 1, 2011, and spent hundreds of hours negotiating with the union.200 Though both parties put in numerous hours in negotiations, there were no agreements at the time of the section 1113 motion.

One of the most disputed modifications proposed by AMR was increasing the ability of the company to outsource various fleet service worker functions.201 AMR alleged in its motion that the company was far below the outsourcing level of other competitors, which resulted in higher labor costs for the same work. Specifically, AMR sought to outsource dayline cabin cleaning services,202 all cargo functions, fueling functions, baggage services, and maintenance repair. Additionally, AMR sought to increase the station staffing thresholds, which required a certain number of TWU-represented employees to staff stations that are currently being staffed by TWU-represented employees and the station maintains a certain number of annual departures.203 Lastly, AMR wanted to increase the utilization of part-time employees and remove surplus employees from the payroll.204

199 Id. at 5.
201 Debtors’ Motion to Reject TWU Collective Bargaining Agreements (Part 1). Doc. No. 2045, p. 10.
202 These were the functions performed between flights while the planes were in service, such as removing linens and blankets, equipping the cabin for flight, and cleaning the interior of the airplane.
203 Id. at 17
204 Id. at 10-24.
AMR also sought modifications relating to work rules. Specifically, the company sought to gain control over determining the required qualifications for various job positions. The current collective bargaining agreement prohibited AMR from making modifications to the Qualifications Administration Manual, which effectively gave control to the TWU in determining the required qualifications for transit worker employees. AMR also wanted to modify the holiday payment schedule, which would decrease the number of holidays that employees would receive and decrease the rate of pay that employees received for working a holiday. Lastly, AMR sought to eliminate company pay for time spent on union business. Under the collective bargaining agreement at the time, AMR paid full wages to union officers or representatives who worked full time for the union and did no work for AMR. AMR proposed to eliminate this practice and replace it with a leave of absence from the airline that was paid by the TWU.

Again, AMR asserted that these modifications were necessary for the reorganization of the company and for the company to remain competitive.

3. Unions’ Objections

Initially, each of the three unions objected to AMR’ Section 1113 motion to reject the collective bargaining agreements. Each objection attacked AMR’ stand-alone business plan for requiring labor cost reductions before exploring its other

205 Id. at 25-6.

206 Id.

207 Id. at 43.

208 Id. at 42.

209 Id.

210 Id.
Specifically, each union pointed to a merger with another airline as a possible means for reducing costs without sacrificing the employees. However, each unions’ had its own unique requests and objections to AMR’ proposals and Section 1113 Motion.

a. Allied Pilots Association’s Objection

The APA addressed two key issues in its objection: the specific contract modifications made by AMR and a consolidation plan between AMR and US Airways. The APA argued that the modifications proposed by AMR were “far beyond the competitive levels” and that the profitability sought by AMR was “unprecedented and unrealistic.” The APA argued that it had made concessions that would allow AMR to reorganize successfully without “exacting unnecessary, punitive concessions from the pilots.” Lastly, the APA detailed the counter-proposals it made and presented to AMR, which equaled $10 million more in savings than what was requested by AMR. Specifically, this counter-proposal made by the APA called for alterations to the pilots’ benefit plans. The APA suggested increasing the pilots’ contribution to the medical plan to 17%, which would save $24 million. Additionally, the APA suggested a pension plan “freeze,” rather than


212 Id.

213 APA Objection to Debtors’ Motion to Reject Collective Bargaining Agreement. Doc. No. 2722, p. 2

214 Id. at 11, 27.

215 Id. at 22.

216 Id.

217 Id at 23.

218 Id.
termination, which would save about $116 million annually. The APA also proposed modifications to work rules, including changes to the then-current sick leave policy. The APA proposed a sick leave “sellback” program which would allow pilots to sell back their unused sick leave to AMR for pay.219

The APA also rebuked AMR for failing to consider whether a merger or consolidation would be a better option than rejecting employees’ collective bargaining agreements. The APA, having negotiated a term sheet with US Airways220, contended that, the terms agreed upon in negotiations with US Airways proves that AMR’ proposals were unnecessary to remain competitive in the market.221 According to the motion, if US Airways acquired AMR, it would only cut labor costs by $240 million, rather than $370 million.222 In its motion, the APA claimed that AMR’ labor cost reduction was based on an earning target that the company could not justify, and was thus unnecessary.223

Lastly, the APA addressed AMR’s proposed modifications regarding code sharing. According to the motion, AMR’s proposed modifications would essentially give AMR the ability to engage in unrestricted code sharing with other airlines.224 The APA argued that these modifications were inconsistent among AMR’s competitors and were not necessary for effective reorganization.225

219 *Id.* at 33-34.

220 *See* Section IX regarding merger negotiations.

221 [APA Objection to Debtors’ Motion to Reject Collective Bargaining Agreement](Doc. No. 2722, p. 44).

222 *Id.*

223 *Id.* at 45.

224 *Id.* at 59.

225 *Id.*
b. Association of Professional Flight Attendants’ Objection

The AFPA criticized AMR for not pursuing a merger. The union pointed out that numerous members of management had admitted the need for a merger and that the question was one of timing. Further, the AFPA attacked AMR for not evaluating whether a merger in bankruptcy was a better alternative to the stand-alone business plan. The AFPA argued that the company’s stand-alone business plan was essentially a reiteration of its pre-petition business plan.

In its objection, the AFPA admitted that it met with US Airways to discuss the benefits of a merger. The result of this meeting with US Airways was a term sheet that outlined the terms for flight attendants in the event of a merger. As a result of these negotiations, the AFPA saw reorganization as a possibility through a merger, rather than the rejection of collective bargaining agreements.

Though a majority of the AFPA’s objection dealt with criticisms of the business plan and the failure to consider a merger, the AFPA also contended that the modifications that were proposed by AMR would have a negative impact on flight attendants’ quality of life and that the proposed contract would put the flight attendant labor costs at below market rates. In addition to these objections, the AFPA also argued that AMR failed to meet the requirements of section 1113. Specifically, the APFA argued that the modifications proposed by AMR were not necessary for the successful reorganization of the company and that, therefore, the proposals were not “fair and equitable.” The APFA argued that, because the proposed modifications were not fair and equitable, the APFA had “good cause” to reject the


227 Id. at 14.

228 Id. at 15.

229 Id. at 30.

230 Id. at 32.

231 Id. at 22-25.
proposals.232 Because of this failure to comply with section 1113 and the deficiencies in the business plan, the AFPA argued that AMR’ motion should be denied.233

c. Transport Workers Union’s Objection

The TWU objected to AMR’ initial proposal and stated that the modifications would “have a devastating effect on TWU-represented employees and their families,” by eliminating more than 8,800 TWU-represented employees.234 The TWU argued that outsourcing was not a viable solution, as it had been tried by AMR in the past and had created issues in the turnaround time for aircraft, creating stagnant revenue-generating aircraft.235 The TWU also criticized AMR for using “excessive and overreaching cost cutting measures” by proposing to reduce sick leave, vacation days, and other benefits.236 Ultimately, the TWU attack AMR for not following the procedures set forth in Section 1113,237 for making proposals that were not necessary for the reorganization of the company,238 and for ignoring the counter-proposals made by the TWU.239

4. AMR’s First Motion

After AMR filed its section 1113 motion, it continued to negotiate with the three unions.240 The court held a three-week trial, from April 23 to May 25, 2012, in

232 Id. at 42.

233 Id. at 61.


235 Id. at 15.

236 Id. at 17.

237 Id. at 18.

238 Id. at 21-26.

239 Id. at 41-42.

240 In re AMR Corp., 477 B.R. at 404.
order to make a determination on the motion. The trial resulted in a new collective bargaining agreement for the transport worker groups, ratified by the TWU. Additionally, the AFPA submitted a new proposal from AMR to its members for a ratification vote. Neither of these agreements were filed with or presented to the court. Lastly, the APA sent a new AMR’s proposal to its members who subsequently rejected the proposal. AMR and the APA then agreed that it was necessary for the court to rule on the motion to reject the APA’s collective bargaining agreement.

The court first looked at the necessity requirement under section 1113 by addressing the APA’s blanket objection that AMR had failed to consider a merger prior to filing a section 1113 motion. The court quickly dismissed this argument. The court noted that, ultimately, that there was no merger for the court to consider. Additionally, there is no language in section 1113 that suggests a restraint on when a debtor may file a motion under section 1113. Thus, AMR was not required to consider a merger before it filed a motion to reject the collective bargaining agreements. Lastly, the court rejected the APA’s request that it focus on a merger between the two parties, because the language of section 1113 is applicable to the debtor, not to a third party.

