

Methodology for Estimating Potential Losses/Benefits/Damages
in *Allman v. American Airlines, Inc. Pilot Retirement Benefit*
Program Variable Income Plan, 1:14-cv-10138 (D. Mass.)

The Plaintiff and Defendants in *Allman v. American Airlines, Inc. Pilot Retirement Benefit Program Variable Income Plan, 1:14-cv-10138 (D. Mass.)*, have agreed to explore the voluntary resolution of the instant action.

To determine whether such a resolution is possible, Defendants have agreed to produce and have produced to Plaintiff's counsel a range of personnel information that will allow the parties to estimate the losses to the Plan under Plaintiff's theory of liability and the allocation of those alleged losses to the putative class members ("Pilots") (or asserted damages of the Pilots), and to identify methodologies for estimating those asserted losses or damages, including any assumptions that will be made in estimating asserted losses or damages.

The methodologies outlined in this agreement are intended solely for the purpose of seeking a resolution of the instant action, and aspects of the methodologies reflect compromises by the parties and reasonable efforts to simplify the calculation effort in light of available data. Accordingly, the methodologies do not necessarily reflect the precise methodologies that any party contends or acknowledges should be used to calculate pension contributions for periods of military leave in the ordinary course. By executing this agreement and agreeing on methodologies for estimating potential damages, the parties do not waive any argument with respect to the Defendants' alleged liability or claimed losses, benefits, damages, or with respect to class certification. Further, while the agreed methodologies shall be used as a basis for good faith negotiations, this agreement does not constitute an agreement by Defendants to pay, or Plaintiff to accept, the calculated amounts in settlement of the litigation, and the parties reserve the right to argue that the value of Plaintiff's claims differs from the estimated potential losses for reasons including but not limited to the likelihood of success on the merits.

Methodology For Calculating Estimated Losses, Benefits
and/or Damages Under Plaintiff's Theory of Liability

The alleged losses to putative class members' accounts and/or damages of putative class members under Plaintiff's theory of liability (the "Alleged Losses") will be calculated by comparing each Pilot's Alleged Pension Contributions to the actual pension contributions made on the Pilot's behalf in connection with the relevant military leave periods. Alleged Pension Contributions shall be calculated differently for those periods encompassing at least one full calendar month (i.e., the first through last day of a particular calendar month) and for periods not encompassing one full calendar month. The Alleged Loss calculations are based upon a Summary Worksheet which contains summary data for each Pilot; Individual Pilot Spreadsheets which contains detailed data for each individual Pilot; and Rate Tables which contain information concerning hourly pay rates.

I. Pilots on Military Leave for Periods Encompassing at Least One Full Calendar Month ("Longer Term Leave"):

For periods of military leave that encompassed at least one full calendar month (i.e., the first through last day of a particular calendar month) ("Longer Term Leave"), Alleged Pension

Contributions shall be calculated separately for full calendar months within the leave period and for partial months of leave (“Stub Periods”) at the beginning or end of the leave period. Two different versions of the methodology will be applied for periods of Longer Term Leave. The first version is identified in Subsections A through C. The second version is identified in Subsections D through F.

A. Defendants’ Alleged Pension Contributions for Complete Calendar Months

For complete calendar months within a Longer Term Leave, the Pilot’s Alleged Pension Contribution shall be calculated according to the following formula:

$$\text{(Average Monthly Compensation)} \times \text{(Number of Complete Calendar Months within the Longer Term Leave)} \times .11$$

The Pilot’s **Average Monthly Compensation** shall be calculated by dividing the sum of the Pilot’s actual Gross Monthly Compensation for each of the twelve full months preceding the Longer Term Leave by twelve. (Gross Monthly Compensation in Month is a field in the spreadsheet).

(1) For purposes of identifying the full months preceding the Longer Term Leave, any months containing days that were part of a military leave other than a military leave period coded “MR” shall be disregarded.

(2) If a Pilot does not have twelve full, consecutive months of work history prior to a Longer Term Leave (excluding months containing days within a military leave period other than a military leave period coded “MR”), the calculation will be made using the full, consecutive months of work that are available in the personnel spreadsheet. In such event, the Average Monthly Compensation shall be calculated by adding monthly compensation for the number of full months available before the Longer Term Leave and dividing the sum by that number of available months.

