

IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

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4	IGNACY GREEN, et al.,	}
5	Plaintiffs,	
6	vs.	
7	THE UPS HEALTH AND WELFARE	}
8	PACKAGE FOR RETIRED	
9	EMPLOYEES AND UPS HEALTH, et	
10	al.,	
	Defendants.	

Docket No. 09 C 616

Chicago, Illinois
March 12, 2009
10:05 a.m.

VOLUME 2
TRANSCRIPT OF PROCEEDINGS
BEFORE THE HONORABLE MATTHEW F. KENNELLY

APPEARANCES:

14	For the Plaintiff:	JOHNSON, JONES, SNELLING & GILBERT
15		BY: MR. JEFFREY B. GILBERT
16		MR. STEPHEN J. ROSENBLAT
17		MR. PATRICK N. RYAN
		36 South Wabash Street, Suite 1310
		Chicago, Illinois 60603

18	For the Defendant:	QUARLES & BRADY, LLP
19		BY: MR. GARY R. CLARK
20		MR. JOHN A. KLAGES
21		MR. ANDREW F. HETTINGA
		500 West Madison Street
		Suite 3700
		Chicago, Illinois 60661

Also Present: MR. ALAN RAPP

LAURA M. BRENNAN - Official Court Reporter
219 South Dearborn Street - Room 2102
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1 (The following proceedings were had in open court:)

2 THE CLERK: 09 C 616, Green v. UPS.

3 THE COURT: Good morning.

4 MR. GILBERT: Good morning.

5 THE COURT: Can we get everybody's names for the
6 record?

7 MR. CLARK: Good morning, your Honor; Gary Clark for
8 defendants.

9 MR. KLAGES: John Klages for defendants.

10 MR. HETTINGA: Andrew Hettinga for the defendants.

11 MR. GILBERT: Jeffrey Gilbert for the plaintiffs.

12 MR. RYAN: Patrick Ryan for plaintiffs.

13 MR. ROSENBLAT: Stephen Rosenblat on behalf of the
14 plaintiffs.

15 THE COURT: Okay, everybody ready to resume?

16 MR. ROSENBLAT: Yes, your Honor.

17 MR. KLAGES: Yes.

18 THE COURT: We can go off the record for a second.

19 (Brief interruption.)

20 THE COURT: Go ahead.

21 MR. KLAGES: One is just to read the stipulation. We
22 think it's important that it get read to you real briefly.

23 THE COURT: The thing that I have here and that I
24 have read myself and that you have now filed in the record?

25 MR. KLAGES: You have read, okay.

1 THE COURT: Yes, I have read it all. Don't worry.

2 MR. ROSENBLAT: That was Mr. Price's?

3 MR. KLAGES: No, no, it's the stipulation.

4 THE COURT: Are you talking about this thing right
5 here that you gave me the other day?

6 MR. KLAGES: Correct.

7 THE COURT: Yes, I have got it.

8 MR. KLAGES: Okay.

9 THE COURT: It talks about the plans and the mailing
10 of everything and the mailing of the modifications --

11 MR. KLAGES: Correct.

12 THE COURT: -- and so on and the mailing of the
13 letter and increased contributions. No, I read it when you
14 gave it to me. I read it again when I was going over my notes
15 for today.

16 MR. HETTINGA: We have one replacement or an
17 additional --

18 THE COURT: Exhibit?

19 MR. CLARK: Exhibit for the binders.

20 THE COURT: Just hand it up and I will just pop it in
21 there.

22 Let's just take a pause for a second here.

23 (Brief interruption.)

24 THE COURT: Let's get the person in the room here
25 while we're getting rearranged here.

1 (Brief interruption.)

2 THE COURT: Okay, you can call the next witness.

3 MR. CLARK: Judge, we're going to call Alan Rapp.

4 (Witness sworn.)

5 THE COURT: You can proceed.

6 MR. CLARK: Okay.

7 ALAN RAPP, DEFENDANTS' WITNESS, DULY SWORN

8 DIRECT EXAMINATION

9 BY MR. CLARK:

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

11 A My name is Alan Rapp, R-a-p-p.

12 Q Are you currently employed?

13 THE COURT: It's not on wheels. We don't want people
14 taking headers down the stairs basically.

15 THE WITNESS: I see.

16 Yes, I am.

17 BY MR. CLARK:

18 Q By whom?

19 A I am employed by United Parcel Service.

20 Q How long have you been employed by UPS?

21 A It will be 32 years this coming October.

22 Q What is your current position?

23 A I am the corporate health care manager.

24 Q How long have you held this position?

25 A I took over the position in April of 2004.

1 Q What are your duties and responsibilities in this
2 position?

3 A I'm responsible for all of UPS administered health care
4 plans for active as well as retirees and all other non-health
5 care related supplemental benefits.

6 Q Is the UPS Health and Welfare Package for Retired
7 Employees one of these plans that you have responsibility for?

8 A Yes, it is.

9 Q What is your responsibility with regard to that plan?

10 A Well, I serve on the administrative committee, and the
11 administrative committee performs the role of plan
12 administrator.

13 Q Besides yourself, who else is on the administrative
14 committee?

15 A There's three members: Myself; another person, Steve
16 Nord, who is the director of compensation and benefits; and
17 then his superior is John Saunders. John is an HR
18 coordinator, vice-president of HR, again, and compensation and
19 benefits are part of his area of responsibility.

20 THE COURT: So there's three of you altogether?

21 THE WITNESS: Correct.

22 THE COURT: Can you spell Mr. Nord's last name and
23 Mr. Saunders' last name?

24 THE WITNESS: Sure. Nord is N-o-r-d. Saunders is
25 S-a-u-n-d-e-r-s.

1 THE COURT: Thank you.

2 BY MR. CLARK:

3 Q So we're clear, what is the UPS Health and Welfare Package
4 for Retired Employees?

5 A Well, it is a plan that provides benefits for retired
6 employees, and it's a natural next step from the UPS Health
7 and Welfare Package for Active Employees. When they retire,
8 they move into the retiree plan.

9 Q Is every UPS employee in this plan?

10 A No. We have several plans of which our employees are part
11 of those.

12 Q Do you have any role for these other plans?

13 A Same role, a part of the administrative committee.

14 Q How is it determined who is covered by which plan?

15 A Well, we have non-union plans and we have plans that cover
16 union employees.

17 As far as the union employees, it's for the most part
18 negotiated, part of the negotiations of the bargaining
19 agreements and/or supplements and riders as to which plan they
20 are covered under.

21 Q Is the health and welfare plan, is that something that is
22 bargained at the local level in some instances?

23 A Repeat that question.

24 Q Sure. Just so I'm clear, you are saying it's the health
25 -- it's local unions and supplements and addendums determines

1 which plan someone is in?

2 A That is correct.

3 Q Are retirees from Local 705 in the Health and Welfare
4 Package for Retired Employees?

5 A Most are, yes.

6 Q Why not all of them?

7 A Well, in 2002, the Local 705 active employees began to be
8 covered under the Health and Welfare Package for Active
9 Employees, and as those employees have retired since 2002,
10 they have moved into the Health and Welfare Package for
11 Retired Employees.

12 In 2002 there were some previously retired 705
13 participants who were given the option to move into the
14 retired -- into the UPS Health and Welfare Package for Retired
15 Employees or not. So some did, some didn't.

16 Q Approximately how many Local 705 retirees are in this
17 plan?

18 A I think it's between 400 and 500. I think it's around
19 460.

20 Q If you could turn to what's been marked as Exhibit 5?

21 A Yes.

22 Q Do you recognize this document?

23 A I do.

24 Q What is it?

25 A This is the summary plan description for the UPS Health

1 and Wel fare Package for Reti red Empl oyees.

2 Q Does that SPD apply to any other plans as well?

3 A No. This is for the UPS Heal th and Wel fare Package only.

4 Q Let me ask it a di fferent way.

5 It applies to the Heal th and Wel fare Package for

6 Acti ve Empl oyees or for Reti red Empl oyees?

7 A Well, this document is both the Heal th and Wel fare Package

8 for Reti red Empl oyees as well as the Heal th and Wel fare

9 Package for Acti ve Empl oyees.

10 Q Is that the current versi on of the SPD?

11 A Yes, it is.

12 Q If you coul d turn to what has been marked as Exhi bi t 3?

13 A Okay.

14 Q Do you recognize thi s document?

15 A I do.

16 Q What is it?

17 A This is the formal plan document for the Heal th and

18 Wel fare Package for Reti red Empl oyees.

19 Q Do you have any responsi bi li ty wi th regard to these two

20 documents we have just looked at?

21 A Yes. As part of the admi ni strati ve commi ttee and the role

22 of plan admi ni strator, I have the responsi bi li ty to admi ni ster

23 the plans and to i nterpret the plans.

24 Q Does Exhi bi t 3, the actual plan document, provi de any

25 guidance regarding your role on the admi ni strati ve commi ttee?

1 A Yes, it does. Should I go to it?

2 Q Sure.

3 A I believe it is Section 8.1C, which is on UPS page 416.

4 And I think the section that replies to your question
5 is:

6 "The committee and its designated agents shall have
7 the exclusive right and discretion to interpret the terms and
8 conditions of the plan and to decide all matters arising with
9 respect to the plan's administration and operation including
10 factual issues. Any interpretations or decisions so made
11 shall be conclusive and binding on all persons subject to the
12 claims procedures set forth in each respective coverage
13 document."

14 Q Thank you.

15 Do you have the ability to amend or modify this plan
16 document?

17 A Yes.

18 Q Is there anything in the plan addressing that?

19 A I believe it is maybe just a page before, 7.1, the bottom
20 of that page where it says:

21 "Except as otherwise provided in a collective
22 bargaining agreement, the employer, through its duly
23 authorized corporate benefits manager, reserves the right to
24 amend the provisions of the plan to any extent and in any
25 manner it desires by execution of a written document

1 describing the intended amendments. The SPD and benefit
2 schedules attached hereto may be amended at any time by
3 preparation and execution of a revised SPD or benefit schedule
4 by the corporate benefits manager."

5 Q You just read language regarding amendments as long as
6 they don't violate a collective bargaining agreement.

7 How do you determine whether a proposed change
8 violates a collective bargaining agreement?

9 A Well, I'm not part of the labor group. We have, I think,
10 some 30 or so different agreements, supplements, riders. So I
11 don't know them all or close to it. So what I would do with
12 the proposed amendment of change is review it with the labor
13 department.

14 Q If you could turn your attention to Exhibit 5, is there
15 anything in this --

16 THE COURT: When you say the "labor department," you
17 don't mean the U.S. Labor Department; you mean the UPS labor
18 department?

19 THE WITNESS: Correct.

20 THE COURT: Okay.

21 BY MR. CLARK:

22 Q What are the responsibilities of the UPS labor group?

23 A Well, the labor group negotiates the contracts, deals with
24 labor related issues.

25 Q When you say labor related issues, are you referring to

1 dealing with the unions?

2 A Yes, unions, contractual issues, yes.

3 Q If you could turn to Exhibit 5, is there any language in
4 that SPD similar to the discretion language you previously
5 read from Exhibit 3?

6 A Yes. Both sections that I read from, Exhibit 3, plan
7 administration, have similar language on page 92. And then on
8 page 95 is also the language that talks about the right to
9 amend or terminate the plan at any time similar to the plan
10 document.