Next, the court considered the APA’s objections as to specific proposals made by AMR. The court found that the changes relating to benefits for employees would fall in line with AMR’ competitors’ benefit plan, and were therefore necessary for reorganization. The court also considered AMR’ proposed modifications regarding its codesharing among other airlines. Though the court acknowledged that changes

241 Id. at 405.
242 Id.
243 Debtors’ Renewed Motion to Reject APA Collective Bargaining Agreement, Doc. No. 4084, p. 6-7. The parties continued to negotiate outside the auspices of the court, thus, the court reserved its ruling until the parties had a chance to fully negotiate.

244 Id.
245 Id. at 8.

246 Id. at 12.
247 In re AMR Corp., 477 B.R. at 413.
248 Id. at 414.
249 Id. at 423-27.
to AMR’ codesharing would greatly benefit the company, it concluded AMR had not shown that the “essentially unlimited” codesharing proposed by AMR was necessary for a successful reorganization. The court also found that the proposed modification to codesharing was beyond the company’s stated goals, and that it had not been provided for in the business plan put forth by AMR.

In addition to codesharing, the court also took issue with AMR’s proposed modification to furloughing pilots. The court noted that, while the business plan only proposed the furlough of 400 pilots, the proposal made by AMR sought to eliminate all restrictions on the company’s ability to furlough pilots. Additionally, the court found that the amount of savings gained by the unrestricted ability to furlough pilots was unclear. Thus, the court found that the proposed modification to pilots’ furlough was unnecessary to the successful reorganization of the business. The court denied the motion to reject, but stated that the denial was “without prejudice toremedying the two defects identified.”

5. AMR’s Renewed Motion

On August 17, 2012, AMR filed a renewed motion to reject the collective bargaining agreement of the APA (“Renewed Motion”). This Renewed Motion remedied the two defects found by the court in AMR’ first motion, namely the modifications to codesharing and furloughing. In the Renewed Motion, AMR withdrew entirely its prior proposal on furloughs, effectively removing its section 1113 modifications to the proposal regarding furloughs. Additionally, AMR

250 Id. at 433.
251 Id.
252 Id. at 434.
253 In re AMR Corp., 477 B.R. at 454.
255 Id at 3.
256 Id.
modified its original proposal concerning codesharing. Specifically, the company’s proposal would permit codesharing on Alaska Airlines, but prohibit the company from codesharing on specific flights to and from Alaska. Additionally, the new proposal would eliminate the provision for adding new domestic codesharing relationships. Unlike in the previous proposal, which was denied in large part because of the discord between the business plan and codesharing, this proposal closely tied codesharing to the existing business plan.

The APA objected to the Renewed Motion, however, none of the arguments made by the APA pertained to the two original defects, codesharing and furloughs. First, the APA argued that AMR’ business plan and the concessions deemed necessary for successful reorganization of the company changed materially, from the time of the First Motion until the Renewed Motion. Specifically, AMR had originally determined that a 20% labor cost reduction from all labor groups was necessary for the successful reorganization of the company, which included the $370 million that was requested specifically from the pilots. However, during the course of the section 1113 negotiations, AMR revised the business plan to require about a 17% labor cost reduction, representing about $315 million from the pilots. Second, the APA argued that AMR’ labor costs were, in fact, in the process of reaching uniformity with the rest of the industry, a concept known as “convergence.” Specifically, the APA stated that AMR’ analysis regarding labor costs for pilots and the industry standard among the carriers was outdated. The APA cited to new collective bargaining agreements between Delta and United/Continental and their

257 Id. at 3-4.

258 APA Objection to Debtors’ Renewed Motion. Doc. No. 4251, p. 4.

259 Id. at 4.

260 Id.

261 Id. at 6.

262 Id. at 7.

263 Id.
pilots.\textsuperscript{264} The APA argued that, when considering the new agreements between these airlines and their pilots, AMR’ labor cost disadvantage will shrink from $1 billion to $71 million, with the gap closing in the coming years.\textsuperscript{265} Lastly, the APA argued that consolidation prospects had narrowed and the company was likely to merge with US Airways.\textsuperscript{266} The APA asserted that, because US Airways had received a non-disclosure agreement from AMR, the possibility of a merger was more of an inevitability.\textsuperscript{267}

On September 4, 2012, the court ruled on AMR’ renewed motion to reject the collective bargaining agreement that it had with the APA.\textsuperscript{268} The court quickly dismissed the APA’s arguments and stated that the convergence argument was “anecdotal and [did] not provide an industry-wide comparison with American’s costs.”\textsuperscript{269} Additionally, the court stated, there was still no merger for the court to consider.\textsuperscript{270} The court dismissed the APA’s first argument and stated that the 17% labor cost reduction was a result of negotiations that happened prior to the hearing.\textsuperscript{271} In fact, these negotiations were conducted among all three unions and the proposals containing these negotiations were ratified by the APFA and the TWU.\textsuperscript{272} The court concluded that these negotiations were barred from being introduced as evidence by

\begin{thebibliography}{9}
\bibitem{264} Id. at 7-8.
\bibitem{265} Id. at 8.
\bibitem{266} Id at 9.
\bibitem{267} Id. at 9-10.
\bibitem{268} Debtors’ Renewed Motion to Reject APA Collective Bargaining Agreement. Doc. No. 4084, p. 6-7.
\bibitem{269} Id. at 15.
\bibitem{270} Id.
\bibitem{271} Id. at 17.
\bibitem{272} Id.
\end{thebibliography}
the Federal Rules of Evidence Rule 408, prohibiting statements made in the course of negotiations from being entered into evidence.273

As a result of the modifications made by AMR to its new proposal to the APA, the court authorized the rejection of the collective bargaining agreement between AMR and the APA and overruled the objections made by the APA.274

273 Id. at 18.

274 Id at 26.
VIII. The Plan

A. The Initial Plans

On April 15, 2013, AMR filed its first Chapter 11 Plan for reorganization (“the First Plan”), along with the accompanying disclosure statement, as required by section 1125 of the Bankruptcy Code, and motion seeking approval of the disclosure statement. The First Plan and disclosure statement received multiple objections, as well as statements of support.

1. Objections

U.S. Bank National Association and U.S. Bank Trust National Association (“U.S. Bank”) filed a limited objection to the First Plan and disclosure statement. Specifically, the objection identified “ambiguities or technical problems” in the disclosure statement and proposed voting procedures. The objection also noted that U.S. Bank had notified AMR prior to filing its objection and while U.S. Bank was hopeful that the parties could resolve the issue, filed the objection in order to preserve its rights.

U.S. Bank National Association (“USBNA”) also filed an objection regarding AMR’s 9019 Settlement, which attempted to resolve certain inter-creditor issues. Though USBNA was not opposed to the settlement, USBNA asserted that the disclosure statement did not provide any financial analysis of those inter-creditor


277 Id. at 2.

278 Id. at 3-4.

279 Fed. R. Bankr. P. 9019(b) permits the court to authorize the debtor to “compromise or settle controversies” between classes of controversies.

issues, nor did it offer sufficient detail on substantive consolidation. USBN argued that these limited disclosures would not allow creditors to adequately evaluate the terms of the 9019 settlement. Thus, USBN requested that the court require AMR to amend the First Plan and disclosure statement.

USBN filed an additional objection, in its capacity as indenture trustee with respect to Senior Secured Notes, as to the inadequacy of the disclosure statement in providing the information necessary to determine the treatment of USBN’s claim. USBNA contended that the disclosure statement did not specify which class of claims the Senior Secured Notes fell into, nor did it detail the treatment the Senior Secured Class would receive. USBNA requested that the court deny the motion to approve the First Plan, unless these modifications took place.

Lastly, the U.S. Trustee (“UST”) filed an objection to AMR’ initial motion to approve the First Plan and disclosure statement for two reasons: the First Plan did not meet the requirements of section 1129(a)(1) of the Bankruptcy Code because it required impermissible payments to be made for reimbursement of legal expenses to certain creditors, as well as to AMR’s CEO, Tom Horton (“Horton”) and the disclosure statement did not provide adequate information regarding the First Plan. The

281 Substantive consolidation allows the judge to “consolidate ‘substantively’ one bankruptcy estate with another.” BERNSTEIN & KUNEY, BANKRUPTCY IN PRACTICE (5TH ED.) 362-63.


284 Id.

285 Id. at 17.

286 11 U.S.C. § 1129(a)(1) (stating “The court shall confirm a plan only if all the following requirements are met: (1) The plan complies with the applicable provisions of the title.”).