B. Defendants’ Alleged Pension Contributions for Stub Periods

For Stub Periods within a Longer Term Leave, the Pilot’s Alleged Pension Contribution shall be calculated by dividing the Average Monthly Compensation by 30.5 and multiplying that quotient by the total number of days in the Stub Periods and then by .11, as reflected in the following formula:

$$\text{(Average Monthly Compensation}/30.5) \times \text{(Number of Days in Stub Periods)} \times .11$$

C. Defendants’ Comparison of Alleged Pension Contributions to Actual Contributions

For each Longer Term Leave, the Alleged Pension Contribution calculated in accordance with Section I.A shall be added to the Alleged Pension Contribution, if any, calculated in accordance with Section I.B to determine the Pilot’s total Alleged Pension Contribution for that Longer Term Leave. That total Alleged Pension Contribution shall then be compared to the actual B Fund contribution credited to the Pilot in connection with that Longer Term Leave to

determine the Pilot's Alleged Loss for that Longer Term Leave (this figure is identified in the field named "B Plan Contribution Associated with USERRA Pay Credit on Month").

D. Plaintiff's Alleged Pension Contributions for Complete Calendar Months

For EACH complete calendar month within a Longer Term Leave, the Pilot's Alleged Pension Contribution shall be calculated according to the following formula:

(Avg. Monthly Hours During Prior 12 Month Period) x (Contractual Hourly Rate During the Month of Leave) x (11%)

a. "Avg. Monthly Hours During Prior 12 Month Period" shall be determined by identifying the number of hours for which the Pilot was compensated plus the number of hours the Pilot took unpaid military leave during each of the 12 full months that preceded the longer period of military leave, and calculating the average of the figures among the 12 months.

i. **Number of hours for which the Pilot was compensated** shall be identified in the following manner: (1) if the spreadsheet reports the number of hours worked in the month, that figure shall be used; (2) if the spreadsheet does not report the number of hours worked in the month, the total compensation shall be divided by the contractual hourly rate that was in place during that month to determine the number of hours the Pilot worked. (See below for a description of what contractual hourly rate to apply when the spreadsheet does not provide one for that particular month).

ii. **Number of hours of unpaid military leave** shall be identified in the following manner: (1) excluding unpaid military leave that is coded as "MR" that was always paid, divide the number of days of short term military leave by 30.5, and then multiply the resulting fraction by 73 hours for Pilots who were reserve Pilots at the end of military leave (i.e., the reserve guarantee), or by 78 hours for Pilots who were line holders at the end of the military leave. (78 hours is the number of hours that line holders were ordinarily scheduled to work during the class period).

iii. **Imposing a Line Guarantee.** Whenever the sum of the number of hours a Pilot was compensated for plus the number of hours of unpaid military leave in a particular month is less than the relevant guarantee of monthly paid hours that applied when the Pilot ended his or her period of military leave (based on the rank of line holder or reserve Pilot), then the relevant guarantee of monthly paid hours that applied when the Pilot ended his or her period of military leave (based on the rank of line holder or reserve Pilot) shall serve as a floor on the number of hours that will be identified for the particular month and, in turn, in calculating the "Avg. Monthly Hours During Prior 12 Month Period." For reserve Pilots, the monthly "reserve guarantee" was 73 hours during the class period, and

for line holders, the monthly “line guarantee” was 64 hours during the class period.¹

iv. **When 12 Months Are Not Available Directly Prior to a Period of Longer Term Leave.** If the spreadsheet does not provide enough information to identify the number of hours the Pilot worked during 12 consecutive months prior to a Longer Term Leave, the calculation will be made by using months earlier in time until information for 12 months is available.

b. **Contractual Hourly Rate During the Month of Leave** shall be determined by the contractual hourly pay rate for the Pilot during the month of Longer Term Leave. This figure shall be identified (1) by the contractual pay rate stated in the Individual Pilot Spreadsheet, or (2) if the spreadsheet does not identify a contractual pay rate, by the hourly pay Rate Tables provided in ALLMAN00057, based on the Pilot’s seniority, seat (Captain or First Officer), and the type of equipment listed in the spreadsheet for that month.

i. In the Individual Pilot Spreadsheets, Defendants have represented that the Pilot’s seniority for each month is identified by the Field “Jobcode.”

(1) Defendants’ represent that the Jobcodes for Pilots are as follows:

(a) For Pilots whose seniority is identified by a Jobcode of 7001 through 7012, the relevant seniority is reflected in the last two digits; for example, a Jobcode of 7012 means that the pilot’s seniority is 12, while a Jobcode of 7001 means a seniority of 01.