11 Q Has the plan been amended since its creation?

12 A Yes.

13 Q More than once?

14 A Several times.

15 Q Are you familiar with the document called a summary of
16 material modifications?

17 A I am.

18 Q What is it?

19 A The summary of material modifications, referred to as an
20 SMM, is a document that we produced and would send to all
21 active and retired participants in a plan that would serve to
22 notify them of changes, updates, information, et cetera,
23 related to the plan.

24 Q How often do you issue an SMM?

25 A I think we can issue them whenever necessary, but what we

1 do is tend to issue them once per year. We let any changes
2 accumulate and then issue one SMM per year.

3 Q How is the Health and Welfare Package for Retired
4 Employees funded?

5 A It is basically self-funded by UPS.

6 In regard to this plan, the Health and Welfare
7 Package For Retirees, it requires a \$50 monthly contribution
8 on behalf of the retiree, and then contribution above the 6250
9 cap on behalf of all participants.

10 Q And that 6250 cap, who pays that amount?

11 A The company has a commitment on an annual basis to pay up
12 to \$6,250 on behalf of each participant in the plan.

13 Q And can you --

14 You have used the word "cap."

15 Can you explain to me how that works?

16 A Well, the cap, again, is a predetermined dollar amount
17 that was agreed upon, that the -- again, that the company will
18 pay on behalf of each individual's claim experience in a given
19 year.

20 And how we look at that or evaluate that is by
21 totaling all claims for all participants across the plans,
22 basically divided by the number of participants, and you come
23 to a dollar amount that would be reflective of being below or
24 above that cap.

25 Q So --

1 THE COURT: Can I just interject a question?
2 When you say "all participants," are you talking
3 about both retirees and current employees?

4 THE WITNESS: All retirees, dependents and spouses of
5 those retirees.

6 THE COURT: So you take --

7 Oh, it's not just the retirees; it's also the
8 dependents and the spouses. In other words, the total number
9 of people covered by the retiree plan, you total up all of
10 their claims, you divide it by that total number of people,
11 and you come out with a number.

12 THE WITNESS: Correct.

13 THE COURT: Then if that number is below 6250, then
14 the retirees aren't asked to contribute any more.

15 THE WITNESS: Any more than the \$50.

16 THE COURT: Any more than \$50 per month.

17 Is it \$50 per month or \$50 total?

18 THE WITNESS: \$50 per month for the retiree only.

19 THE COURT: Right.

20 Then if it's above \$6,250, let's say that the total
21 comes out to be 7,000, how is that divided up, seeing as how
22 you have got some retirees where it's just them, some where
23 it's them and the dependent, some where it's them and the
24 spouse and so on.

25 THE WITNESS: Well, number one, we rely on our

1 actuaries to work that out for us.

2 THE COURT: Fair enough, okay.

3 THE WITNESS: But we have a four-tier system with
4 three different tiers of pricing. The tiers are -- retiree
5 only is tier number one of pricing.

6 Tier number two would be either retiree plus spouse
7 or retiree plus children, and tier three would be retiree plus
8 family, in other words, spouse and dependents.

9 THE COURT: And the children.

10 So, obviously, it's going to be higher for tier three
11 than for tier two and higher for tier two than for tier one.

12 THE COURT: Basically it's one times two times three.

13 THE COURT: Okay, thanks.

14 Sorry to interrupt. Go ahead.

15 MR. CLARK: No problem.

16 BY MR. CLARK:

17 Q That calculation that we just discussed, that is made
18 across more than one plan?

19 A It's made across two plans, the health and welfare package
20 and the health care package.

21 Q Why is that made across two plans?

22 A Well, we spread it out amongst all potential retirees and
23 participants, and the reason we do that is it just wouldn't be
24 realistic or fair to charge an individual retiree his or her
25 actual experience.

1 I mean, an individual can easily rack up \$50-\$60,000
2 worth of medical bills and/or pharmacy bills in a given year.

3 And if we didn't spread it out amongst, you know,
4 equally amongst all these participants, then in that example,
5 that person would be responsible for \$44,000, \$54,000 in a
6 given year. So we spread it out. I think it's the fairest
7 way to do it. And also in conversation with our actuaries,
8 it's a pretty standard way to do the business.

9 Q And has this method for calculating the cost number, has
10 that changed since you have been involved with the plan?

11 A No, it has not.

12 Q Is there anything in Exhibit 5, the summary plan
13 description, addressing that?

14 A Yes, it's page 87.

15 Under Average Annual Cost, it says that:

16 "The average annual cost per participant is defined
17 as the total claims paid by the plan in a calendar year
18 divided by the total number of plan participants during that
19 year. Each retired employee, each spouse, and each eligible
20 dependent would be considered a plan participant. If the
21 annual average cost per participant exceeds \$6,250, each
22 retired employee will share equally in the cost above the 6250
23 maximum by making an additional contribution."

24 Q How did you reach this conclusion regarding the meaning of
25 this "share equally" language?

1 A Well, I mentioned I took over this responsibility in 1994.

2 Q Just before --

3 A I'm sorry, 2004.

4 And I replaced Dale Whitney, who was here with a
5 group on Wednesday, and I spent two years with Dale. Dale
6 retired in '96 -- I'm sorry. Dale retired in 2006. I came
7 into the position in 2004. So we spent two years.

8 In those two years, we reviewed lots of things, had
9 lots of conversations as he made the transition. And he was
10 intimately familiar with this. He was part of the
11 negotiations. He was part of the group that actually wrote
12 the language. So, you know, it was very clear to me that this
13 is the way -- this is the way it was meant to be administered.

14 Q Did Dale give you any background on why the "share
15 equally" language was in the SPD?

16 A Yes. What he told me was during the time that this was
17 being developed and negotiated back around 2002, there still
18 was some concern on part -- on the part of some of the
19 participants; again, the example that I gave where an
20 individual could really be negatively impacted if he or she
21 had significant medical expenses in the year.

22 And so when they started talking about a cap back
23 then, again, there was some confusion. I mean, with this cap,
24 if I have some extraordinary expenses or my spouse has some
25 extraordinary expenses, they are going to be really subject to

1 some unreasonable expectations in a given year.

2 So that's clearly why it was done this way. It's
3 clearly what he communicated to me. And, again, he told me
4 that story about the confusion back in early 2002 or so when
5 this was put in.

6 Q Has that 6250 cap been exceeded at any time during your
7 time as plan administrator?

8 A Yes. I think the last three years or so, it has been
9 \$7,000 or more for this group.

10 Q Do you know whether it was exceeded prior to that time?

11 A You know, it's not something that's --

12 THE COURT: You said the last three years. Do you
13 mean the last three calendar years, in other words, '06, '07,
14 '08?

15 THE WITNESS: That's correct.

16 THE COURT: Okay.

17 THE WITNESS: I don't believe it was. It's not
18 something I really watch real closely. It's really not on my
19 radar screen, if you will, because I'm well aware that we will
20 not collect any excess costs until the expiration of the
21 current collective bargaining agreement.

22 So, you know, I really don't watch it that closely,
23 but I'm aware it's in excess for three years now.

24 BY MR. CLARK:

25 Q Why were you unable to collect costs until the expiration

1 of the collective bargaining agreement?

2 A There was --

3 You know, in those negotiations, there was an
4 agreement that was reached, a two-part agreement. The first
5 part was in regard to the \$6,250 cap, it would not be changed
6 or would not be increased without that being negotiated.

7 And the second agreement along with that was no
8 cap -- no amount in excess of that cap would be collected
9 until the current collective bargaining agreement at that time
10 expired.

11 Q And you referenced negotiations. What year were those
12 negotiations?

13 A Well, that would have been the 2002 negotiations.

14 Q And how do you have knowledge of what went on in those
15 negotiations?

16 A Well, again, through my conversations with Dale, who was
17 certainly representing the health care group in those
18 negotiations as well as the folks from the labor group who
19 were actually there.

20 MR. GILBERT: Your Honor, I'm sorry to interrupt, but
21 I am objecting to the extent that this is coming in for the
22 truth. If it's coming in only to tell us how Mr. Rapp got his
23 understanding, I think --

24 THE COURT: Is the latter what you're offering it
25 for?

1 MR. CLARK: That is what we're offering it for.

2 THE COURT: All right.

3 BY MR. CLARK:

4 Q Are these two commitments you mentioned, are they in
5 writing anywhere?

6 A Yes, they are. They are part of the -- that page that I
7 referenced in the summary plan description, page 87.

8 I guess it's the bottom paragraph:

9 "The 6250 maximum cost per participant is subject to
10 future negotiations. If required, the additional contribution
11 would not be implemented until after the expiration of the
12 current collective bargaining agreement."

13 Q What does that mean, the current collective bargaining
14 agreement?

15 A The current collective bargaining agreement means the
16 bargaining agreement that was in place at the time the cap was
17 exceeded.

18 Q Is your understanding --

19 Do you have an understanding of why this commitment
20 was made?

21 A The commitment was made to give the union the opportunity
22 to negotiate that 6250 cap if they so desired.

23 Q How did you reach this conclusion regarding the language?

24 A Well, I think it's pretty clear. I mean, I'm not trying
25 to be smart, but I think it's crystal clear what the language

1 means.

2 If it wasn't intended that way, there would never be
3 the opportunity to collect on excess costs because you would
4 always say you're in a new current collective bargaining
5 agreement.

6 I mean, really in addition to that, though,
7 discussions with the plan administrative committee and the
8 labor relations folks who, you know, actually negotiate it and
9 can agree to it.

10 Q If you could turn to what's been marked as Exhibit 6?

11 A Okay.

12 Q Do you recognize this document?

13 A I do.

14 Q What is it?

15 A This is a summary of material modifications that I
16 referred to as an SMM that was issued in October of 2007 to
17 the participants covered under the health and welfare package
18 and covered under the Health and Welfare Package for Retired
19 Employees.

20 Q Did you have any responsibility for issuing this SMM?

21 A I have ultimate responsibility for it. I have a group
22 that produces them, writes them, writes them, edits them,
23 fulfills them, et cetera, but it falls under my group.

24 Q Did you receive any response regarding this SMM?

25 A I did. This was sent out during the time that the

1 national master negotiations were taking place, and I heard
2 from Dan Hoyer and other folks within our labor department
3 that this created some concern.

4 Q What was that concern?

5 A The concern was it wasn't accurate. The section -- I
6 guess page 3 under Retired Employee Contribution was indeed in
7 error.

8 Q I'm sorry. What was the error on page 3?

9 A Well, the error is under the Retired Employee Contribution
10 heading. It accurately says that the average annual cost per
11 participant for the UPS Health and Welfare Package for Retired
12 Employees exceeds 6250. And it went on to say that, according
13 to the plan, each retired employee will share equally in the
14 cost above the 6250 maximum by making an additional
15 contribution. That is also accurate.

16 But then it said:

17 "Therefore, effective January 1, 2008, the per
18 retiree contribution of \$50 per month will increase to
19 \$114.33."

20 Q What is inaccurate about that last sentence?

21 A As I testified to, we're not at liberty to collect
22 anything in excess of the cap until the expiration of the
23 current collective bargaining agreement.

24 My group jumped the gun and sent it out effective 1/1
25 when indeed the collective bargaining agreement wasn't set to

1 expire until July 31st of 2008. So it was inaccurate because
2 of that.

3 Q Did you do anything to remedy this mistake?

4 A We did. We developed and sent out some revised SMMs again
5 to all participants of both the active and the retiree plans.