287 U.S. Trustee’s Objection to Debtors’ Plan. Doc. No. 8309.
objection called for more information regarding the 9019 Settlement, substantive consolidation, and the approval process that was used to determine the severance payment to Horton.288

2. Support

AMR filed its response to the multiple objections on May 31, 2013.289 Because the majority of the objections were based on the allegation that the disclosure statement contained inadequate information, AMR amended the disclosure statement in order to address these claims.290 Specifically, AMR intended to file an amended disclosure statement and plan that would include additional or amended language regarding the “9019 Settlement, substantive consolidation, [and] the treatment and classification of certain claims.”291 However, AMR did not come to an agreement with certain objectors, namely the UST.292 AMR completely disagreed with the UST’s assertion that the First Plan was unconfirmable due to the proposed severance payments to Horton and requested that the court overrule these objections.293

The Ad Hoc Committee of Creditors (“the Ad Hoc Committee”) and Hewlett Packard Enterprise Services, LLC (“HP”) filed independent statements of support to AMR’s motion for approval of the First Plan and disclosure statement.294 The Ad Hoc Committee acknowledged that the merger was a strategy that would prove beneficial to all the parties involved and that the First Plan should be confirmed to facilitate

288 Id. at 13-20.


290 Id. at Exhibit A.

291 Id. at 3

292 Id.

293 Id. at 4-9.

the merger. HP specifically attacked the UST’s argument that the disclosure statement did not contain adequate information regarding the reimbursement of committee member fees and, therefore, made the First Plan unconfirmable. HP argued that there was sufficient information in the disclosure statement to render the First Plan confirmable, and even if there was not sufficient information, UST’s objection was made procedurally too early and should not be heard until the confirmation hearing.

In addition to statements of support, Bank of New York Mellon (“BNY”) and the Unsecured Creditors’ Committee (“OCC”) filed joinders to AMR’ response to the objections. Specifically, BNY adopted AMR’ response in opposition to the UST’s objection and the OCC similarly disagreed with the UST’s objection and argued that it was brought prematurely.

3. Amendments

Ultimately, AMR made amendments to the First Plan and disclosure statement. Substantively, there was little that was amended to either document. However, the amended disclosure statement elaborated on the plan’s compromise on intercompany claims, which was the 9019 Settlement. These claims arose from

295 Ad Hoc Committee’s Statement of Support for Debtors’ Plan, Doc. No. 8487, p. 2-3; HP Response to U.S. Trustee’s Objection In Support of Debtors’ Plan, Doc. No. 8484., p. 3.

296 HP Response to U.S. Trustee’s Objection In Support of Debtors’ Plan, Doc. No. 8484., p. 3.

297 Id. at 3-6.


299 Id.

300 Notice of Filing of Blackline of Debtors’ Proposed Disclosure Statement Concerning First Plan, Doc. No. 8542, p. 6-11.
intercompany payables and receivables made in connection with the operation of the business that arose prior to the filing of the voluntary petition and that were owed by AMR to one of its affiliates. The amended disclosure statement articulated that the amended plan and its distribution scheme incorporated the 9019 Settlement, or compromise, as to these intercompany claims, in order to avoid future litigation.\textsuperscript{301} The disclosure statement specifically stated “the 9019 Settlement resolves extremely complex factual and legal issues, greatly facilitates the resolution of these cases, avoids significant litigation costs, and expedites confirmation and consummation of a plan of reorganization.”\textsuperscript{302}

The amended disclosure statement also provided a brief statement as to the approval of the Horton’s severance pay.\textsuperscript{303} The statement said that AMR’ Board of Directors approved the severance payments and that consideration was given to Horton’s ongoing service to the merged company in determining the severance payment.\textsuperscript{304}

Lastly, the only major substantive change made to the First Plan was the addition of the section entitled Special Provisions for Governmental Units.\textsuperscript{305} This new provision stated that, upon confirmation of the plan, nothing in the plan would “discharge, release, enjoin, or otherwise bar” any liability of AMR with respect to “governmental units.”\textsuperscript{306}

A hearing on the motion to approve the amended disclosure statement was conducted on June 4, 2013.\textsuperscript{307} Prior to the hearing, AMR had come to an agreement

\begin{enumerate}
\item \textit{Id.} at 9.
\item \textit{Id.} at 11.
\item \textit{Id.} at 65.
\item \textit{Id.} at 65-66.
\item \textsuperscript{305} Notice of Filing of Blackline of Debtors' First Amended Plan. Doc. No. 8539, p. 96.
\item \textit{Id.}
\item \textsuperscript{307} Transcript of Hearing on June 4, 2013. Doc. No. 8694.
regarding almost all of the objections. AMR filed a second amended plan and second amended disclosure statement that reflected these agreements. The only objection that AMR did not resolve before the hearing was the UST's objection. The UST's objection consisted of two issues; that the disclosure statement did not contain adequate information regarding the severance payment for Horton and that the First Plan was unconfirmable because it violated section 503(c)(2) of the Bankruptcy Code because it provided for the severance payment to Horton. AMR, the creditors committee, and HP argued that this violation, even if it was a violation, did not render the plan “patently unconfirmable,” and therefore the objection should not be heard until the plan confirmation hearing. The court overruled the UST's objections, and held that the disclosure statement contained adequate information regarding the severance payment and that the UST failed to show that the plan was

308 Id. at 8.


311 11 U.S.C. § 503(c)(2) (2016) states as follows:

(2) a severance payment to an insider of the debtor, unless—

(A) the payment is part of a program that is generally applicable to all full-time employees; and

(B) the amount of the payment is not greater than 10 times the amount of the mean severance pay given to nonmanagement employees during the calendar year in which the payment is made; or


313 Id. (referencing argument made in In re American Capital Equipment LLC, 688 F.3d 145 (3d Cir. 2012)).

314 Id. at 29-31.
patently unconfirmable. The court approved the amended disclosure statement and approved the solicitation packages and procedures for distributing the disclosure statement. The confirmation hearing was set for August 15, 2013.

B. The Confirmation Hearing

On August 15, 2013, the court held a hearing to confirm ("the Hearing") the second amended plan. However, just two days before the Hearing, the Department of Justice filed a lawsuit that sought to block the merger on antitrust grounds. Though the judge was hesitant to conduct the Hearing in light of the pending antitrust lawsuit, he continued with the Hearing and requested briefs from all parties outlining the reasons why he should proceed with confirmation.

At the Hearing, AMR urged the court to confirm the plan and presented evidence of the acceptance of the plan by the classes. According to the evidence presented, the plan was accepted by an "overwhelming majorit[y]" in each class. More than 99% in each class, in terms of number as well as amount, voted to confirm the plan. The charts below outline how the classes voted regarding the plan for reorganization:

315 *Id.* at 34-36.


317 *Id.* at 11. See also Section IX regarding antitrust issues.

318 *Id.* at 12.

319 *Id.* at 22.

320 *Id.*

321 *Id.*
### AMR DEBTORS

<table>
<thead>
<tr>
<th>CLASS</th>
<th>ACCEPT THE PLAN</th>
<th>REJECT THE PLAN</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Dollar/Share Amount Voted / Percentage of Total Dollar/Share Amount</td>
<td>Number of Votes/Percentage of Number of Votes</td>
</tr>
<tr>
<td>3</td>
<td>$539,262,023.90 / 99.98%</td>
<td>1.515 / 99.15%</td>
</tr>
<tr>
<td>4</td>
<td>$20,172,711.69 / 99.62%</td>
<td>95 / 87.96%</td>
</tr>
<tr>
<td>5</td>
<td>133,288,163.57 / 99.22%</td>
<td>N/A</td>
</tr>
</tbody>
</table>

### AMERICAN DEBTORS

<table>
<thead>
<tr>
<th>CLASS</th>
<th>ACCEPT THE PLAN</th>
<th>REJECT THE PLAN</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Dollar Amount Voted/Percentage of Total Dollar Amount</td>
<td>Number of Votes/Percentage of Number of Votes</td>
</tr>
<tr>
<td>4</td>
<td>$1,202,223,832.79 / 99.98%</td>
<td>880 / 99.32%</td>
</tr>
<tr>
<td>5</td>
<td>$2,135,355,635.27 / 99.35%</td>
<td>1,536 / 98.59%</td>
</tr>
<tr>
<td>6</td>
<td>$1,553,000,000.00 / 100%</td>
<td>3 / 100%</td>
</tr>
<tr>
<td>7</td>
<td>$1,728,573.69 / 99.00%</td>
<td>631 / 99.37%</td>
</tr>
</tbody>
</table>

### EAGLE DEBTORS

<table>
<thead>
<tr>
<th>CLASS</th>
<th>ACCEPT THE PLAN</th>
<th>REJECT THE PLAN</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Dollar Amount Voted/Percentage of Total Dollar Amount</td>
<td>Number of Votes/Percentage of Number of Votes</td>
</tr>
<tr>
<td>3</td>
<td>$29,902,678.07 / 97.92%</td>
<td>129 / 97.73%</td>
</tr>
<tr>
<td>4</td>
<td>$617,445.96 / 100%</td>
<td>299 / 100%</td>
</tr>
</tbody>
</table>

---

322 Ballot Tabulation for Confirmation of Plan, Doc. No. 9504, p. 21-22.
AMR also presented its third amended plan at the Hearing, which accounted for some technical amendments.\textsuperscript{323} None of the amendments affected the treatment of or the amount to be distributed to the various classes of claims.\textsuperscript{324} AMR clarified that these amendments were not material and therefore did not require another solicitation of votes, nor would these amendments allow those who had voted to change their votes.\textsuperscript{325}

1. Objections

There were a number of objections filed prior to the Hearing, though most of these objections were resolved prior to the Hearing.\textsuperscript{326} However, the court heard oral arguments concerning the few objections that were unresolved.