(b) Pilots with a Jobcode of 7201 were Flight Crewman Trainees and received pay rates comparable to pilots with a 7001 Jobcode.

(c) Pilots with Jobcodes of 8006, 8029, and 8032 were management pilots and salaried (“Management Pilots”).

(d) Pilots with Jobcodes of 2499, 7094, 7820, and 7821 were employed by Eagle (“Eagle Pilots”), not American, are not participants in the Plan and their service for Eagle are not credited to the Plan.

(e) Data restrictions limit the availability of information for 6904, 6908, 2002, 2497, and 6903 Jobcodes.

ii. Based on the above representations and the data provided by Defendants, the Parties have agreed to make the following calculations:

¹ Defendants’ position is that the number of hours attributed to a Pilot for purposes of determining “Avg. Monthly Hours During Prior 12 Month Period” should be limited according to the maximum number of flight hours permitted under applicable Federal Aviation Administration rules and regulations and may calculate the effect of such a limitation for purposes of negotiations.

(a) Contractual pay rates for Pilots with a Jobcode of 7201 will be determined by applying a Jobcode of 7001.

(b) Alleged Losses for Management Pilots will be based on the formula set forth in Section I.A.

(c) Contractual pay rates for Pilots will exclude periods during which they were Eagle Pilots as they were not pilots for American.

(d) In light of data restrictions identified by Defendants, contractual pay rates for Pilots for any period during which their Individual Pilot Spreadsheets reflect a Jobcode of 6904, 6908, 2002, 2497, or 6903 will be determined by applying whichever 7001-7012 Jobcode is reported nearest in time in the future for that particular Pilot.

iii. The Pilot's seat is identified in the field "Seat", and the Pilot's Equipment is identified in the field "Equipment." Equipment is reported as the aircraft model and a subfleet variant (e.g., 727-200B). If the subfleet variant information for the Equipment is not reported on the Individual Pilot Spreadsheet, the contractual pay rate shall be determined by taking the average contractual rate for all the subfleet variants for the particular aircraft (e.g., 727-200B, 727-223, 727-100).

iv. Subject to the above, when the spreadsheet does not report the Pilot's seniority, seat, or equipment, the contractual pay rate shall be determined by finding the next contractual hourly pay rate that is reported in the spreadsheet in the future (not the past), and if there is no such contractual pay rate reported in the future, the figure shall be determined by applying the hourly pay rate for the next month in the future where the seniority of 7001-7012, seat, and equipment are reported.

E. Plaintiff's Alleged Pension Contributions for Stub Periods

For Stub Periods within a Longer Term Leave, the Pilot's Alleged Pension Contribution shall be calculated by applying the same formula described in Section D but adjusting it based on the number of days the Pilot was engaged in the Longer Term Leave. Thus, the calculation should be:

$(\text{Avg. Monthly Hours During Prior 12 Month Period}) \times (\text{Contractual Hourly Rate During the Month of Leave}) \times (11\%) \times ([\text{Number of Days in Stub Period}] / 30.5)$

F. Plaintiff's Comparison of Alleged Pension Contributions to Actual Contributions

For each month of a Longer Term Leave, the Pilot's Alleged Loss for that month of Longer Term Leave shall be calculated by subtracting the actual B Fund contribution credited to the Pilot in connection with that Longer Term Leave to determine the Pilot's Alleged Loss for that month of Longer Term Leave (the Actual B fund contribution is identified in the field named "B Plan Contribution Associated with USERRA Pay Credit on Month") from the Alleged Pension Contribution calculated in accordance with Section I.D or I.E. Under Plaintiff's

methodology, if the actual B Fund contribution for a single month of Longer Term Leave is larger than the Alleged Pension Contribution calculated in accordance with Section I.D or I.E for that month, the Pilot will have a loss of \$0 for the purpose of that month of the Longer Term Leave. (Defendant's position is that the negative value (i.e., gain) associated with any such month shall be used as the Pilot's loss for that month, and Defendants reserve the right to determine Alleged Losses in a manner consistent with the position.) Finally, the alleged losses associated with each month of a Longer Term Leave will be added together to determine the Pilot's alleged overall loss associated with the total period of Longer Term Leave.