6 Q Do you recognize what has been marked as Exhibit 7?

7 A I do.

8 Q What is it?

9 A This is a revised --

10 Well, it's a cover letter that alerts the participant
11 that there was an error and please disregard the prior SMM,
12 and then it's a revised SMM. This one went specifically to
13 the Local 705 participants.

14 Q So this Exhibit 7 is the SMM that went to Local 705?

15 A That is correct.

16 Q What was different about Exhibit 7 as compared to
17 Exhibit 6?

18 A The difference was we took out the actual date that the
19 excess would be charged, and we took out the dollar amount,
20 and we just said that the additional cost would be effective
21 after the expiration of the current collective bargaining
22 agreement.

23 Q Why did you take the dollar amount out?

24 A Well, that dollar amount in the December '07 SMM was based
25 upon projected 2008 costs, and now we're well into the year,

1 so we took that dollar amount.

2 Plus we knew that Local 705 hadn't even begun their
3 negotiations at that point, and they would have the
4 opportunity to negotiate that \$6,250 cap if that's what they
5 decided to do.

6 Q Did Exhibit 7 go to anyone outside of -- any participants
7 in the plan outside of Local 705?

8 A No.

9 Q Did those individuals receive a different SMM?

10 A Did the other --

11 Q Outside of -- the participants outside of Local 705?

12 A Yes, they did.

13 We developed a couple different SMMs that would
14 pertain to the specific groups of the specific Local.

15 The group falling under the national master did
16 indeed receive a different SMM. Right about this same time
17 was when the national negotiations were reaching an early
18 handshake. And I received word from Dan Hoyer and the Labor
19 group that they had agreed for that group to not collect the
20 excess of the cap for that current collective bargaining
21 agreement, or that collective bargaining agreement, and indeed
22 move it to the bargaining agreement that would run from to
23 2013.

24 Q I'm not sure if I heard you correctly. Did you say you
25 heard about that agreement from Dan Hoyer?

1 A I heard about that from Dan Hoyer and other members of the
2 labor group, yes.

3 Chris Langan, Jim Maloney, several folks were in
4 conversation about it.

5 Q Did you have any conversations with anyone in labor
6 regarding Exhibit 7 -- I'm sorry -- exhibit -- strike that.

7 Going back to Exhibit 7, again, did you have any
8 conversations with anyone in labor regarding this SMM before
9 it went out?

10 A Yes. I talked with --

11 Like I said, I was on a couple different calls with
12 folks, but specifically talked with Chris Langan as well as
13 Dan Hoyer in regard to this.

14 Q Did the retiree benefits portion of Exhibit 7 change or
15 modify anything in the SPD? I'm talking about the portion
16 entitled Retired Employee Contribution.

17 A It really didn't. I mean, that language that you are
18 referring to in the SMM is virtually identical to the SPD.

19 The SPD says if a cap is exceeded, this will happen.
20 This SMM says the cap has been exceeded.

21 So this really served as really a notice, a
22 notification, in December of '07 that the cap had been
23 exceeded and that it would be collected at the expiration of
24 that current collective bargaining agreement.

25 Q Is it fair to say that an SMM includes more than just

1 changes to the plan?

2 A Absolutely. It can be changes, it can be opt dates, it
3 can be information, it can be change of regulations, IRS
4 driven. It can be any of those things that we put in an SMM
5 to notify the participants.

6 Q And I apologize for jumping around, if you could now go to
7 Exhibit 5, page 87.

8 A Okay.

9 Q Has anything in this language on page 87 changed since
10 2002?

11 A No, it has not.

12 Q Just so we're clear, we are talking -- are we talking
13 about the Average Annual Cost heading, nothing in that has
14 changed since 2002?

15 A That is correct.

16 Q For the portion under Contribution, has anything in that
17 changed since 2002?

18 A No, those are two separate sections, if you will, from
19 that page, but neither have changed.

20 Q Looking at the "share equally" language you read to us
21 earlier on this page, did you have any concerns that you were
22 not sharing equally in the excess costs to the extent that you
23 were collecting from Local 705 retirees but not from the
24 retirees associated with the national master agreement?

25 A No.

1 Shared equally is the calculation process that we go
2 through to determine what the average cost per participant is
3 in a calendar year. As I said, the shared equally is the
4 process we use to avoid the possibility of an individual
5 experiencing some extremely high claim costs or pharmacy costs
6 in a given year.

7 The larger that group, the more it spreads it out for
8 the benefit of the participants.

9 Q Are you familiar with the term called the average cost per
10 plan participant?

11 A I am.

12 Q Is that the cost number that you just described to me?

13 A Sure. That's the figure that we result in after we go
14 through the process of totaling all claims, dividing it by
15 participants. That is the average cost per plan participant
16 in a calendar year.

17 Q And the plans that are involved in calculating those
18 costs, those two plans are -- what are they -- what are they
19 called?

20 A It's the health and welfare package and the health care
21 package.

22 Q For retired employees?

23 A For retired employees, yes.

24 Q And is the cost number the same; the average cost per plan
25 participant, is it the same for both plans?

1 A Yes, because we pool. Like I said, we pool all the
2 retirees and the participants together, divided by those total
3 numbers, so that that average cost per participant would be
4 identical across both those plans.

5 Q And once you have determined this average cost per plan
6 participant, how do you determine what an individual retiree
7 pays?

8 A Well, you would take this annual average cost per
9 participant and subtract the cap. And if they're above the
10 cap, what is left from that subtraction is that dollar amount.

11 Q What about with regard to retirees covered by the national
12 master agreement?

13 A Well, the national master agreement, there was a
14 negotiation that took place, and it was agreed to defer that
15 process to the next collective bargaining agreement from '09
16 to 2013. So in that event, the company, you know, would cover
17 those costs above the cap.

18 Q Besides retirees for Local 705, is anyone else being
19 charged for the costs in excess of the cap?

20 A Yes. We have, I think it's nine locals in upstate west
21 New York who also are being charged. They have a different
22 cap. Their cap is 6,000 per year. That's what was agreed
23 upon.

24 Again, the average cost is the same, but in their
25 case, you subtract 6,000 to come up with the amount that they

1 pay annual ly.

2 Q Is there any sort of separate labor agreement for these
3 retirees up in upper west New York?

4 A Well, they have their own supplement that they adhere to,
5 and this is a group that's in the health care plan that I
6 referred to earlier as well.

7 Q Were these retirees subject to the agreement that the
8 international reached to defer collecting costs until 2013?

9 A No, they weren't. As I said, they have their own
10 supplemental agreement.

11 Q You said they are in the health care plan for retired
12 employees. Do you have any responsibility with regard to that
13 plan?

14 A Same responsibilities, sit on the administrative
15 committee, serve as the plan administrator.

16 Q If you could turn to Exhibit 18?

17 A I don't have an 18.

18 THE COURT: Yes, it was blank in mine, too, before.

19 (Brief interruption.)

20 THE WITNESS: Okay.

21 BY MR. CLARK:

22 Q Do you recognize this document?

23 A I do.

24 Q What is it?

25 A This is the enrollment guide for that plan that I

1 referenced the health care package for retirees.

2 THE COURT: This is the New York, the upstate New
3 York, one you were referring to?

4 THE WITNESS: That's correct.

5 BY MR. CLARK:

6 Q Is this a document you used in your duties as plan
7 administrator for the health care package?

8 A It is.

9 Q If you could turn to the Bates -- page Bates stamped UPS
10 00794. I direct your attention to the title Average Annual
11 Cost.

12 Is there anything in that language regarding sharing
13 equally?

14 A Yes, there is.

15 The average annual cost per participant is divided by
16 the total claims provided by the plan in a calendar year
17 divided by the total number of participants during that year.
18 Each retired employee, each spouse, and each eligible
19 dependent would be considered a plan participant.

20 Q Is there any difference between this language in
21 Exhibit 18 and the language on page 87 of Exhibit 5?

22 A The only difference that I mentioned is this group has a
23 \$6,000 annual cap as compared to the 6250 in the Health and
24 Welfare Package For Retired Employees.

25 Q Do you interpret the language in Exhibit 18 any

1 di fferently than the language in Exhibit 5?

2 A I do not.

3 Q So we're clear, UPS is currently collecting the costs in
4 excess of the cap from these retirees in upstate New York?

5 A That's correct.

6 Q In doing so, they are using the same average cost per plan
7 participant that is being applied to Local 705 retirees?

8 A Exact same shared equally calculation. The only
9 difference is subtracting 6,000 from their average cost as
10 compared to the 6250.

11 Q Approximately how many retirees are in this upstate west
12 New York addendum?

13 A I said it's nine locals, and I know it's between 4- and
14 500.

15 Q So it's about the same size as the retirees for Local 705?

16 A Yes.

17 Q If you could turn to what has been marked as Exhibit 8,
18 do you recognize this document?

19 A I do.

20 Q What is it?

21 A This is a letter that, once again, my group put together
22 that was mailed to all 705 retirees under the Health and
23 Welfare Package for Retired Employees.

24 Q And I'm going to direct your attention to the prices on
25 here which the judge has already asked you about.

1 A Yes.

2 Q Can you tell me how those prices were determined?

3 A Well, as I mentioned, we rely on our actuaries for it, but
4 basically it is the 2009 projected cost, minus the cap,
5 divided by 12.

6 Q Can you tell me why there are different prices for single
7 versus single plus one dependent versus family?

8 A Well, again, in the spirit of being fair, we didn't think
9 it would be right for a single retiree to pay the same amount
10 as a retiree who would have a spouse or who would have a
11 family. So we wanted to develop the different tiers again to
12 be fair.

13 You know, in addition, as I said, we also learned it
14 is very standard. It's standard with active plans and it's
15 certainly standard with retired plans.

16 Q Is there anything in the summary plan description that has
17 been marked as Exhibit 5 referencing using these different
18 tiers?

19 A The summary plan description again is crystal clear about
20 sharing equally and the calculation we go through to determine
21 the shared equally and the average cost, but it's really
22 silent on then how to collect.

23 So it's a good example of this administrative
24 committee that I sit on, we -- this is one of the topics we
25 talked about and said this is the fairest way to administer

1 it, and that is how we administer it.

2 Q I'm sorry. Did you say you consulted with someone outside
3 of UPS regarding doing this?

4 A Well, as I said, the actuaries told us it is very
5 standard. So we definitely consulted the actuaries and then
6 relayed that information to the administrative committee when
7 we talked about it and decided upon it.

8 Q When did these new prices go into effect?

9 A They went into effect in 2009.

10 Q When was the first bill due?

11 A The first bill was due -- should have been due January
12 '09, but we weren't able to put all the processes in place.
13 So it's the first bill that the participants received was
14 February '09.

15 Q When is the next bill due?

16 A Well, we generally do bill quarterly. So the next bill
17 will be April for the second quarter.

18 Q And it's fair to assume that July would be the bill after
19 that?

20 A That's correct.

21 Q Has the plan raised the \$50 per month contribution that's
22 referenced on page 87 of the SPD?

23 A No.

24 Q Do these prices we're seeing on Exhibit 8, do those
25 somehow incorporate that \$50 per month contribution?

1 A No. The SPD, as we read on page 87, has one section about
2 the \$50 contribution required per retiree per month.

3 And then the other section says that if the cap is
4 exceeded, they will make up that addition -- that amount in
5 addition to the \$50 monthly contribution.