The first objection was made by the State of Michigan.\textsuperscript{327} This objection objected to the plan on the basis that, to the extent it seeks to limit collection of tax debt due from those other than AMR, it was unconfirmable.\textsuperscript{328} AMR argued that the plan did not attempt to limit the collection of tax debts due.\textsuperscript{329} The court overruled this objection.\textsuperscript{330}

\textsuperscript{323} Transcript of Hearing on August 15, 2013. Doc. No. 9903.

\textsuperscript{324} Id. at 22.

\textsuperscript{325} Id. at 28.

\textsuperscript{326} Id. at 29

\textsuperscript{327} State of Michigan Objection to Debtors’ Second Amended Plan. Doc. No. 9146.

\textsuperscript{328} Id. at 3.

\textsuperscript{329} Transcript of Hearing on August 15, 2013. Doc. No. 9903, p. 45.

\textsuperscript{330} Id.
The second and third objections were addressed together. Each objection asked the court to delay the confirmation Hearing, until the resolution of a pending appeal. The primary appeal, of which both objectors were parties, dealt with an order from the court, authorizing AMR to enter into new collective bargaining agreements with the APA. The court overruled these objections, and noted that the pendency of the appeals had little bearing on the confirmation of the plan.

The fourth group of objections were made by pro se litigants. These litigants objected to the confirmation based on the modification of retiree benefits, the severance payment to Horton, and venue. AMR argued that the plan did not modify any retiree benefits under section 1114 of the Bankruptcy Code. AMR also proposed that the issue of the severance payment to Horton be addressed in connection with the UST’s objection. Lastly, AMR argued that raising the issue of venue was irrelevant and that there was no issue with the venue of the case. Thus,

331 Id. at 46.
332 Id.
333 Id.
336 Id.
337 Id.
338 Id. at 47-8. See also 11 U.S.C. § 1114 (2016).
339 Id. at 48.
340 Id.
with the exception of the issue of severance payment to Horton, the court overruled the objections made by the pro se litigants.341

The fifth objection addressed was made by a group of plaintiffs called the Clayton Plaintiffs.342 This group of plaintiffs were neither creditors, nor shareholders.343 The Clayton Plaintiffs sought to delay the confirmation of the plan in order to litigate an action that was filed in California against AMR.344 This action was an independent antitrust lawsuit that alleged that the AMR and U.S. Airways merger was a violation of the Clayton Antitrust Act.345 The Clayton Plaintiffs were primarily concerned that the confirmation of the plan would bar their independent claim regarding the merger, because the plan contained specific provisions that stated that upon confirmation, the plan would release and discharge AMR from all claims held against the company.346 Essentially, the Clayton Plaintiffs wanted to halt the confirmation of the plan so that the potential confirmed plan would not bar their claim as to the legality of the merger. In response to the Clayton Plaintiffs’ objection, AMR, US Airways, and the UCC argued that the plan and the merger were contingent upon one another and that the Clayton Plaintiffs’ argument was, therefore, without merit. Additionally, AMR offered to “carve out” the provisions in the plan that barred claims upon confirmation, specifically with respect to the Clayton Plaintiffs.347 The Clayton Plaintiffs ultimately agreed to AMR’s offer.348

341 Id. at 50.

342 Id.

343 Debtors’ Memorandum of Law in Support of Confirmation of Second Amended Plan. Doc. No. 9516, p. 35.

344 Id. at 35-36.


348 Id.
The last objection that was heard was by the UST. This objection focused primarily on the severance payments made to Horton and the award of administrative expenses to committee members and indenture trustees. The UST argued that the severance payments violated section 503(c)(2) of the Bankruptcy Code. AMR rebutted the first objection by stating that the severance payments were not governed by section 503(c)(2) of the Bankruptcy Code; rather, the severance payments were governed by section 1129(a)(4), because AMR requested that the severance payments be approved in the context and under the protection of the plan. Additionally, the UST objected to the automatic payment of professional fees and expenses to the indenture trustees and to the members of the Creditors’ Committee, and argued that these payments violated section 503(b) of the Bankruptcy Code. Specifically, the UST argued that they violated sections 503(b)(3) and (5) and that the contributions made by the indenture trustee and the

349 Id. at 99.


352 11 U.S.C. § 1129(a)(4) (2016) (stating: “Any payment made or to be made by the proponent, by the debtor, or by a person issuing securities or acquiring property under the plan, for services or for costs and expenses in or in connection with the case, or in connection with the plan and incident to the case, has been approved by, or is subject to the approval of, the court as reasonable.”).


355 UST Objection to Debtors’ Second Amended Plan. Doc. No. 9427, p. 16.

356 11 U.S.C. § 503(b)(3), (5) states:

(b) After notice and a hearing, there shall be allowed administrative expenses, other than claims allowed under section 502(f) of this title, including—(3) the actual, necessary expenses, other than compensation and reimbursement specified in
Creditors’ Committee were neither necessary, nor substantial and thus should not be paid automatically.\textsuperscript{357} AMR, the Creditors’ Committee, and several representatives for indenture trustees,\textsuperscript{358} in defense of the plan, claimed that those administrative expenses were reasonable and, thus, the UST’s objection should be overruled. The court reserved its ruling on these objections.

About two weeks later, on August 29, 2013, the court held a second hearing (“the Second Confirmation Hearing”) on the confirmation of the plan, specifically as it related to the Department of Justice lawsuit.\textsuperscript{359} At the time of the Second Confirmation Hearing, no creditor, shareholder, or economic party in interest had filed any oppositions to the confirmation of the plan, with respect to the antitrust suit.\textsuperscript{360} The only opposition to the confirmation of the plan was by the Clayton Plaintiffs.\textsuperscript{361} The court ultimately overruled the Clayton Plaintiffs’ objection.

At the Second Confirmation Hearing, AMR argued for the confirmation of the plan. They argued that the plan was feasible and that, if the plan became effective and the merger closed there would be no need for future liquidation or financial paragraph (4) of this subsection, incurred by— (D) a creditor, an indenture trustee . . . in making a substantial contribution in a case under chapter 9 or 11 of this title.

\begin{itemize}
  \item[(5)] reasonable compensation for services rendered by an indenture trustee in making a substantial contribution in a case under chapter 9 or 11 of this title, based on the time, the nature, the extent, and the value of such services, and the cost of comparable services other than in a case under this title
\end{itemize}

\textsuperscript{357} \textit{UST Objection to Debtors’ Second Amended Plan}. Doc. No. 9427, p. 16.

\textsuperscript{358} Indenture trustees included: Bank of New York Mellon, Law Debentures Indentured Trustees, Manufactures and Traders Trust Company, and Hewlett Packard Enterprise Services.

\textsuperscript{359} \textit{Transcript of Hearing on August 29, 2013}. Doc. No. 10059, p. 3-7.

\textsuperscript{360} \textit{Id.} at 6-7.

\textsuperscript{361} \textit{Id.}
reorganization, satisfying the feasibility requirement of section 1129(a)(12). At the end of the Second Confirmation Hearing, the court found the arguments in favor of confirmation persuasive, but there was no ruling as to the confirmation of the plan.

On September 12, 2013, the parties held their final status conference and on September 13, the judge entered his order. The court denied the objection of the UST based on the payment of administrative expenses of certain creditors committee members. The court reasoned that the professional fees were permissible under sections 1129(4) and 1123(b)(6) of the Bankruptcy Code. The court upheld the UST’s objection as to Mr. Horton’s severance payments. The court reasoned that the severance payment did not meet the reasonableness standard of section 1129(a)(4).

Ultimately, the court approved the payment of professional fees (but denied the severance payment to Mr. Horton). The court decided to continue with the confirmation of the plan, spite of the pending antitrust suit. The court confirmed the plan, except to the extent that it contained any provision relating to Horton’s severance payment.

