

Mr. DEFAZIO. Because a lot of the emphasis in this and materials provided, particularly the flow chart for how one would file a complaint and where it would go, it really seems to me that we sent out the wrong message here. I am just trying to get at whether this is totally inadvertent or whether we have political pressure applied here, as everywhere else in the Bush Administration where they are saying we don't regulate, markets will regulate. God, no one would fly an airplane that was unsafe, because that would be bad for business when it crashes. Markets can regulate themselves, just like Wall Street just did.

I am feeling like we are coming in sort of a situation here that is similar. Somehow this thing became perverted at the application level, at least in one region, and I fear in many more. And we are hearing from the IG he thinks the same thing.

Mr. SABATINI. Well, sir, I believe that it is inadvertent.

Mr. DEFAZIO. You believe it is inadvertent. I am glad to hear that, but I still will have questions.

Mr. Chairman, I am over my time. I will have more questions in another round.

Mr. COSTELLO. Ms. Johnson?

Ms. JOHNSON. Thank you, Mr. Chairman.

I would like to pose this question to whomever, I guess the chief safety person. At what point was Southwest Airlines notified of the discrepancies in safety?

Mr. SABATINI. They are the ones who discovered it.

Ms. JOHNSON. But I hear you talking about a \$10 million fine. What is your justification?

Mr. SABATINI. Well, prior to their time where they disclosed a possible noncompliance with the airworthiness directive, they had flown those airplanes for an extended period of time on thousands and thousands of flights.

Ms. JOHNSON. With no paper trail of you telling them that that is not safe enough?

Mr. SABATINI. Well, it is the responsibility of the air carrier for them to comply with the rules. The FAA—

Ms. JOHNSON. I understand that, but you have inspectors to notify them when they are not in compliance, don't you?

Mr. SABATINI. Well, when we discover noncompliance we do that.

Ms. JOHNSON. But you had to wait for them to tell you about the problems they were having?

Mr. SABATINI. Well, I would characterize it as we were informed, and when we were the people responsible in the FAA for taking swift and summary action and putting those aircraft on the ground failed to do that. During that period of time between notifying the FAA until the time that they did get those airplanes into compliance, they operated roughly 1,400 flights. The penalty is based on a calculation that is a formula that is in our Compliance and Enforcement Handbook. It is not an arbitrary or capricious figure. It is set in guidance.

Ms. JOHNSON. Okay. I am still having difficulty understanding that they are the ones who notified you. Where was your responsibility?

Mr. SABATINI. Our responsibility—and it should have been discharged by the supervisory principal maintenance inspector was to

say you cannot continue to operate those airplanes in noncompliance.

Ms. JOHNSON. And did that happen?

Mr. SABATINI. No, it did not, ma'am.

Ms. JOHNSON. What happened to that person?

Mr. SABATINI. Well, that person has now been removed from that position—is still employed by the FAA. The investigation continues—and has been removed from any safety inspector duties.

Ms. JOHNSON. No fine?

Mr. SABATINI. Well, we are continuing the investigation, and I can assure you, Ms. Johnson, that I will take the full measure of the law and apply it.

Ms. JOHNSON. Okay. Thank you very much.

Mr. COSTELLO. I wonder if the gentlelady will yield?

Ms. JOHNSON. I will yield.

Mr. COSTELLO. I thank the gentlelady.

Mr. Sabatini, let me follow up on that question and a question I asked about the disciplinary action that was taken. You said that you removed the employee and assigned him to other responsibilities that are not related to safety; is that correct?

Mr. SABATINI. That is true, sir.

Mr. COSTELLO. I am told that he is now auditing the office at Dallas Fort Worth and he is participating or supervising an AFS pre-audit. Is that correct? As we speak, that is exactly what he is doing?

Mr. SABATINI. That should not be what is happening. If I may, I would like to ask Mr. Stuckey to address that.

Mr. STUCKEY. Mr. Costello, when he was removed from the Southwest CMO he was placed in a position where he had no inspector duties, and his duties for the last year have been preparing an office for an external flight standards audit. He is looking at office files. He is reviewing manuals within the office. He is checking compliance within the office of their processes and procedures, but no inspector duties. And he has not done any inspector duties since he was moved.

Mr. COSTELLO. But he is participating in this pre-audit; is that correct?

Mr. STUCKEY. He is helping to rewrite manuals and check files and do administrative work.

Mr. COSTELLO. And under the current rules within the FAA, Mr. Sabatini, how long will it take to go through due process so that the Agency can reach a conclusion as to his future?

Mr. SABATINI. The Office of the Inspector General is going to conclude its investigation, and when that is done we will put that entire package together and we will—

Ms. JOHNSON. Reclaiming my time for one second, is he being paid?

Mr. SABATINI. Yes, ma'am.

Mr. COSTELLO. What do you have to do to get fired there?

Mr. SABATINI. Ma'am, you know we are so lucky to live in these United States. Every single person has rights, no matter what the charge may be, and this County affords that right to whoever that person may be.

Ms. JOHNSON. Yes, but it seems to me that if this person was responsible for allowing the condition to go on without taking a positive step to do anything about it, and that was his responsibility, in any other job there would be some kind of disciplinary action. If it was somebody in my office, they would be fired. So that is my point. I don't understand why he is okay and the airline is being fined.

Mr. SABATINI. Well, the results of the investigation may support that he is other than okay.

Mr. SCOVEL. Ms. Johnson, if I may?

Ms. JOHNSON. Yes.

Mr. SCOVEL. Let me shed a little bit of light. Mr. Sabatini has referred to the OIG's report, which will help FAA make up its mind in this particular case regarding the PMI. Three weeks ago FAA contacted my office and indicated that they were contemplating a personnel action against the PMI, which consisted of a reduction of two pay grades and a reassignment. I spoke with Mr. Sabatini on the telephone and advised him, of course, that whatever personnel actions would ultimately be taken were within FAA's purview. They are not the IG's. We are not judge, jury, and executioner.

Ms. JOHNSON. Sure.

Mr. SCOVEL. But before the Agency took an action that some might view as premature and overly lenient, that it would certainly be helpful to the Agency to have all the facts.

It is my understanding, based on that, that FAA has, indeed, held up. At that time we were working on information concerning the PMI's approval of voluntary self-disclosure submitted by Southwest in other instances than the one we are talking about here today. That would certainly be information perhaps that the Agency would want to consider in this case where dereliction of duty would be the primary charge.

Another concern that I expressed to Mr. Sabatini at the time was that the PMI be taken completely out of the safety decision-making loop. As Mr. Sabatini has reported today, that certainly has happened. We want to commend the Agency for that.

This week we have had further contact with FAA, and my staff has informed FAA that, of course, at any time if they believe they have sufficient evidence to fire him they can do that. Of course, what they want to do was make it stick. I thank them for their confidence in the IG's report. If they believe that that is what will be necessary in order to make the personnel action stick, then we will get it done as soon as we can and turn it over to them so they can take their action.

Ms. JOHNSON. Thank you very much.

Thank you, Mr. Chairman.

Mr. OBERSTAR. I would observe that, while the question the gentlewoman from Texas, our Chair of the Water Resource Subcommittee, may have sounded harsh, it comes from a woman who in the private sector owned and managed six businesses. I think she brings a very different judgment and perspective to bear.

I wanted to return just a moment, Mr. Sabatini, to Mr. Gawadzinski. Can you state unequivocally that Mr. Gawadzinski is not in a position to undertake inspections, to do oversight of carrier maintenance; that he is not engaged in any such action?