6 Q So those are two separate components?

7 A Right.

8 Q Is the plan collecting that \$50 per month contribution
9 from the Local 705 retirees in 2009?

10 A We are not.

11 Q Is there a reason for that?

12 A There is a reason.

13 You know, we realized the cap had been exceeded for
14 three years, and so it would result in an increase for the
15 retirees in 2009. And we just felt the fairest way to
16 administer it would be to not include the \$50 since it was an
17 increase for the retirees. And as I said, it really was
18 reflective of three years of the cap being exceeded. So we
19 chose not to. We chose to err on the side of the employee, or
20 the retiree in this case, and not charge that \$50.

21 THE COURT: Can I just back up and walk through that
22 again?

23 Basically what you are saying is that, for example,
24 looking at Exhibit A where it says, for the retiree, it's only
25 \$157.58 -- what you are saying is it's not that plus 50; it's

1 just the \$157.58; or did I hear you wrong?

2 THE WITNESS: What I said was the language is clear
3 that it could be and maybe should be 50 plus 157.

4 THE COURT: But you chose not to do it that way.

5 THE WITNESS: Correct.

6 THE COURT: Got it.

7 So the bill a person gets just says \$157.58; it
8 doesn't say that plus 50 bucks?

9 THE WITNESS: Correct.

10 THE COURT: Got it. Okay, I just wanted to make sure
11 I understood.

12 BY MR. CLARK:

13 Q In your time in your current position, have you ever been
14 asked to commit that you will not change the summary plan
15 description for a period of years?

16 A No.

17 Q Would you be amenable to such a request?

18 A Absolutely not.

19 Q Why is that?

20 A Well, I couldn't make such a commitment again.

21 As plan administrator, there are changes that are
22 required to be made. Examples would be the IRS may change
23 flexible spending amounts. The different carriers that we
24 utilize could change. The networks could change. Things
25 could change that would be totally out of my control which we

1 would have to put in place and then notify the participants
2 via an SMM.

3 So I could never commit to making no changes during
4 any period of time.

5 Q Are you aware of what it will cost UPS if the Local 705
6 retirees do not pay back their share of the costs in excess of
7 the cap?

8 A I think it's a little over a million dollars a year.

9 Q How did you come to this conclusion?

10 A Again, you know, it's a number that our actuaries produce
11 and develop for us.

12 Q What was UPS' revenue in the most recent fiscal year?

13 A About \$50 billion.

14 Q Has UPS received any appeals regarding the additional
15 contribution that is being collected in 2009?

16 A As of February 24th, we have received 12 appeals.

17 Q Can you explain to me what UPS' appeal process is?

18 A We have a two-step appeal process.

19 The first step, or the first level, goes to -- if
20 it's a medical appeal, it goes to the carrier. If it's an
21 appeal related to something administrative like this, it goes
22 to our third party administrator located right here in
23 Lincolnshire, which is Hewitt Associates.

24 The carrier, or Hewitt, will review that appeal and
25 render a decision. If the appeal is upheld, then that's the

1 end of the process, obviously.

2 If the appeal is denied, the participant receives a
3 letter and receives instructions that the second level of
4 appeal comes directly to the UPS Appeals Committee in Atlanta.

5 Q Have any of the 12 appeals you mentioned, have any of
6 those reached that second step yet?

7 A No, they have not.

8 Q Have you received an appeal from Patrick Cooper?

9 A No.

10 Q Have you received an appeal from Ignacy Green?

11 A No.

12 MR. CLARK: No further questions.

13 THE COURT: Mr. Gilbert.

14 CROSS EXAMINATION

15 BY MR. GILBERT:

16 Q Mr. Rapp, if you could look again at Exhibit 6, I believe
17 you testified that this was the summary of material
18 modification that was sent out to all the retirees in the UPS
19 package for retirees, correct?

20 A It went to all actives and retirees covered under the
21 health and welfare package.

22 Q And it's the one you testified you later determined that
23 there was an error in, correct?

24 A That's correct.

25 Q Now, this SMM, as it's called, indicated that the increase

1 would be to \$114.33, correct?

2 A Per month, correct.

3 Q Right. And nobody ever actually paid that amount,
4 correct?

5 A That is correct.

6 Q And if I understand the error here, it was that you
7 were -- the SMM says the increase will take effect January 1st
8 of 2008, but that would have been before there would have been
9 any opportunity to negotiate the amount, correct?

10 A Well, that would have been before what the summary plan
11 description says, and that is at the expiration of the current
12 collective bargaining agreement.

13 Q Right. And, therefore, had it taken effect, it would have
14 been premature, correct?

15 A That's correct.

16 Q Now, if you could look then at Exhibit 7, I believe you
17 testified that this SMM was sent only to the retirees who were
18 associated with Local 705, correct?

19 A Retirees and active employees in 705.

20 Q Right, I'm focused on the retirees. But in terms of the
21 actives, it was the actives affiliated with Local 705, is that
22 correct?

23 A That's correct.

24 Q I want to focus on the retirees who were members of the
25 same plan but the ones who were not affiliated with Local 705;

1 they got a different notice, correct?

2 A They got different notices, correct.

3 Q And if you look at Exhibit 16, which is in the other book,
4 am I correct that that is the notice that went to the retirees
5 in the plan who were not affiliated with Local 705?

6 A That went to some of the retirees in the plan who were not
7 affiliated with Local 705.

8 Q And who were the groups that were neither associated with
9 705?

10 A Well, we have a couple off the top of my head, crew
11 members, which is a different plan. Local 2727 is a part of a
12 different plan. The individuals in upstate west New York have
13 a different SMM.

14 Q The one you testified, correct.

15 A This went to the folks who were under the national master
16 who had reached agreement to negotiate the delay or the
17 collection of the excess of cap.

18 Q All right, so this is the national master people. We can
19 refer to them that way perhaps.

20 A A large percentage of them, yes.

21 Q Okay, and do you know how many people there are in that
22 group, the ones that got this notice because their health
23 insurance is governed by the national master agreement?

24 A I really don't know.

25 Q Can you give us an estimate?

1 I appreciate that you wouldn't know an exact number,
2 but are we talking about a hundred, 500, a thousand?

3 A I really don't know. In terms of retirees, maybe a
4 thousand or less, less than a thousand, close to a thousand.

5 Q Now, those retirees, the ones who were governed by the
6 national master agreement, and who got the notice that is
7 Exhibit 16, are still paying the \$50 a month, correct?

8 A That's correct.

9 Q Now, I'd like you to turn to Exhibit 8, if you could.
10 This document was sent out under your supervision, correct?

11 A That is correct.

12 Q Now, do I understand, in your opinion, this is not a
13 summary of material modification, is that right?

14 A That's correct.

15 Q And is that because this letter was sent to a specific
16 group and not generally to all the members of the plan?

17 A No. I believe this just to be a letter to inform
18 specifically the Local 705 retirees what the 2009 costs would
19 be, what their 2009 cost would be.

20 Q But Exhibit 7 was also sent only to the Local 705
21 retirees, correct?

22 A It was.

23 Q And yet that is a summary of material modification?

24 A Well, that's a --

25 That is a summary of material modification that

1 served as a notice that the excess, the cap had been exceeded,
2 and that they would be subject to collection at the expiration
3 of the current collective bargaining agreement.

4 The letter was able to then incorporate the actual
5 cost figures.

6 Q Now, you became aware that there was a discussion among
7 certain members of the group you work with about Exhibit 8,
8 correct?

9 I'm referring to a discussion that was had with a
10 Ms. Dorfman and with Mr. Langan and Mr. Hoyer?

11 A That's correct.

12 Q And you were not a part of that discussion, but you later
13 became aware of it, correct?

14 A I actually was part of a discussion with Ms. Dorfman and
15 Langan.

16 Q And that was a later discussion than the one I just
17 referred to, correct?

18 A I'm not certain when yours took place. It was in January,
19 I'm sure, of 2009.

20 Q Right.

21 Now, you testified that Exhibit 5 at page 87 -- we
22 can look at the document and the language -- says that that
23 will not be a change in the retirees' contribution during the
24 term of the current collective bargaining agreement, correct?

25 A Correct.

1 MR. CLARK: Judge, I'm going to object to the extent
2 that counsel is misreading the language he is asking about.

3 MR. GILBERT: Well, let's get it exactly. I didn't
4 mean to mislead.

5 BY MR. GILBERT:

6 Q It says:

7 "If required, the additional contributions would not
8 be implemented until after the expiration of the current
9 collective bargaining agreement," correct?

10 A Correct.

11 Q Okay. And if you look at Exhibit 7, on page 3 of that
12 document, it says "that additional cost will be effective
13 after the expiration of the current collective bargaining
14 agreement," correct?

15 A Let me see. First, you were at 5, which was the summary
16 plan discrimination.

17 Q Right.

18 A And now we're at 7.

19 Q Now, I'm at 7, on the page that is numbered 3.

20 A I understand. I just want to make sure I know what 7 is.
21 Okay.

22 Q And that document notifies people that additional costs
23 will be effective after the expiration of the current
24 collective bargaining agreement?

25 A Correct.

1 Q Correct?

2 A That's correct.

3 Q Right.

4 Now, Plaintiffs' Exhibit 8 was issued as it's dated,
5 in January of 2009, correct?

6 THE COURT: It's actually Defense Exhibit 8.

7 MR. GILBERT: You're right. I should just call it
8 Exhibit 8. I am using the reference I used during the
9 deposition, your Honor. I apologize.

10 BY MR. GILBERT:

11 Q In any event, Exhibit 8 was issued as it's dated, in
12 January of 2009, correct?

13 A Correct.

14 Q And are you aware that a collective bargaining agreement
15 with Teamsters Local 705 was ratified in August of 2008?

16 A I'm not certain of the exact dates.

17 Q All right. If you could look at Exhibit 1?

18 THE COURT: Should I be keeping my finger in one of
19 these other exhibits?

20 MR. GILBERT: Yes. 8, your Honor, is the one I will
21 get back to, right.

22 THE COURT: Exhibit 1, page what? Oh, just the cover
23 page.

24 MR. GILBERT: Yes.

25 BY MR. GILBERT:

1 Q My first question would just be: Do you recognize this
2 document?

3 A What exhibit are we at now?

4 Q Number 1, the very first one.

5 A Okay.

6 Q Do you recognize this document?

7 A You know, I'm not part of the labor group, so I don't deal
8 with the contracts to any great extent, but it appears to be
9 the collective bargaining agreement for 705.

10 Q Let's assume that it is for a second. If you could look
11 at page 52 at section -- at Article 56.

12 THE COURT: Is what you're looking for here some sort
13 of a date as to when the agreement was ratified?

14 MR. GILBERT: Yes.

15 THE COURT: You guys know this. We can stipulate to
16 it, right?

17 MR. KLAGES: It was October or November is when it
18 was ratified.

19 MR. CLARK: Our next witness will testify to that.

20 MR. GILBERT: I think we can stipulate that it became
21 effective on August 1st, 2008.

22 THE COURT: It was ratified later, but it became
23 effective on August 1st.

24 Does everybody agree to that?

25 MR. CLARK: Yes.

1 THE COURT: Fine, then you don't need to cover that
2 with this witness.

3 BY MR. GILBERT:

4 Q That being so, Plaintiffs' Exhibit 8 was issued after the
5 ratification of that agreement, correct?

6 A Correct.

7 Q Now, in the conversation you testified to that you had
8 with Ms. Dorfman and Mr. Langan, the three of you did not
9 discuss how the issuance of Exhibit 8 was affected by the
10 language in Exhibit 5 and Exhibit 7 regarding changes in the
11 retirees' contributions during the term of the current
12 collective bargaining agreement, right?