---

362 Id. at 11-12.

363 Id. at 45.


365 Id. at 9.

366 Id.

367 Id. at 15.

368 Id. at 14.

369 Id. at 16.

370 Id.

371 Id.
C. The Final Plan

On October 21, 2013, the court filed its findings of fact and conclusions of law regarding AMR’s Fourth Amended Joint Chapter 11 Plan for reorganization (“the Plan”), which reflected the severance payment modifications ordered by the court in its confirmation order on September 13. The Plan stipulated 19 different classes of claims and outlined the treatment what each class would receive on the effective date. The 19 different classes were divided according to whether they were impaired or unimpaired, as expressed by the following chart:

<table>
<thead>
<tr>
<th>Class</th>
<th>Designation</th>
<th>Impairment</th>
<th>Entitled to Vote</th>
</tr>
</thead>
<tbody>
<tr>
<td>AMR Class 1</td>
<td>AMR Secured Claims</td>
<td>Unimpaired</td>
<td>No (deemed to accept)</td>
</tr>
<tr>
<td>AMR Class 2</td>
<td>AMR Priority Non-Tax Claims</td>
<td>Unimpaired</td>
<td>No (deemed to accept)</td>
</tr>
<tr>
<td>AMR Class 3</td>
<td>AMR General Unsecured Guaranteed Claims</td>
<td>Impaired</td>
<td>Yes</td>
</tr>
<tr>
<td>AMR Class 4</td>
<td>AMR Other General Unsecured Claims</td>
<td>Impaired</td>
<td>Yes</td>
</tr>
<tr>
<td>AMR Class 5</td>
<td>AMR Equity Interests</td>
<td>Impaired</td>
<td>Yes</td>
</tr>
<tr>
<td>AMR Class 6</td>
<td>AMR Other Equity Interests</td>
<td>Unimpaired</td>
<td>No (deemed to accept)</td>
</tr>
<tr>
<td>American Class 1</td>
<td>American Secured Aircraft Claims</td>
<td>Unimpaired</td>
<td>No (deemed to accept)</td>
</tr>
<tr>
<td>American Class 2</td>
<td>American Other Secured Claims</td>
<td>Unimpaired</td>
<td>No (deemed to accept)</td>
</tr>
<tr>
<td>American Class 3</td>
<td>American Priority Non-Tax Claims</td>
<td>Unimpaired</td>
<td>No (deemed to accept)</td>
</tr>
<tr>
<td>American Class 4</td>
<td>American General Unsecured Guaranteed Claims</td>
<td>Impaired</td>
<td>Yes</td>
</tr>
<tr>
<td>American Class 5</td>
<td>American Other General Unsecured Claims</td>
<td>Impaired</td>
<td>Yes</td>
</tr>
<tr>
<td>American Class 6</td>
<td>American Union Claims</td>
<td>Impaired</td>
<td>Yes</td>
</tr>
<tr>
<td>American Class 7</td>
<td>American Convenience Class Claims</td>
<td>Impaired</td>
<td>Yes</td>
</tr>
<tr>
<td>American Class 8</td>
<td>American Equity Interests</td>
<td>Unimpaired</td>
<td>No (deemed to accept)</td>
</tr>
<tr>
<td>Eagle Class 1</td>
<td>Eagle Secured Claims</td>
<td>Unimpaired</td>
<td>No (deemed to accept)</td>
</tr>
<tr>
<td>Eagle Class 2</td>
<td>Eagle Priority Non-Tax Claims</td>
<td>Unimpaired</td>
<td>No (deemed to accept)</td>
</tr>
<tr>
<td>Eagle Class 3</td>
<td>Eagle General Unsecured Claims</td>
<td>Impaired</td>
<td>Yes</td>
</tr>
<tr>
<td>Eagle Class 4</td>
<td>Eagle Convenience Class Claims</td>
<td>Impaired</td>
<td>Yes</td>
</tr>
<tr>
<td>Eagle Class 5</td>
<td>Eagle Equity Interests</td>
<td>Unimpaired</td>
<td>No (deemed to accept)</td>
</tr>
</tbody>
</table>

372 [Debtors’ Fourth Amended Plan](#). Doc. No. 10367-1.

373 *Id.* According to the Plan, the Effective Date is a business day on or after the confirmation date on which the conditions to the effectiveness of the Plan have been satisfied.

374 *Id.* at 46.
A class is impaired if the plan “modifies the rights that the class of creditors would otherwise have.” The class is unimpaired if the plan does not modify the class's rights, or maintains the same rights that it had upon entering the plan. An unimpaired class is deemed to have accepted the plan, as it maintains the same position it had prior to the plan. Thus, the difference between an impaired class and an unimpaired class is important, as the impaired classes largely determine the outcome of the plan.

1. Administrative Expenses and Priority Tax Claims

The first treatment of claims addressed in the Plan was the Administrative Expenses and Priority Tax Claims. Administrative Expenses were any expenses of the administration of the Chapter 11 Cases “arising on or prior to the Effective Date.” Priority Tax Claims were any claims of “a governmental unit of the kind entitled to priority in payment as specified in . . . the Bankruptcy Code.” Under the Plan, these claims were to receive payment in full satisfaction of the amount of the Administrative Expense or the tax claim. Ultimately, these expenses totaled more than $290 million.

2. Secured Claims

The next class of claims articulated in the Plan consisted of AMR Secured Claims, American Secured Aircraft Claims, American Other Secured Claims, and Eagle Secured Claims. Each of these claim holders were to be fully paid for their claims against either AMR, AMR, or Eagle. The claim holder was to be paid in one

375 BERNSTEIN & KUNEY, BANKRUPTCY IN PRACTICE (5TH ED.) 517. See also 11 U.S.C. § 1124 (2016).


377 Id. at 5.

378 Id.

379 Id.


381 Debtors’ Fourth Amended Plan. Doc. No. 10367-1, p. 47.
of five ways, at the option of AMR. First, the claim holder could be paid in cash, equal
to the unpaid amount of the secured claim.382 Second, claim holder could be paid the
proceeds of the sale of the collateral that secured the claim.383 Third, the creditor
could be paid in the collateral that secured the claim.384 Fourth, the creditor might
receive any other treatment that did not alter the “legal, equitable, and contractual
rights” that the credit holder possessed.385 Finally, the claimant could be paid in any
other way that satisfied section 1124 of the Bankruptcy Code.386 The method of
payment was to determined by either the AMR debtor, the AMR debtor, or the Eagle
debtor, depending on who the claim was against.387

3. Priority Non-Tax Claims

The priority non-tax claim class consisted of all those claims that were not a
part of the Administrative Expenses or Priority Tax Claims that were entitled to
priority payment, according to section 507(a) of the Bankruptcy Code.388 These claims
holders were to receive cash “in full satisfaction” of their claims against either AMR,
AMR, or Eagle.389

382 Id.

383 Id.

384 Id.

385 Id.

386 Id.

387 Id.

388 Id. at 29. 11 U.S.C. § 507(a) of the Bankruptcy Code specifies the claims have
priority and in what order.

389 Id. at 47.
4. General Unsecured Guaranteed Claims

The next class of claims for which the Plan set forth treatment was AMR General Unsecured Guaranteed Claims and American General Unsecured Guaranteed Claims. These claim holders were entitled to receive a number of shares of preferred stock in the new company, that was equal to the amount of the “Double-Dip Full Recovery Amount,” divided by $25 per share. Additionally, the AMR Note Claims were to be allowed as AMR General Unsecured Guaranteed Claims, and those claims were to receive the prepetition amount of each indenture, plus interest. The Plan also provided that at any time before the fifth business day before the Plan became effective, the holders of AMR General Unsecured Guaranteed Claims and American General Unsecured Guaranteed Claims could have their claims treated as Other General Unsecured Claims. Further, the claim holders of “Triple-Dip Unsecured Claims” were also treated as General Unsecured Guaranteed Claims.

---

390 *Id.* “Double-Dip Full Recovery Amount” was an amount equal to the total amount of the AMR and American General Unsecured Guaranteed Claims plus interest.

391 *Id.* at 47. This calculation was based on the “Double-Dip Full Recovery Amount,” divided by per share “Initial Stated Value.” The Initial Stated Value was $25 per share. (The Plan at 22).

392 These AMR Claims were claims against American Airlines arising under any “indenture.” “The term ‘indenture’ means mortgage, deed of trust, or indenture, under which there is outstanding a security . . . constituting a claim against the debtor, a claim secured by a lien on any of the debtor’s property, or an equity security of the debtor.” 11. U.S.C. § 101(28).

393 [Debtors’ Fourth Amended Plan](#). Doc. No. 10367-1, p. 48.

394 *Id.* “Triple-Dip Unsecured Claims” were General Unsecured Claims based on the obligations of American to guarantee guaranteed obligations of AMR.

395 *Id.* at 51.
5. Other General Unsecured Claims

AMR Other General Unsecured Claims, American Other General Unsecured Claims, and Eagle General Unsecured Claims were all subject to the same treatment under the Plan. Claim holders in this class would receive shares of New Mandatorily Convertible Preferred Stock on the Effective Date, or as soon as reasonably practicable. Claim holders would also receive shares of New Common Stock after the Final Mandatory Conversion Date. The shares received by this class of claims were received subsequent to the shares received by the General Unsecured Guaranteed Claims.