II. Pilots on Military Leave Not Encompassing a Full Calendar Month ("Shorter Term Leave")

A. For periods of military leave that were greater than four days (i.e., coded as "MR") but did not encompass any full calendar month, a Pilot's Alleged Pension Contribution will be calculated by dividing the Average Hours of All Pilots by 30.5 and then multiplying the quotient by the number of days of Shorter Term Leave, then by the Contractual Hourly Rate, and then by .11, as reflected in the following formula:

$$\text{(Average Hours of All Pilots/30.5) x (Number of Days within Shorter Term Leave) x (Contractual Hourly Rate) x .11}$$

The "Average Hours of All Pilots" shall be the following:

(1) for reserve Pilots, the average number of compensated hours for all months worked by reserve Pilots in 2011, as reflected in the Individual Pilot Spreadsheets of reserve pilots (for months where less than 73 hours were reported for a reserve Pilot, 73 hours will be applied);²

(2) for line holder Pilots, the average number of compensated hours for all months worked by line holder Pilots in 2011, as reflected in the Individual Pilot Spreadsheets of line holder pilots (for months where less than 64 hours were reported for a line holder Pilot, 64 hours will be applied).

American will calculate such Average Hours for All Pilots and provide Plaintiff's counsel a spreadsheet setting forth the Pilot hours used for such calculation.

The "Contractual Hourly Rate" shall be the contractual hourly pay rate for each Pilot, based on his or her rank (Reserve / Line Holder), Equipment and Seat, at the time that the Pilot took the shorter period of military leave. If the contractual hourly pay rate for the Pilot is not reported for the month that he took shorter term military leave, the contractual hourly pay rate shall be determined based on the procedure set forth in Section I.D.b. If the Pilot's rank as Reserve or Line Holder is unknown for a particular month, the rank for

² Defendants' position is that the number of compensated hours attributed to individual Pilots for purposes of determining the "Average Hours of All Pilots" with respect to reserve Pilots and line holder Pilots should be limited according to the maximum number of flight hours permitted under applicable Federal Aviation Administration rules and regulations and may calculate the effect of such a limitation for purposes of negotiations.

the nearest subsequent month with available data will be used to calculate the contractual hourly pay rate.

B. The Alleged Loss for each Shorter Term Leave shall be calculated by subtracting the actual B Fund contribution credited to the Pilot for that Shorter Term Leave from the Alleged Pension Contribution for that Shorter Term Leave. As set forth in Section III, the Parties disagree about whether Short Term Leave calculations can be aggregated.

C. No calculation shall be performed for periods of military leave that were coded "MR."

D. Periods of Shorter Term Leave are reflected in the MX and MN codes which are reflected in columns Z and AB in the Individual Pilot Spreadsheets.

III. Aggregate Alleged Losses

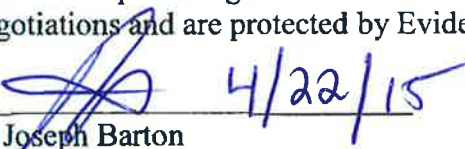
A. For each Pilot, the sum of all Alleged Losses for all Longer Term Leaves and all Shorter Term Leaves shall be the Pilot's Total Alleged Loss.

B. In the event that the Pilot's Alleged Loss for a Longer Term Leave or a Shorter Term Leave, as calculated above, is negative, Plaintiff's position is that the alleged loss for such period of Longer Term or Shorter Term Leave should be treated as \$0 for the purpose of calculating a Pilot's Total Alleged Loss. Defendants' position is that the negative value (i.e., gain) for the Pilot's Alleged Loss associated with such longer or shorter term leave shall be used as the Alleged Loss for that leave period for the purpose of calculating that Pilot's Total Alleged Loss. Plaintiff and Defendants reserve the right to negotiate on the basis of these respective positions.

c. The Pilot's Total Alleged Loss excludes any interest that may be applied. The parties reserve the right to negotiate the appropriateness and the appropriate rate or rates of interest. For the purpose of applying any interest, it will be assumed that the contribution to the B Fund was made 60 days after the pilot returned to work after a relevant period of military leave, as American Airlines generally made contributions to the B Fund during the pay period following the month that followed the pilot's return to work following military leave.

IV. Confidentiality

The parties agree that these methodologies shall be used for the purpose of settlement negotiations and are protected by Evidence Code § 408 in the event that there is no settlement.

/s/  4/22/15
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