13 A I'm sorry. You lost me.

14 Q Okay. Taking it back to the conversation you had with
15 Ms. Dorfman and Mr. Langan where you discussed Exhibit 8,
16 correct?

17 A Correct.

18 Q In that conversation, there was no discussion about
19 whether the issuance of Exhibit 8 would be affected by the
20 language in Exhibit 5, the summary plan description, and
21 Exhibit 7, the summary of material modification, with regard
22 to changes in the retirees' contribution rates during the term
23 of the current collective bargaining agreement, correct?

24 A What was discussed was that the cap was exceeded during
25 the prior collective bargaining agreement. There was a

1 rati fication time period, there was ballots to go out, and so
2 it was actually not ratified until much later in the year.

3 And until such time we know what is ratified, we
4 can't begin the process of letters, mailing lists, reviews,
5 mailings, et cetera.

6 So it was at that point the contract had been
7 ratified, we knew the cap was exceeded during the collective
8 bargaining agreement, that ended in 2008, and the 705 retirees
9 were subject to the excess cap. And we talked about, you
10 know, now the letter is going to go out informing them of
11 such.

12 Q Right. You have just described what you did talk about?

13 A Um-hmm.

14 Q I'm asking you to confirm that you did not talk about
15 whether or not the issuance of Exhibit 8 would be affected by
16 the language we have referred to about raising the rates
17 during the term of the current collective bargaining
18 agreement.

19 A I don't recall specifically what we talked about with
20 regard to that.

21 Q You don't recall having a discussion about that subject,
22 do you?

23 A No.

24 As I testified, that language seemed, you know,
25 pretty crystal clear to us and don't believe we talked about

1 i t.

2 Q Now, the average annual cost per participant is the same
3 for retirees affiliated with Local 705 and other participants
4 who are not retirees affiliated with 705, correct?

5 A Ask me that again, please.

6 Q The average annual cost per participant is the same
7 regardless of whether a particular retiree is affiliated with
8 705 or not, correct?

9 A The average cost -- the average cost is for all retirees
10 across the health and welfare package as well as the health
11 care plan.

12 Q And UPS makes the additional contribution for the costs of
13 the retirees who are covered by the national master agreement,
14 correct?

15 A What cost is that?

16 Q The excess cost above 6250.

17 A We are currently doing that, yes.

18 Q When you say "we," you mean UPS?

19 A Correct. We are self-funded. So any costs will be the
20 responsibility of UPS.

21 Q Now, if you could look at Exhibit 5 again, page 87.

22 You testified that the -- what you referred to as the
23 "share equally" language described for you how to calculate
24 the cost, correct?

25 I just need a yes or no.

1 A Sorry.

2 Q That's all right.

3 A Ask me the question again.

4 Q Yes.

5 What you spoke of on direct examination as the "share
6 equally" cost -- language -- I'm sorry -- was, as you
7 understood it, the description of how you would calculate the
8 cost, correct?

9 A Shared equally is how we calculate the cost, yes.

10 Q But in addition, the language says each retired employee
11 will share equally in the costs above \$6,250 maximum by making
12 an additional contribution, correct?

13 A That is correct.

14 Q But the retirees who are governed by the national master
15 agreement don't make an additional contribution, do they?

16 A It was negotiated during their negotiations of their
17 contract that expired in 2008 to defer that excess cap
18 contribution to the next collective bargaining agreement.

19 Q And that, what you call excess contribution, is then the
20 one that is made by UPS, correct?

21 A Contribution above the 6250, yes.

22 Q Okay. Now, you also said that if the language in the SPD
23 under average annual cost remained as it was and was
24 understood to affect every new -- every collective bargaining
25 agreement that gets ratified, you would never be able to

1 change the amounts because each new collective bargaining
2 agreement would become the current one, right?

3 A You lost me in there a little bit.

4 Q On direct examination, and you can correct me if I'm wrong
5 because maybe I misunderstood it, but I thought you testified
6 that you didn't interpret the language regarding the current
7 collective bargaining agreement as meaning each new collective
8 bargaining agreement as it became ratified because that would
9 mean you could never change the cost figures for a retiree?

10 A I said the current collective bargaining agreement meant
11 the bargaining agreement that was in place at the time the cap
12 was exceeded.

13 So if a collective bargaining agreement expired
14 July 31st of '08, as this one did, and the cap was exceeded
15 three years into that, earlier than that expiration date, then
16 the excess cap would be collected at the expiration of that
17 collective bargaining agreement.

18 And if you suddenly moved into August 1st and said,
19 oops, we're in a new collective bargaining agreement, we can't
20 collect, then we would never collect because you would always
21 move into a collective bargaining agreement and you say, we're
22 not subject to collecting the thing.

23 Q But that assumes that the language remains the same,
24 correct?

25 A Well, and it also gives the opportunity for that cap to

1 be -- it allows for that cap to be negotiated, if desired.

2 Q Right. So if there were a negotiation and there was an
3 agreement to change either the dollar figure for the cap or
4 the amount of contribution that retirees were to make, that
5 language changing the amounts could be included in a new
6 collective bargaining agreement, couldn't it?

7 MR. CLARK: Judge, we are going to object to the form
8 of that question. It requires speculation.

9 THE COURT: Overruled. Put the question again just
10 so he has it in mind.

11 BY MR. GILBERT:

12 Q If there's a negotiation and there's an agreement reached
13 that either the cap will be changed or that the monthly costs
14 that a participant pays is going to be raised, you could put
15 that language into a new collective bargaining agreement,
16 correct?

17 A Well, I'm not part of the labor group, but the language in
18 the collective bargaining agreement outlines or refers or
19 supports the SPD.

20 And if that were the case that it was negotiated, as
21 would the case in the national master, it would obviously take
22 place prior to the expiration of that collective bargaining
23 agreement.

24 In the event of the national master, my understanding
25 is this takes place all the time in negotiations. It was an

1 agreement between the company and the union that the cap, you
2 know, wouldn't be raised without negotiation and that it
3 wouldn't be collected until the expiration of the current
4 collective bargaining agreement.

5 Q And I believe you testified that the plan administration
6 committee that you described is free to issue a new summary
7 plan -- I'm sorry -- a summary of material modification
8 provided that whatever that summary of material modification
9 might say, doesn't contravene a collective bargaining
10 agreement, correct?

11 A That's correct.

12 MR. GILBERT: I have no further questions, your
13 Honor.

14 THE COURT: Redirect.
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1 MR. CLARK: No further questions.

2 THE COURT: I have some questions I need to ask you.

3 A couple of times during your testimony when you were
4 talking about how the calculation of average cost is made you
5 said it's made across the health and welfare package and the
6 health care package. You drew this distinction between health
7 and welfare package and health care package, and I'm still not
8 sure I'm getting that.

9 THE WITNESS: Okay.

10 THE COURT: What's the health and welfare; what's the
11 health care?

12 THE WITNESS: Two different plans.

13 THE COURT: Okay.

14 THE WITNESS: One is the health and welfare package.
15 That is the plan the 705 retirees and actives fall under.

16 THE COURT: Got it.

17 THE WITNESS: The health care package is a separate
18 plan, separate benefit design.

19 THE COURT: Right.

20 THE WITNESS: Actually came about years ago. Some
21 groups chose to change to the health and welfare package that
22 we just referenced, and some chose not to. This upstate west
23 New York group chose not to, so they continue to be covered
24 under the health care package.

25 THE COURT: Okay. So those terms are just sort of

1 the terms that you use internally to refer to the two, I take
2 it?

3 THE WITNESS: It's the name of the plan.

4 THE COURT: It's the name of the plan, okay.

5 So the people that are on what we call the national
6 master plan or whatever it is, which one are they under? Is
7 it health and welfare or the health care?

8 THE WITNESS: Health and welfare.

9 THE COURT: Health and welfare, okay. Got it.

10 So the health care plan was basically the earlier
11 plan that some groups have opted to stay in.

12 THE WITNESS: Correct.

13 THE COURT: Got it.

14 If you look at Exhibit 8, that's the one that gives
15 the amounts that are going to be billed out monthly --

16 THE WITNESS: Yes.

17 THE COURT: -- starting February 1.

18 As I understand from what you're saying, even though
19 these amounts in here, for example, the \$157.58 for the
20 retiree only, that's a monthly amount but you don't bill it
21 every month, you bill it per quarter.

22 THE WITNESS: Because we started it February, we bill
23 February and March separately, and then we'll bill quarterly
24 starting April.

25 THE COURT: So the April bill would then include

1 three times 157.58 for that person basically.

2 THE WITNESS: For a single, correct.

3 THE COURT: Got it. Okay.

4 Now, when you calculated -- you mentioned that --
5 during your testimony that the \$6250 cap had actually been
6 exceeded for I think you said three years even before the new
7 collective bargaining agreement went into effect. Did I get
8 that right?

9 THE WITNESS: That's correct.

10 THE COURT: Okay. So when you're calculating the
11 excess and then spreading it across everybody, is the amount
12 that's being spread across everybody the predicted excess for
13 the current year only, or are you picking up those other years
14 where it had been exceeded but you weren't able to charge for
15 it?

16 THE WITNESS: I understand.

17 So, these amounts in Exhibit 8 are the 2009 projected
18 based on 2008 actual.

19 THE COURT: Got it. So, in other words, it's just
20 for the one year?

21 THE WITNESS: Correct, which was my point. They had
22 exceeded in '06, '07, so it went up in those years. So '08 was
23 a -- and so '09 is a heavier year, which is why we didn't
24 charge that additional 50.

25 THE COURT: And I know you're not the actuary, and I

1 assume it's the actuary that sort of figures it out what the
2 projected amount is going to be. Do you know how they do
3 that? They take the '08 number and extrapolate some way?

4 THE WITNESS: I think we're going to have the actuary
5 testify.

6 THE COURT: Oh. Then I'll ask them. Never mind.
7 Is that right?

8 MR. CLARK: Yes, Your Honor.

9 THE COURT: Okay.

10 Now, looking at Exhibit 5, which is the SPD, and you
11 testified that that's the one that's currently in effect.

12 THE WITNESS: That's correct.

13 THE COURT: Okay. And I understand your testimony
14 about how you've interpreted what the reference on page 87 to
15 the, quote/unquote, current collective bargaining agreement
16 means and your concern that if it was interpreted in the way
17 the plaintiffs are arguing in this case you'd never be able to
18 collect the increase. I understand that. Had there been any
19 consideration given to modifying the SPD once the new
20 collective bargaining agreement was adopted to sort of take
21 out that language because that old current collective
22 bargaining agreement didn't exist anymore?

23 THE WITNESS: No.

24 THE COURT: Okay.

25 THE WITNESS: Not to my knowledge.

1 THE COURT: All right. Fine.

2 Does anybody have further questions based on my
3 questions?

4 MR. GILBERT: No, Your Honor.

5 THE COURT: Thanks. You can step down.

6 THE WITNESS: Thank you.

7 THE COURT: We'll take a ten-minute break, and then
8 we'll resume and go till 12:30.

9 (Recess taken.)

10 THE COURT: You can call the next witness.

11 MR. CLARK: We would call Chris Langan.

12 (Witness sworn.)