6. Union Claims

AMR’ unions received shares of New Common Stock, according to the renegotiated collective bargaining agreements under section 1113. The APA was entitled to receive a 13.5% stake in the merged company. The APFA and the TWU were entitled to receive a 3% and a 4.8% stake, respectively. Additionally, the Plan granted distributions to non-union employees, constituting a 2.3% equity stake in the company, to be distributed by the merged company.

---

396 Id. “New Mandatorily Convertible Preferred Stock” was a series of preferred stock of the new, merged company.

397 Id. Effective Date is a date, either on the day the Plan is confirmed or a business day after confirmation, when the obligations under the Plan must be fulfilled.

398 Id. at 52.

399 Id. “Final Mandatory Conversion Date” was 120 days after the effective date.

400 Id. This is also known as the Double-Dip Recovery.

401 Id. The unions included the APA, AFPA, and the TWU.

402 Id. at 53-54.

403 Id. at 65.
7. Convenience Class Claims

The next class of claims articulated in the Plan was the Convenience Class Claims, which included American Convenience Class Claims and Eagle Convenience Class Claims. Claim holders under this class were entitled to receive cash equal to 100% of the amount of the claim. However, if the aggregate amount of the American Convenience Class Claims and the Eagle Convenience Class Claims exceeded $25 million, that percentage amount would be reduced so that the aggregate amount was less than $25 million.

8. Equity Interests

The Plan also specified treatment for AMR Equity Interests. Under the Plan, the interest holders were to receive a certain amount of New Common Stock on the Effective Date and receive share of New Common Stock at intervals of 30 days, 60 days, 90 days, and 120 days after the Effective Date.

9. Other Equity Interests

The last class articulated in the Plan was Other Equity Interests, which included AMR Other Equity Interests, American Equity Interests, and Eagle Equity Interests. Equity Interests were defined as interests of equity security in AMR, as represented by any issued and outstanding shares of common or preferred stock, or any other device that showed an ownership in the company. Under this provision of the Plan, equity holders' interest in the company would not be cancelled as a result of the dissolution or winding-up of the company, if such dissolution or winding-up ever took place.

404 Id. A convenience class claim was any claim against AMR that would otherwise be a General Unsecured Claim and that is more than $0 but less than $10,000.

405 Id. at 54.

406 Id. at 54-56.

407 Id. at 49.

408 Id. at 18.

409 Id. at 30, 55.
D. The Merger Agreement and The Plan

As well as providing for the treatment of the different classes, the Plan also laid out the means by which the Plan was to be implemented in conjunction with the merger agreement. The Plan and the merger agreement were contingent upon one another. The Plan specified that the new company’s corporate governance documents must be “full force and effect” as a condition precedent to the effectiveness of the Plan. Additionally, all conditions precedent to the completion of the merger were required to be satisfied and the Effective Date and merger closing were to occur at the same time. Further, the Plan subjected itself to the terms of the merger agreement, in the event of any conflict between the two.

E. Additional Provisions of the Plan

In addition to the treatment of the different classes and the implementation, the Plan also contained other articles governing the reorganization of AMR.

The Plan set out the means by which it would be implemented and executed, a few sections of which are worth noting. First, each debtor would continue its corporate existence after the effective date and subject to the merger agreement. Second, this section of the Plan constituted a 9019 Settlement, which reflected a compromise of intercreditor issues relating to the benefits and rights of those creditors. Confirmation of the Plan constituted approval of the 9019 Settlement motion.  

---


412 Id.

413 Id.

414 Id. at 65.

415 Id. at 64.

416 Id. at 65.

417 Id.
Further, this section provided for the distribution of equity shares to the non-union employees.418 Under this article, the Plan also called for substantive consolidation of AMR, AMR, and Eagle.419 Again, the Plan served as a motion seeking approval of consolidation and confirmation of the Plan would signal the approval of the motion to consolidate.420 However, if the court denied the motion to consolidate, AMR was entitled to withdraw the Plan entirely.421

The means for implementation article also included a “cramdown”422 provision, which allowed AMR to seek confirmation of the Plan under § 1129(b) of the Bankruptcy Code, in the event that the Plan was not accepted by the required number of votes.423 Lastly, this article appointed a new initial Board of Directors for the new company.424 The new board consisted of 12 members, including Horton and Doug Parker, the former CEO of US Airways.425 After selection of the initial board, the shareholders were required to elect members in accordance with the new company’s corporate governance documents.426

418 Id.

419 Id. at 66.

420 Id.

421 Id. at 68.

422 “Cramdown” is a bankruptcy term that is codified in § 1129(b), permitting a court to confirm a plan, absent a consensual vote by one or more impaired classes of claims. BERNSTEIN & KUNEY, BANKRUPTCY IN PRACTICE (5TH ED.) 515, 522.


424 Id. at 73.

425 Id.

426 Id.
Another article provided for procedures for disputed claims.427 These procedures allowed AMR to object to any filed claims and to refrain from payment on a disputed claim until that claim became an Allowed Claim.428

The Executory Contracts and Unexpired Leases article stated that all executory contracts and unexpired leases of AMR would be deemed rejected on the Effective Date.429 However, this article would not apply to any executory contracts or unexpired leases that had been previously assumed or rejected or that were the subjects of separate motions to assume or reject that were still pending on the day the Plan was confirmed, or those to which a Treatment Objection was filed.430 Other, enumerated contracts were not to be deemed rejected upon the Effective Date; these included, Cash Management Agreements, Confidentiality and Non-Disclosure Agreements, Fuel Consortia Agreements, Insurance Plans, Workers’ Compensation Plans, and Collective Bargaining Agreements.431 Agreements that were specifically assumed as of the Effective Date included employee benefit plans, postpetition aircraft agreements, and any employee protection arrangements.432 Lastly, pension plan required contributions were assumed as of the Effective Date and AMR agreed to continue pension plan payments after the Effective Date.433

The Effect of Confirmation article stipulated that on the Effective Date, all property of AMR would vest in the new company free and clear of all claims, liens, encumbrances, charges, and interests, except as to those provided for in the Plan.434

427 Id. at 75.
428 Id. at 76.
429 Id. at 79.
430 Id.
431 Id. at 82-83.
432 Id. at 84-85.
433 Id. at 85-86.
434 Id. at 91.
Additionally, in light of the distributions made according to the Plan, this article considered the holder of each claim and interest to have waived, release, and discharged AMR to the fullest extent, according to section 1141 of the Bankruptcy Code.\textsuperscript{435} Upon the Effective Date, AMR released all the directors of AMR, all those who were advisors after the commencement date,\textsuperscript{436} and all committees, trustees, agents, and other professionals from any causes of action held by AMR, relating to the bankruptcy.\textsuperscript{437}

The Plan also provided that the Bankruptcy Court retained jurisdiction relating to any and all matters arising under or out of, or related to the bankruptcy.\textsuperscript{438}

Finally, the Plan contained miscellaneous provisions that dissolved the committees after the Effective Date, that allowed AMR to modify or amend the Plan according to section 1127 of the Bankruptcy Code,\textsuperscript{439} and that allowed AMR to revoke, withdraw, or delay the Plan before it was confirmed and to file subsequent amended plans of reorganization.\textsuperscript{440}

The Plan’s Effective Date was December 9, 2013.\textsuperscript{441}

\begin{flushleft}
\footnotesize
\textsuperscript{435} Id. at 91. See also 11 U.S.C. § 1141, which outlines the effect of confirmation.
\end{flushleft}

\begin{flushleft}
\footnotesize
\textsuperscript{436} The commencement date is the day the voluntary petition was filed, which was November 29, 2011.
\end{flushleft}

\begin{flushleft}
\footnotesize
\textsuperscript{437} Id. at 93-94.
\end{flushleft}

\begin{flushleft}
\footnotesize
\textsuperscript{438} Id. at 95.
\end{flushleft}

\begin{flushleft}
\footnotesize
\textsuperscript{439} “The proponent of a plan may modify such plan at any time before confirmation.” 11 U.S.C. § 1127(a).
\end{flushleft}

\begin{flushleft}
\footnotesize
\textsuperscript{440} Id. at 98.
\end{flushleft}

\begin{flushleft}
\footnotesize
\textsuperscript{441} Notice of Entry of Order Confirming Debtors’ Plan, Doc. No. 11402.
\end{flushleft}
IX. The Merger

During the same period that the debtors worked through the § 1113 process of restructuring its collective bargaining agreements, indications that AMR would merge with US Airways began to materialize. From the beginning of the restructuring process, the court and all interested parties recognized that AMR lacked two advantages its competitors possessed: lower labor costs through renegotiated collective bargaining agreements and the increased market share that came from its competitors’ mergers. While AMR’s board, the OCC, and the Ad Hoc Committee constructed their bankruptcy exit strategy around a standalone company moving forward, each party recognized the myriad advantages to a merger under the right terms. Throughout AMR’s bankruptcy, newspapers circulated speculation that US Airways was interested in a merger with AMR. By the time the § 1113 proceedings began shaping up, that speculation began to solidify into negotiation.