13 CHRIS LANGAN, DEFENDANTS' WITNESS, DULY SWORN

14 DIRECT EXAMINATION

15 BY MR. CLARK:

16 Q Could you please state your name.

17 A Chris Langan. Last name is spelled L-A-N-G-A-N.

18 Q Are you currently employed?

19 A Yes. I work for United Parcel Service based out of
20 Atlanta, Georgia.

21 Q How long have you been employed by UPS?

22 A Going on my 28th year.

23 Q What is your present job?

24 A Currently I work in our BIA group, which is our Business
25 Information Analysis group, and I am the labor -- I work with

1 the labor group. I'm the finance liaison with the labor
2 function.

3 Q And what do you do with the labor group?

4 A I'm responsible for all the financial aspects of our labor
5 contracts. I deal with pension plans, health plans and
6 anything really monetary that has to do with the contracts and
7 fringe benefits.

8 Q What does that mean, you deal with the financial component
9 of that?

10 A For example, whenever there's a contract, I'm the person
11 there that does all the costing. If there's things that
12 either we're looking at or that the union is proposing, I look
13 at the cost ramifications of it. I interface with payroll to
14 make sure that if there's any interpretations about pay rates
15 and so forth and to make sure that the health and welfare and
16 pension plans are being contributed to under the guidelines
17 and rules.

18 Q How long have you been in that job?

19 A Six years.

20 Q Did you participate or play any role in the negotiations
21 in 2007 for a national master agreement?

22 A Yes, I did.

23 Q What did you do?

24 A I was the financial liaison, you know, the job I
25 described, I had that job during the negotiations. I was part

1 of the team that did the negotiations, and I worked very
2 closely with our lead negotiator, Jim Maloney, and gave him
3 finance advice throughout the whole process.

4 Q Who is Jim Maloney?

5 A At the time he was the vice president of labor relations
6 for United Parcel Service.

7 Q And what was your role in these negotiations?

8 A I was the financial representative and did all the --
9 anything financial. Basically I was the numbers guy for the
10 contract.

11 Q Were you responsible for keeping anyone at corporate
12 informed regarding those negotiations?

13 A Yes. I was the go-between between labor and finance with
14 our management committee, which our management committee is
15 the group in Atlanta that runs the company. It's made up of
16 our to senior management, the CEO, the CFO. And I spent a lot
17 of time with the CEO and the CFO explaining what was going on.

18 Q When was the 2002 to 2008 national master agreement
19 scheduled to expire?

20 A July 31st, 2008.

21 Q When did negotiations begin for a new agreement?

22 A September 19th, 2006.

23 Q Why did they start so early?

24 A Well, we had a couple of goals in front of us.

25 One was we wanted to make sure, if we could, get the

1 contract finished early because we have a lot of competitive
2 pressures and threats right now. We wanted to make sure our
3 customers didn't see any disruption in service.

4 The other had to do with the Pension Protection Act
5 that was going to be coming into force on January 1st, 2008,
6 and some of the issues that had to deal with the pension funds
7 out there, and primarily we had an issue with the Central
8 States Pension Fund, that they were looking to withdraw from
9 that fund.

10 Q Was that an issue that was important to the company?

11 A I would say that was the number one issue that was in
12 front of us.

13 Q And why was that?

14 A It was really twofold. It had -- the fund is very big,
15 and the fund has some financial issues that the company was
16 concerned about, and we contributed a lot of money into the
17 fund, and our drivers we don't feel were receiving the pension
18 benefit that the money was buying, and their benefits were
19 reduced in 2004 because of the financial problems the plan
20 had, and still has, and we wanted to get those benefits back
21 to where they were.

22 Q And what happened with that issue in negotiations?

23 A We negotiated with the fund and the international, and we
24 were able to withdraw from the pension fund.

25 Q Do you remember a handshake tentative agreement with the

1 international?

2 A Yes. We shook hands on the contract on September 30th,
3 2007.

4 Q Was there any significance to having a handshake agreement
5 as of that date?

6 A Yes. When we negotiated the settlement agreement with the
7 Central States fund, there was time constraints wrapped around
8 it because of the withdrawal liability rules that exist in
9 ERISA, and we had to withdraw and make our payment by December
10 the 26th, 2007, and we had to have a valid ratified contract
11 prior to that date, so we needed to get finished, we felt, by
12 October the 1st in order to go through the balloting process,
13 and if there was any issues with all the supplements that are
14 out there, to deal with those and get it ratified.

15 Q Was there anything significant that occurred after the
16 September 30th, 2007, handshake agreement that jeopardized a
17 ratification of that national master agreement?

18 A Yes. We had a national grievance panel in San Diego about
19 two weeks after we shook hands. It was, I believe, the 8th or
20 9th of October, in that range. And an issue had come up in
21 regards to retiree health care contributions, a notice that
22 was sent out to plan participants looking for a -- notifying
23 them that there was going to be an increase, and that created
24 a situation for us at the panel.

25 Q Was that notice a summary of material modification?

1 A Yes, it was.

2 Q What happened next?

3 A When I arrived, the issue was out there. It was discussed
4 by the team. Jim Maloney discussed it with Ken Hall. And the
5 decision was made to not enforce that notice because of the
6 bigger item that was looking at us in the face in the Central
7 States pension plan.

8 Q And so I'm clear, there was an agreement reached not to
9 collect on the costs in excess of the cap from the retirees
10 subject to the national master agreement?

11 A Correct.

12 Q How did that issue compare in value with getting out of
13 the Central States Pension Fund?

14 A There was no comparison at all. With the Central States
15 Pension Fund we made a withdrawal payment of 6.1 billion
16 dollars and moved folks into a new plan to get their pension
17 benefits back to where they were in 2004, and that was a very
18 big item for us, and in comparing the moneys we would have
19 collected through the retiree increased contributions, it
20 wasn't worth jeopardizing the contract over.

21 Q Did you explain the financial impact of this decision to
22 not collect an additional contribution to anyone at UPS?

23 A Yes. I had to get on the phone with our CFO and CEO at
24 the time and review everything with them and explain what this
25 meant and what was at stake if we decided to enforce the

1 notice.

2 Q Did the 2008 to 2013 national master agreement get
3 ratified?

4 A Yes, it did.

5 Q And when was that?

6 A The master and all of the supplements -- we have 34
7 supplements across the country, with the exception of Local
8 710 and 705, because they're not part of the national master
9 agreement. They're negotiated separately. They ratified on
10 December the 19th, 2007.

11 Q Did that contract include a commitment by UPS not to
12 collect on the costs in excess of the cap for the retirees?

13 A There's nothing in writing in the contract. It was more
14 of a verbal discussion between Jim Maloney and Ken Hall, the
15 small package director for the IBT.

16 Q The binder in front of you, can you turn to what's been
17 marked as Exhibit 10.

18 A I have it in front of me.

19 Q Do you recognize this document?

20 A Yes. This is the -- a contract for one of our
21 supplements. In every one of our supplement agreements
22 there's also a copy of the national agreement, with the
23 exception of 705 and 710, because they're not part of the
24 national agreement, but this is the central region supplement
25 international for the current contract ratification through

1 2013.

2 Q Did UPS make the payment necessary to withdraw from the
3 Central States Pension Fund?

4 A Yes. On December 26th we wired them 6.1 billion dollars.

5 Q If we could turn to what's been marked as Exhibit 1?

6 A I'm sorry, which exhibit?

7 Q Number one.

8 A I have it in front of me.

9 Q Do you recognize this document?

10 A Yes. This is a lined out version of the collective
11 bargaining agreement between United Parcel Service and Local
12 705.

13 Q For what time period?

14 A The duration in the back of the contract under Article 56
15 is August 1st, 2008, through 2013, so this is the current
16 agreement.

17 Q Did you have any involvement with negotiating this
18 agreement?

19 A Yes. I had the same role that I had in the national
20 agreement, but instead of Mr. Maloney, I advised Dan Hoyer,
21 and also Dick Turner was involved from our corporate labor
22 when Dan wasn't able to be there, but I was the finance guy on
23 the negotiation team.

24 Q And what's Dan Hoyer's position?

25 A Dan Hoyer is the region labor manager, and he was the head

1 negotiator for the company during these negotiations.

2 Q What's Dick Turner's position?

3 A Dick Turner works out of our corporate office, and he's --
4 we call him corporate zone. They have zones in the country,
5 and Dan dotted line reports to him.

6 Q How many bargaining sessions did you attend for this
7 negotiation?

8 A There were quite a few sessions. I wasn't there at the
9 very beginning in the June area when we started, but for the
10 month of July I was there primarily through the whole month.
11 I might have missed one or two, but I was probably, if I was
12 to put a percentage, at 70 percent of them, with the lion's
13 share of those being at the end when the financial parts of
14 the contract were discussed.

15 Q Were there any particular sessions that you attended?

16 A The majority of them were at the end. I was there, you
17 know, exclusively, I believe, the last two weeks and all the
18 way to the end of the contract when we got a handshake.

19 Q Were there any sessions addressing economic issues that
20 you did not attend?

21 A No.

22 Q What kind of numbers did you deal with and analyze during
23 the Local 705 negotiations?

24 A Basically anything that we were looking at as far as if we
25 were trying to make changes to the contract; any proposals

1 that the union would have given us, I would have put dollar
2 value to it. Throughout the whole process things changed
3 quite a bit. There was proposals that they put across for
4 wages that were in excess of what the national master had, so
5 I had to cost those things out. They were looking for extra
6 vacation. You know, just typical negotiations where they're
7 looking for extra stuff, and I put a value to it and see if it
8 fits within the budget that we have allotted for the contract.

9 Q Were there any economic items that you were anticipating
10 would be brought in at that negotiation?

11 A I really felt that since the issue of the retiree medical
12 was such a big issue after the national master in San Diego,
13 that would have been brought up during these negotiations.

14 Q And was it brought up during those negotiations?

15 A No, it was not.

16 Q Do you recall any time at the -- during the 2008
17 negotiations with Local 705 when any issue involving retiree
18 health care was ever addressed?

19 A No, I not.

20 Q Did Local 705 ever propose to raise the \$6,250 cap?

21 A No, they did not.

22 Q Did they ever propose that UPS defer collecting the costs
23 in excess of the cap?

24 A No, they did not.

25 Q Did you ever represent to anyone at Local 705 that UPS

1 would be willing to defer collecting the costs in excess of
2 the cap?

3 A No, I did not.

4 Q Did Local 705 ever ask you for any confirmation that the
5 costs had exceeded the cap?

6 A No, they did not.

7 Q Did the subject of a summary plan description even come
8 up?

9 A Yes, they requested a copy of the summary plan
10 description.

11 Q Who did?

12 A It was Juan Campos was his name. He's the recording
13 secretary for Local 705.

14 Q Do you recall when that was?

15 A It was towards the end. I want to say it was either the
16 last day or the second to last day, in that range, he had
17 asked for a copy, and we gave him one.

18 Q And what did he ask you on that day?

19 A He asked me if anything had changed, and I said no.

20 Q Did he say anything else?

21 A I believe he said thank you after that.

22 THE COURT: The last day, when is that?

23 THE WITNESS: We shook hands I want to -- it was on
24 July 31st after midnight, so it would have been either the
25 30th or the 31st, in that range.

1 THE COURT: Of '07.

2 THE WITNESS: Of '07, yes. I am sorry, '08.

3 THE COURT: Right.

4 BY MR. CLARK:

5 Q And what did you mean by no changes?

6 A We weren't proposing any changes to the summary plan
7 description.

8 Q And was that true?

9 A Yes, it was true. We were proposing no changes at all.

10 Q Had UPS previously provided Local 705 with a copy of the
11 summary plan description?

12 A I believe one was provided at the beginning of the
13 negotiations when a information request -- there was a lot of
14 information that was requested, and things were provided to
15 them, yes.

16 Q Did UPS ever raise the issue of the \$6,250 cap with Local
17 705?

18 A No, we did not.

19 Q Why not?

20 A We didn't feel it was an issue that we needed to raise.
21 We felt that the language supported what we are doing with
22 retiree medical, and if I was going to make any proposal on
23 that, I would have proposed to lower it because if I lower it,
24 then that's less cost for the company.

25 Q Did Local 705 ever make any proposal or ask to discuss the

1 \$6,250 cap?

2 A No, they did not.

3 Q Did they ever make any proposal regarding retiree health
4 care?

5 A No, they did not.

6 MR. CLARK: No further questions.

7 THE COURT: Mr. Gilbert.

8 CROSS EXAMINATION.

9 BY MR. GILBERT:

10 Q The UPS health and welfare package for retired employees
11 insures more than just retirees affiliated with Local 705,
12 right?

13 A Correct.

14 Q If you would look at Exhibit 7 in the book, the larger
15 book in front of you.

16 A I have it.

17 Q Do you recognize that document?

18 A It's a summary material modification, revised
19 modification.

20 Q And it was sent to the retirees affiliated with Local 705,
21 correct?

22 A I didn't personally send it. I would assume it was sent
23 because it says it's who it was going to.

24 Q Now, do you remember having a discussion with Mr. Rapp
25 asking you to contact Mr. Hoyer about issuing this document?

1 THE COURT: "This document," you mean No. 7.

2 MR. GILBERT: No. 7, yes.

3 BY THE WITNESS:

4 A I do remember a conversation with Mr. Rapp to ask
5 Mr. Hoyer about a document similar to this that was going out
6 in 2009. This particular document, my involvement was on
7 conference calls listening to the dialogue and that. I do not
8 recall saying I was going to review it with Mr. Hoyer.

9 BY MR. GILBERT:

10 Q All right. Then look at Exhibit 8.

11 A Exhibit 8?

12 Q 8, yes.

13 A Okay, I have it in front of me.

14 Q Do you recognize that document?

15 A Yes, I do. It's a letter to participants dated January
16 2009.

17 Q And it's also directed to retired employees affiliated
18 with Local 705, correct?

19 A Yes, it is.

20 Q Now, is this the document that you had the conversation
21 with Mr. Rapp about?

22 A Yes. Mr. Rapp asked me to review it with Mr. Hoyer and
23 ask him if it was okay to send out, and I did that.

24 Q And what did Mr. Hoyer say to you?

25 A He said there was nothing that was negotiated that would

1 prohibit us from sending it out, so go ahead and send it out.

2 Q And I take it you reported that, then, to Mr. Rapp?

3 A Yes, I did.

4 Q Now, you testified a minute ago that you had a
5 conversation during negotiations with Mr. Campos in which he
6 asked you whether the SPD was going to change, correct?

7 A Correct.

8 Q And if you'd look at Exhibit 5, and you might hold your
9 finger on Exhibit 8, but look at Exhibit 5, and first can you
10 just confirm for us that that is the SPD for the UPS health
11 and welfare package for retired employees?

12 A This is a version of it. I believe the current version is
13 a 2006 version. The copyright on here says 2003, but it is a
14 summary plan description.

15 Q I'm sorry. Do you have 5 or 4?

16 A I have 5.

17 Q Okay. Ah, the first page does say 2003. You're right.

18 A Yeah.

19 Q But if you'd go in a few pages, you start to get more
20 recent dates, including 2008, on page UPS 00431, right?

21 A Yes. I do see that.

22 Q Now, turn to page 87, if you would.

23 A Exhibit 5, 87?

24 Q Yes.

25 A Okay, I have it.

1 Q And in the left-hand column do you see the area called
2 contribution?

3 A Yes, I do.

4 Q And it says there: "All retired employees are responsible
5 for a fifty dollar per month contribution for their medical
6 coverage. This contribution covers the retired employee's
7 spouse and any eligible dependent children." Correct?

8 A That's what it says, yes.

9 Q And this was the SPD that you told Mr. Campos was not
10 going to be changed, correct?

11 A Yes, that's correct.

12 Q Now look at Exhibit 8.

13 A Exhibit what?

14 Q 8.

15 A 8. Okay.

16 Q This document changes the contribution rates to \$157.58
17 for a participant only, \$315.17 for a participant plus spouse
18 or a participant plus children, and \$472.75 for a participant
19 plus family, correct?

20 A This doesn't change the fifty dollar contribution. What
21 this is, is this is the cost that's in excess of the 6250 cap.

22 Q Okay. But it does require participants to pay more than
23 fifty dollars, correct?

24 A Yes, it does. But it's not the fifty dollar contribution.
25 It's the excess that's over the cap.

1 Q You testified as to Exhibit 1, which you said was the
2 lined out version of the current Local 705 collective
3 bargaining agreement, correct?

4 A Yes, that's what I said.

5 Q Okay. And if you look at -- again at Exhibit 5, page 87.

6 A Okay. I have that open.

7 Q Looking now at the right-hand column.

8 THE COURT: I'm sorry, page -- back to page 87?

9 MR. GILBERT: 87, yes.

10 BY MR. GILBERT:

11 Q The last sentence reads, "If required, the additional
12 contributions would not be implemented until after the
13 expiration of the current collective bargaining agreement,"
14 correct?

15 A That's what it says.

16 Q Now, you don't recall ever having a conversation with
17 anyone about whether, in light of that language, there was a
18 problem in issuing Exhibit 8?

19 A No, because this language was in the SPD that's been in
20 place in the previous contract, so this language has been
21 there since -- my understanding, since the plan's inception
22 and was there during the 2002 through 2008 agreement, which
23 when it expired that's when we started sending out bills for
24 the additional money over 6250.

25 Q Now, it's your understanding that when the annual average

1 cost of retiree health insurance exceeds 6250, the cap, it
2 exceeds that for every person in the plan, correct?

3 A Yes.

4 Q There's no distinction between which local any participant
5 in the plan might be affiliated with, correct?

6 A No. My understanding it's a shared equally concept, so an
7 insurance-type concept where you take all the experience of
8 the population in that plan and then you spread that cost over
9 everybody.

10 Q Now, there are some retirees covered by the plan we've
11 been discussing, the one that's reflected in Exhibit 5, for
12 instance, who continue to pay fifty dollars a month, correct?

13 A Correct. But they're subject to a different collective
14 bargaining agreement.

15 Q Right.

16 But they also have an average annual cost that's
17 above 6250, correct?

18 A Correct. And in those cases the company pays that.

19 Q UPS pays that?

20 A Yes, it does.

21 MR. GILBERT: I have no further questions, Your
22 Honor.

23 THE COURT: Redirect.

24 MR. CLARK: No further questions, Judge.

25 THE COURT: You're excused.

1 Next witness, please.

2 (Witness sworn.)

3 JOEY DIZENHOUSE, DEFENDANTS' WITNESS, DULY SWORN

4 DIRECT EXAMINATION

5 BY MR. CLARK:

6 Q Please state your name for the record.

7 A Joey Dizenhouse.

8 Q Could you spell that last name.

9 A D-I-Z-E-N-H-O-U-S-E.

10 THE COURT: I'm sorry. Do that again, D.

11 THE WITNESS: I-Z-E-N-H-O-U-S-E.

12 THE COURT: I didn't hear your first name. I'm

13 sorry.

14 THE WITNESS: Joey.

15 BY MR. CLARK:

16 Q Are you currently employed?

17 A Yes.

18 Q By whom?

19 A Towers Perrin.

20 Q What is your job title?

21 THE COURT: P-E-R-R-I-N?

22 THE WITNESS: Yes, sir.

23 I am a principal within our human capital consulting

24 group.

25 BY MR. CLARK:

1 Q Are you an actuary?

2 A Yes, I am.

3 Q How long have you worked as an actuary?

4 A I've practiced in the field for about 12 years, and I have
5 been accredited formally with the designation since 2002.

6 Q Do you have any degrees or certifications?

7 A Yes. I have a bachelor's degree in mathematics from the
8 University of Waterloo, and I have a -- I am a fellow of the
9 Society of Actuaries and a member of the American Academy of
10 Actuaries.

11 Q Is there anything significant about those last two
12 distinctions or designations you mentioned?

13 A Yes. Those are the highest standards to which an actuary
14 can be recognized in the U.S.

15 Q In your job with Towers Perrin do you have any
16 relationship with United Parcel Service?

17 A Yes.

18 Q What is that relationship?

19 A I have responsibility for all financial analysis related
20 to health and welfare benefit programs for the active and
21 retired employees of UPS.

22 Q Is the health and welfare package for retired employees
23 one of these plans?

24 A Yes.

25 Q How about the health care package?

1 A Yes.

2 Q How long have you been working with UPS?

3 A Since May of 2002.

4 Q If you could -- there's a binder in front of you. If you
5 could turn to what's been marked as Exhibit 17.

6 Do you have it in front of you?

7 A I do.

8 Q Do you recognize this document?

9 A Yes.

10 Q What is it?

11 A This is a calculation of projected 2009 per participant
12 cost for UPS retirees in managed union health care programs.

13 Q Can you please walk us through the calculation.

14 A Sure.

15 So we begin with actual paid claims provided by the
16 administrators for the most recent twelve months we have
17 available to us at the time of the calculation, and then we
18 divide that by the number of average enrolled participant. A
19 participant is a retired employee, a spouse and/or dependent
20 child. We divide those paid claims by the average enrolled
21 employees, and that gives us a historical per participant
22 cost. And then we project that forward from the historical
23 experience data period to the projection period, so in this
24 case from the period from September of '07 to August of '08,
25 we project that forward to 2009.

1 We then repeat that same calculation for prescription
2 drug claims. And the reason we do medical claims and
3 prescription drug claims separately is because inflation has
4 historically been different between those two types of
5 coverages.

6 We then add together the two per participant costs,
7 medical and prescription drugs, and, lastly, add an
8 administrative load that reflects the actual administrative
9 costs of the plan.

10 Q And what is this number at the bottom, the \$8,140.99?

11 A That is the projected 2009 per participant cost for the
12 people in this program.

13 Q And this calculation is with regard to the health and
14 welfare package for retired employees?

15 A Yes.

16 Q And the individuals in the health care package, the
17 retirees?

18 A Yes. We group all retired UPS-ers in managed programs --
19 and I say "managed," similar looking programs -- so that we
20 can collect their experience and we're not merging plans that
21 are very different.

22 Q And when was that calculation done?

23 A It was done a few months ago. Data through August of '08
24 would have been available to us towards the end of 2008, so I
25 would say four months ago.

1 Q And why are you projecting costs for 2009 rather than just
2 waiting to see what the costs are in 2009 and collecting the
3 actual costs?

4 A Because in order to project costs in a future period we
5 have to use the data that's available to us. This is standard
6 practice in all forms of insurance. We use the data available
7 to us at the time of the projection, and we project it forward
8 to the future so that we can give the best representation of
9 what those future costs would be.