At the same time, the parties were confident that pragmatism would prevail in the Justice Department’s Antitrust Division under the Obama Administration. Both AMR and US Airways had been burned by the Justice Department’s handling of antitrust issues in previous administrations but also took stock of the recent mergers of Delta and United, its two largest competitors—both of which were approved at the time by the Justice Department. Just before Judge Lane was set to approve the merger as part of the AMR reorganization, however, the Justice Department sought an injunction of the merger in a D.C. federal district court on Clayton Antitrust Act grounds. At that point, it appears that sufficient uncertainty persisted that the strategy of the key players — the Debtor, the Ad Hoc Committee, the OCC, and the labor unions -- turned from one of adversarial combat into one of solidarity. That is, they recognized “we’re all in this together.”


This section breaks down the merger into three sections. First, we examine the negotiations between AMR, US Airways, and the labor unions. Second, we turn to the antitrust objections that arose from the proposed merger. Finally, we examine the contours of the deal that emerged.

A. Negotiations

Although the prospect of merging with AMR was never unattractive, many analysts believed that AMR would be able to remain independent because it went into bankruptcy with over four billion dollars in unrestricted cash, thus allowing for greater independence than it would have if subject to restrictive covenants that would have been contained in a typical DIP financing arrangement. However, the OCC, the labor unions, and the Ad Hoc Committee of AMR’s bondholders quickly filled any void left by the absence of a DIP lender. Tom Horton on several occasions expressed skepticism about any possibility of a merger while AMR was in bankruptcy. As Horton and the AMR team saw it, “American [Airlines] had two primary goals: to run a great airline and to get out of bankruptcy as soon as possible.” If the merger


helped them get out of bankruptcy quicker, that would be great, but only so long as it allowed them to continue running a great airline. Prior to and early on in the bankruptcy process, AMR had evaluated possible mergers and believed that no good deal could develop until AMR emerged from its vulnerable position. Moreover, the Ad Hoc Committee members actively supported AMR exiting bankruptcy as a standalone entity—even going so far as to offer to finance its exit, albeit on the condition that AMR would need to appoint an entirely new board of directors. That stipulation prevented AMR from seriously pursuing the offer.

At the same time, three other players in this group (i.e., US Airways, the labor unions, and the OCC) actively worked against a standalone exit. From the time AMR entered bankruptcy protection, US Airways made every effort to convince AMR to consider a merger with its airline. On its own, however, US Air was unsuccessful in convincing AMR’s executive team to discuss terms because AMR wanted to wait until it exited bankruptcy so it could negotiate from a position of strength.

Perhaps more than any other entity or individual, Jack Butler, the lead attorney representing the OCC, “was instrumental in getting AMR to the negotiating table with US Airways.” Butler cajoled the AMR team while also persuading both American and US Airways’ unions to see the merger as an ideal match. In addition to their role representing over three quarters of AMR’s workforce, the unions also belonged to the OCC (along with other bondholders and suppliers) because they had a large stake in AMR’s debt. As a result, Butler saw the value in maximizing the


450 Mike Spector & Susan Carey, Attorney Was AMR Deal Key, WALL STREET JOURNAL (Feb. 7, 2013), https://perma.cc/NG42-AX3Q (“Horton said he was always open to exploring mergers once American finished redoing labor contracts and took other restructuring measures.”).

451 Id.
unions’ leverage over AMR and the possible merger. At the same time that he appeared to be working with the unions to put together the best merger deal possible, he was also pressuring AMR’s team to present a “robust standalone restructuring plan that creditors could weigh against a merger so each plan would compete to offer creditors the best deal.”

The Allied Pilots Association (“APA”) attacked the standalone plan using a three-prong approach. First, the APA reached an agreement with US Airways, confirmed in a memorandum of understanding (“MOU”) that created a framework for labor conditions necessary for the unions to approve of the merger. This agreement served two functions: it publicly signaled to other interested parties the pilot unions’ approval of a merger; and “it provided a means for other creditors to assess the viability and value of such a merger.”

Second, the APA worked with other creditors to form a bloc of support for the merger with US Air. After rejecting a “new contract offer containing meager pay raises, higher health-care costs and more time in the cockpit—despite a promise for a 13.5% ownership stake in a reorganized airline”—the union agreed to new collective bargaining agreements at the insistence of Butler, who warned, “there wouldn’t be a third bite at the apple.” These new agreements further “allow[ed] other creditors to compare the standalone versus merger plans.” Because the Ad Hoc Committee remained interested in determining AMR’s board makeup, it circulated a letter to the APA affirming that it would only support a standalone plan on the basis that such a

452 Id.


454 Id. at 119.


456 Dawson, Labor Activism, at 120.
plan would provide for an entirely new board. Consequently, this action appears to have made a merger more enticing to AMR’s leadership.

Lastly, the APA “engaged in more ‘classic’ resistance to AMR’s reorganization plan.” The union opposed the motion to reject the collective bargaining agreements. They also conducted a strike vote—despite its futility since the bankruptcy court possessed the ability to enjoin such a strike once the court rejected the collective bargaining agreements. Additionally, some have suggested the APA engaged in a work slowdown—another classic labor strategy—by employing a tactic known as “work-to-rule,” where pilots report maintenance issues that, though technically are required to be accounted for, are not normally reported.

While AMR’s team remained agnostic about merging with US Airways, in late August 2012 they began six months of heated negotiations and produced a deal supported by everyone involved. Due to the unanimous support, the merger became the centerpiece of AMR’s bankruptcy exit strategy—and thus promised a quick exit from Chapter 11. The basic outline created a merged entity operating under AMR’s name and headquartered in AMR’s current location (Fort Worth, Texas). The


458 Dawson, Labor Activism, at 120.

459 See Section VII supra on the collective bargaining agreements negotiation process.


461 Id.

board would include both Horton and Parker, along with five other board members from US Airways and AMR, and five other directors appointed by a search committee.\textsuperscript{463} The search committee would be composed of eight members, four designated by the OCC and four designated by the Ad Hoc Committee.\textsuperscript{464} Consequently, critical staff immediately began leaving US Airways’ headquarters in Tempe, Arizona, and moving into AMR offices in order to begin facilitating the merger over the next six months. By August, court and regulatory approval of the merger (and with it, the plan) was all that remained; different parties began filing with the court their respective statements in support of the merger.\textsuperscript{465} No one among both company’s advisors believed that the court or any regulatory agency would object to the deal.\textsuperscript{466}

**B. Antitrust Issues**

On August 13, 2013—days before the court was set to approve the merger—attorneys from the Antitrust Division of the Justice Department filed a lawsuit in the U.S. District Court for the District of Columbia.\textsuperscript{467} The lawsuit sought to enjoin the merger based on antitrust concerns under § 7 of the Clayton Antitrust Act.\textsuperscript{468}

\textsuperscript{463} *Id.* at 20-21.

\textsuperscript{464} *Id.*


\textsuperscript{467} Transcript of Hearing on August 15, 2013. Doc. No. 9903, p. 11.

\textsuperscript{468} *Id.*
government argued that if this merger went through, four airlines would control over eighty percent of the U.S. market and essentially conceded its previous merger approvals involving the other legacy carriers had been a mistake.469 While both sides had recognized an antitrust suit was a possibility, attorneys and other advisors had kept in touch with Justice Department attorneys and came to the conclusion that an antitrust suit was unlikely.470 After all, four major airline mergers had passed through without any regulatory resistance since 2005.471 Moreover, the European Commission’s antitrust regulators approved the combination in early August with minor stipulations.472

Yet, the suit came two days before a final hearing was to be held before the court regarding approval of the merger and confirmation of the plan. Consequently, Judge Lane felt uncomfortable moving forward with approval of the merger and sought legal briefs from the parties concerning whether the bankruptcy court had the legal authority to move forward with the merger and plan until the antitrust dispute was resolved.473

Because the plan was fully consensual, all parties felt comfortable moving ahead with approval of the plan’s substance at the August 15 hearing.474


472 Id.


474 Id. at 15.
antitrust issue affected the effective date of the merger, along with other inconsequential details, the plan would need to be amended to account for those changes.\textsuperscript{475} As a result, the court decided to delay final approval of the plan until the appropriate changes could be negotiated and agreed upon.\textsuperscript{476}

The Justice Department’s suit had the practical effect of putting the debtors and US Airways in a vulnerable position. Stock prices in both airlines fell by more than sixteen percent on the day the lawsuit became public. AMR’s team, though invested in the deal and legally bound to fight for it, did not view the antitrust disapproval as an impediment to its long-term success because it remained ambivalent about entering into a merger with US Airways.\textsuperscript{477} Meanwhile, US Airways, the labor unions, and the creditors viewed such action as an existential threat.\textsuperscript{478} All parties recognized that the deal needed to close by December 2013, when the termination date would go into effect—making a contest in the courtroom that much more unlikely.\textsuperscript{479} The parties immediately embarked on a public relations campaign against the federal government. For example, the head of the APA said that “if the deal falls through, the Justice Department will have bolstered the duopoly of Delta and United” and promised to “employ a wide range of tactics” designed to get the public’s attention.\textsuperscript{480} The airlines and their employees also initiated an effective lobbying campaign, particularly with local and state officials.\textsuperscript{481}

\textsuperscript{475} Id.

\textsuperscript{476} Id. at 178-80.


\textsuperscript{478} Id.


As a result of the effective lobbying campaign, it appears that settlement negotiations began shortly after the government first filed suit and that by November—just two weeks away from trial—the parties had reached a settlement.\textsuperscript{482} According to analysts, the government’s position was “indefensible” since it had already blessed the outcome of the Delta and United “super-mergers.”\textsuperscript{483} The government agreed to drop the suit in exchange for minor divestitures.\textsuperscript{484} Under the agreement, both airlines would sell 104 takeoff and landing slots at Ronald Reagan National Airport, 34 slots at LaGuardia, and terminal access rights at Chicago O’Hare, Los Angeles International, Boston Logan International, Dallas Love Field, and Miami International.\textsuperscript{485} Ideally, both airlines were supposed to sell to low-cost carriers (or other non-network carriers); in practice, that did not always work out.\textsuperscript{486}

After the Justice Department settled with the debtors, a group of private individuals brought a similar antitrust suit under § 16 of the Clayton Antitrust Act. The court, along with all of the parties, viewed this as little more than a nuisance suit and quickly dismissed their objections to approving the settlement.\textsuperscript{487} On November 27, 2013, Judge Lane approved the settlement and stipulated that it did not modify the plan to the extent that it would require a new vote by creditors and shareholders.\textsuperscript{488}


\textsuperscript{485} \textit{Id.}

\textsuperscript{486} \textit{Id.}

\textsuperscript{487} \textit{See generally} Transcript of Hearing on November 27, 2013. Doc. No. 11508.

\textsuperscript{488} \textit{Id.} at 16-17
C. The Merger Agreement

1. The Basic Structure

The merger agreement was facilitated through a reverse triangular merger, where US Airways (a Delaware corporation) merged with a Merger Sub, a wholly-owned subsidiary of AMR (a Delaware corporation). After the merger became effective, AMR changed its name to “American Airlines Group Inc.” As consideration for the merger, US Airways’ shareholders received twenty-eight percent of the diluted equity of the merged enterprise, with AMR’s shareholders receiving the remaining seventy-two percent in exchange for their current shares in AMR. Analysts valued the merged entity’s aggregate diluted equity at approximately eight billion dollars. The merger created a Transition Committee (managed by the CEOs of both AMR and US Airways) to oversee the integration of the two companies.

2. Key Benefits

The merger created several benefits for all stakeholders. One of the more important benefits is that the merged company estimated it would save over one billion dollars in annual net synergies by eliminating duplicative functions,
equipment, and real estate.\textsuperscript{494} It also increased the company’s liquidity and borrowing capacity as a result of a combined balance sheet. Because the labor unions played an active role in the merger negotiations, the new entity benefited from more cost-effective collective bargaining agreements. Altogether, the combined airline now offers more than 6,700 daily flights to 336 destinations in 56 countries.\textsuperscript{495} The combined airline now provides the greatest number of flights and city pair connections across the east coast—the “largest and most lucrative air travel market in the world.”\textsuperscript{496}

### 3. Significant Structural Details

The Ad Hoc Committee got some of what they wanted in that half of the combined company’s new board was to be composed of directors to be designated by no less than 75\% approval of the special Search Committee members. That Search Committee was made up of eight members, four of whom are designated by the OCC and the other four designated by the Ad Hoc Committee.\textsuperscript{497} Another five would come from the two former companies—two from AMR and three from US Airways. Finally, Tom Horton would become the Chairman of the Board of the merged company while Doug Parker would become the Vice-Chairman and CEO of the new company.\textsuperscript{498}

Both parties were required by law to seek shareholder approval of the merger. Additionally, the parties jointly filed a Form S-4 (relating to proposed business combinations of public corporations) with the U.S. Securities and Exchange Commission.\textsuperscript{499} In conjunction with the stock exchange, AMR was responsible for getting the merged company’s common stock authorized for listing on the New York Stock Exchange (“NYSE”) and NASDAQ. US Airways was required to de-list its

\textsuperscript{494} Id. at 6.

\textsuperscript{495} Id. at 15.

\textsuperscript{496} Id.

\textsuperscript{497} Id. at 21.

\textsuperscript{498} Id. at 22.

\textsuperscript{499} Id. at 34.
stocks with the NYSE and any other securities markets on which its shares were
listed. AMR structured the merger in conjunction with the plan so as to treat the
transaction as a reorganization as defined in § 368(a) of the Internal Revenue Code.
Reorganizations under § 368(a) are considered “tax free” and are therefore very
attractive in the context of a merger.

In order to guarantee support from the Ad Hoc Committee, the parties entered
into a Support and Settlement Agreement which allowed for the new entity to settle
some of its previous debts and guarantee a minimum distribution of 3.5% of the
common equity to existing equity holders. According to the debtors, shareholders
have never gotten a guaranteed distribution such as this in a Chapter 11
restructuring.

Because the plan (and accompanying disclosure statement) and the merger
were so inextricably integrated, US Airways played a significant role in the drafting
and approval of the plan. The merged company engaged in an aggressive reduction
of redundant staffing by offering attractive severance packages to certain categories
of employees.

The merger contemplated continued indemnification and exculpation of
directors in their capacity as board members. Interestingly enough, all directors (and
their spouses and dependents) of the merged company continue to keep their first-
class flight privileges for all personal non-business related travel—a perk directors of
both separate airline each enjoyed.

500 Id. at 163.
501 Id. at 7.
502 Id.
503 Id. at 51.
504 Id. at 55-56.
X. Conclusion

When American Airlines went into bankruptcy protection in November 2011, many analysts (and concerned shareholders) feared the worst. Of course, several airlines had sought bankruptcy protection in recent years and fared well afterward. But this was American Airlines. The same airline that had entered into failed mergers in the past and did not always enjoy the good fortune its competitors often found. More to the point, bankruptcy protection usually means that shareholders are the “biggest losers.” As one analyst puts it: “Typically, the common stock becomes worthless when a company goes through the bankruptcy wash.”

Yet, by April 2014—less than six months into final confirmation of the merger—American Airlines Group made the last of five distributions of its stock to all of its stakeholders—unsecured creditors, labor unions, claimants, and AMR shareholders. At that time, shareholders of the American Airlines Group who had previously owned AMR stock had seen a 135% return from share prices in December 2011. By merging, American Airlines Group became the largest airline in the United States both in terms of capacity and revenue.

After reviewing the docket and all pertinent documents relating to the restructuring and merger processes, it appears that AMR’s Chapter 11 experience was less painful than other typical restructurings precisely because the executive team made prudent—if not prescient—decisions along the way.

First, after AMR’s unfortunate year in 2001—the failed TWA merger as well as the effects of 9/11—the airline soldiered through a decade of net losses while other airlines reached for the bankruptcy parachute much earlier. As a result, by the time American entered bankruptcy, the company had the good fortune to have learned


506 Id.

507 Id.

508 Id.

509 Id.
from the other airlines’ experiences in bankruptcy—and to have hired attorneys recently experienced in airline industry bankruptcies.

Second, and perhaps most crucial, AMR entered bankruptcy before it was too late—and brought over four billion dollars of unrestricted cash with them. In doing this, AMR entered bankruptcy protection on its own terms. This liberated the company’s leadership to make long-term strategic decisions without needing to accommodate the short-term interests of a DIP lender.

Third, AMR spent the decade before bankruptcy voluntarily trimming its excesses, working to become optimally efficient and cost-effective. This allowed AMR to create a discrete narrative that all would be made well once the airline enjoyed the same labor costs as its competitors. Consequently, AMR’s creditors and its labor unions were compelled to agree with AMR’s solutions—which in turn allowed AMR’s stakeholders to influence the merger. Moreover, it ensured that the Justice Department’s attempt at blocking the merger on antitrust grounds would be, at best, a pyrrhic victory.

Today, American Airlines Group remains a global competitor in the airline industry and by 2015 had joined the S&P 500, a collection of the 500 largest and most profitable companies. AMR’s bankruptcy stands out among its peers as a model bankruptcy in almost every respect.