10 Q Is it unusual to do calculations in this way?

11 A No. On the contrary, this is for, not just health care
12 programs, but all insurances, this is how it is done.

13 Q If you could, turn to what's been marked as Exhibit 8.

14 Did you have any involvement -- direct your attention
15 to the prices on Exhibit 8. You only, \$157.58; you plus
16 spouse, \$315.17; you plus children, \$315.17; you plus family,
17 \$472.75. Did you have any involvement in calculating these
18 prices?

19 A Yes, I did.

20 Q What was your involvement?

21 A I had responsibility for calculating these numbers, which
22 reflect what the retirees of Local 705 would pay for their
23 coverage for 2009.

24 Q How did you come up with these numbers?

25 A We began with the calculation of the per participant cost

1 that we just looked at in Exhibit 17, and we then subtracted
2 the cap, the benefit cap of the program, which is 6,250 per
3 participant, which left us with the excess costs, which were
4 to be charged to retirees. We then distributed those costs to
5 retirees based on whether they were a single retiree or a
6 retiree with a spouse or a retiree with a spouse and children
7 or a retiree with just children.

8 Q And why did you make this distinction based on the number
9 of participants covered?

10 A Well, because fundamentally more people covered equates to
11 more cost, so this is a way to allocate those excess costs to
12 the retired participants in an equitable manner. And this
13 is -- I mean, in my experience, this is the way, by and large,
14 that it's done, where certainly the more people you cover,
15 generally the more you pay for your health insurance.

16 Q So this is not unique to this plan?

17 A No, sir.

18 Q In your job with Towers Perrin do you work with any plans
19 other than UPS that have a cap on health care costs?

20 A Yes. Over the years I've worked with many.

21 Q Have you ever worked with a plan where the concept was to
22 share equally in the costs over the cap?

23 A Yes.

24 When I think of share equally I mean -- I'm thinking
25 that the retirees as a group pay equally costs that exceed the

1 cap as opposed to each individual retiree pays their own cost
2 over the cap. Because, for example, if a retiree had a
3 hundred thousand dollars in claims experience, which can
4 happen, that retiree -- if we charge that retiree costs over
5 the cap, that retiree would get a 90 something thousand dollar
6 bill the next year. That's not insurance. So the mechanism
7 of insurance applies this concept of share equally. So I
8 would say that that, in my experience, is how it's always
9 done.

10 Q Do any of these plans that you're familiar with charge
11 every participant the same amount of costs over the cap
12 regardless of the number of dependents covered?

13 A No. On the contrary, I don't know of a single plan that
14 does what you've described. It's always some function of the
15 number of dependents covered.

16 Q Bringing you back to the UPS health and welfare package
17 for retired employees, did the average cost per plan
18 participant exceed the 6250 cap in 2008?

19 A Yes, it did.

20 Q How about in 2007?

21 A Yes.

22 Q 2006?

23 A Yes.

24 In fact, I don't recall the exact numbers, but I
25 recall that in all three of those years not only did the costs

1 exceed the 6250 cap, but they were above 7,000, so well over
2 the 6250.

3 MR. CLARK: No further questions.

4 THE COURT: Cross.

5 MR. GILBERT: We have nothing, Your Honor.

6 THE COURT: Thank you. You're excused.

7 THE WITNESS: Thank you.

8 THE COURT: Are there other witnesses for the
9 defendant?

10 MR. CLARK: No.

11 THE COURT: Okay.

12 Are there any rebuttal witnesses?

13 MR. GILBERT: I think not. If we could have a few
14 minutes just to talk about that.

15 THE COURT: All right.

16 MR. GILBERT: If we do, it will be very quick.

17 THE COURT: Let's take a five-minute break and then
18 I'll come back out.

19 (Recess taken.)

20 THE COURT: Okay. So there's no more witnesses for
21 the defendants. Anymore for the plaintiffs?

22 MR. GILBERT: No, Your Honor, no more witnesses.

23 THE COURT: Okay. So I had thrown out the
24 possibility, if people wanted to, for you to argue, which we
25 could do this afternoon if people want to. If you don't want

1 to, I'm comfortable with just the written submissions. So
2 tell me.

3 MR. CLARK: Judge, we've discussed it, and we've
4 decided we'd like to just do it in briefs.

5 THE COURT: Fine. Okay.

6 And the date I gave you for those was Wednesday.

7 MR. GILBERT: Yes.

8 MR. KLAGES: And, Judge, there was one other
9 administrative matter with that exhibit.

10 MR. CLARK: 18 that we brought in today.

11 THE COURT: That's admitted.

12 So the exhibits that have been admitted, it's 1
13 through 18 for the defense, and there were several series of A
14 through various things, so it would be Cooper A through N,
15 Smith A through N and Lagioia, L-A-G-I-O-I-A, A through K.
16 They are all admitted.

17 MR. GILBERT: I'd like to just raise two other
18 housekeeping matters.

19 THE COURT: Yes.

20 MR. GILBERT: One is, you had indicated if you had
21 any questions that you wanted us to discuss in the brief you'd
22 let us know.

23 THE COURT: None that I can think of other than stuff
24 that's come up here.

25 MR. GILBERT: Right.

1 Then the other thing is, in trying to get this
2 wrapped up, we realized we need to get a decision on class
3 certification. So we're prepared to file a brief -- I think
4 it's a five-page brief -- in support of a motion today.

5 MR. ROSENBLAT: This afternoon.

6 THE COURT: Hang on a second.

7 How many people are among the retirees?

8 MR. GILBERT: They testified 400 to 500.

9 MR. ROSENBLAT: 460 something. I think that one of
10 the documents --

11 THE COURT: Let me just ask this question, which you
12 don't have to answer now, but maybe you could answer like at
13 1:45 or two. Is there any dispute that there's a certifiable
14 class here? I mean, there's got to be a certifiable class,
15 right? There's issues over the merits, but we've got 500
16 people who are all in the same boat who are all being charged
17 157.33 or whatever it is per month, and it's all for the same
18 reason, and the arguments about all of those people are
19 exactly the same.

20 MR. GILBERT: And I would add, Your Honor, that the
21 relief we're seeking is an injunction.

22 THE COURT: So it's a B 2 class; it's not a B 3
23 class.

24 MR. GILBERT: Yes, that's right.

25 THE COURT: This is what I would propose to do. So

1 in other words, it's not a class where we would have to send
2 out notice and opt out or anything like that.

3 MR. GILBERT: No.

4 THE COURT: I don't want to make people do this on
5 the fly, but you might need to do it on a sprint, so to speak,
6 because -- actually, I'm glad you brought this up,
7 Mr. Gilbert, because that's got to be dealt with before I can
8 rule on the merits, obviously. I can't rule on the merits and
9 then sort of back into the class cert.

10 My suggestion is you think about that and come back
11 at let's say -- I've got a couple of statuses at 1:30. Maybe
12 come back at two.

13 MR. KLAGES: Judge, I'd probably want to call the
14 client on that.

15 THE COURT: Yes. Can you get to the client between
16 now and two?

17 MR. KLAGES: Should be able to.

18 THE COURT: Okay. And we'll talk about it then.
19 Did you have another?

20 MR. GILBERT: No, that was it.

21 THE COURT: That was it. Okay.
22 Thanks for bringing that up.

23 MR. ROSENBLAT: Thank you.

24 THE COURT: We all would have been caught short on
25 that.

1 MR. GILBERT: Yes, exactly.

2 MR. KLAGES: Can we just give you a message either
3 way?

4 THE COURT: I'd rather have something on the record.

5 MR. KLAGES: Okay.

6 THE COURT: Doesn't have to be the whole crowd. You
7 can send over representatives, so to speak.

8 MR. GILBERT: Thank you.

9 (Said hearing was recessed from 12:15 p.m. until 2:00
10 p.m.)

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IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

IGNACY GREEN, et al.,

Plaintiffs,

v.

THE UPS HEALTH AND WELFARE
PACKAGE FOR RETIRED EMPLOYEES AND
UPS HEALTH, et al,

Defendants.

) Docket No. 09 C 616

) Chicago, Illinois
) March 12, 2009
) 2:00 p.m.

VOLUME 2
TRANSCRIPT OF PROCEEDINGS
BEFORE THE HONORABLE MATTHEW F. KENNELLY

APPEARANCES:

For the Plaintiff:

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Also Present:

MR. ALAN RAPP

LAURA M. BRENNAN - Official Court Reporter
219 South Dearborn Street - Room 2102
Chicago, Illinois 60604
(312) 427-4393

1 THE CLERK: 09 C, 616 Green versus UPS.

2 THE COURT: Good afternoon.

3 MR. GILBERT: Good afternoon, Your Honor. Jeffrey
4 Gilbert for the plaintiffs.

5 MR. ROSENBLAT: Stephen Rosenblat on behalf of the
6 plaintiffs.

7 MR. CLARK: Good afternoon, Judge. Gary Clark for
8 defendants.

9 MR. KLAGES: John Klages for defendants.

10 THE COURT: The ball is in your court.

11 MR. CLARK: Judge, we haven't seen the motion to know
12 what the class that's been articulated, but we have no
13 objection to a class of the Local 705 retirees who are subject
14 to this additional contribution.

15 THE COURT: That's what the class would be, right?

16 MR. GILBERT: Well, it would be the participants, I
17 think, because it would include the spouses and the children.

18 MR. ROSENBLAT: Right.

19 THE COURT: That's within what you were talking
20 about.

21 MR. CLARK: Yes.

22 THE COURT: So this is what I would propose to have
23 you do: If you can, between the two sides, come up with some
24 succinct description of what the class ought to be, you know,
25 electronically file something within the next day, day and a

1 half or so. I'll see it when it's filed, and then I'll just
2 incorporate that.

3 MR. GILBERT: Do you want a courtesy copy?

4 THE COURT: I'll see it the next day.

5 MR. GILBERT: Okay.

6 THE COURT: And actually we'll see it immediately if
7 we go to the docket. We get it within nanoseconds of when
8 it's filed.

9 So I'll say that the oral motion to certify a class
10 is granted subject to agreement on the class definition.

11 When you guys -- I'm changing subjects. When you
12 guys asked me before about topics that I wanted to see
13 addressed in the posttrial briefs, you probably were going to
14 do this anyway, but in the -- I believe it came up in the
15 context of the motion in limine that the plaintiffs had filed.
16 In the response to the motion in limine the defendants had a
17 reasonably extended discussion about ERISA standards of review
18 and how that impacts the case. That's something I definitely
19 need to have both sides address in this.

20 You know, most of the ERISA cases which talk about
21 standard of review are benefit denial cases. There are
22 about -- they have something to do with contract
23 interpretation, but they have to do with applying a plan term
24 to a set of facts and determining whether some state of
25 affairs exists. Not really what we're talking about here, so

1 I think it would be helpful to me if people could find and
2 submit whatever they could find, you know, obviously
3 supporting your respective side, on, A, what the standard of
4 review should be and then what it means. I mean, you know, if
5 it's arbitrary and capricious, what does that mean as it
6 applies to this type of thing. If it's de novo, what does
7 that mean.

8 So that was my only additional thought.

9 MR. GILBERT: All right. That's fine.

10 THE COURT: Thanks very much.

11 MR. CLARK: Thanks, Judge.

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C E R T I F I C A T E

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20 I hereby certify that the foregoing is a true and
21 correct transcript of the above-entitled matter.

22

23 /s/ Laura M. Brennan
24 Court Reporter

03-12-2009

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