

In The Matter Of:
PREMERGER PILOTS OF CONTINENTAL v.
PREMERGER PILOTS OF UNITED

SENIORITY INTEGRATION

Vol. 6

May 11, 2013



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BEFORE THE ARBITRATION BOARD

ARBITRATORS DANA E. EISCHEN, ROGER P. KAPLAN, AND
DENNIS R. NOLAN

- - - - - x
In the matter of the seniority :
integration between :

THE PRE-MERGER PILOTS OF :
CONTINENTAL AIRLINES :

AND :

THE PRE-MERGER PILOTS OF :
UNITED AIRLINES :
- - - - - :
In re: SENIORITY LIST INTEGRATION:
- - - - - x

VOLUME 6

MAY 11, 2013

The hearing in the above-entitled matter
recommenced on the 11th day of May, 2013, at 9:03
a.m., at The Mandarin Oriental Hotel, Gallery Room,
1330 Maryland Avenue, SW, Washington DC 20024.

BEFORE: ARBITRATOR DANA E. EISCHEN, CHAIRMAN
ARBITRATOR ROGER P. KAPLAN
ARBITRATOR DENNIS R. NOLAN

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3 CONTINENTAL AIRLINES,

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11 UNITED AIRLINES:

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3 GREG SHOEMAKER, ESQ. - CAL

4 GRANT MULKEY, ESQ. - CAL

5 CAPTAIN JIM BRUCIA - CAL

6 CAPTAIN TONY MONTALTO - CAL

7 CAPTAIN SCOTT BUTCHER - CAL

8 FIRST OFFICER NEAL SCHWARTZ - CAL

9 CAPTAIN WILLIAM BALES - UAL

10 CAPTAIN STEPHEN GILLEN - UAL

11 FIRST OFFICER DAN MADRUGA - UAL

12 FIRST OFFICER JEFFREY RUARK - UAL

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WITNESSES

MORRIS GARFINKLE:

Direct examination by Mr. Pollak 1073

Cross-examination by Mr. Katz 1196

Redirect by Mr. Pollak 1221

E X H I B I T S

EXHIBIT

MARKED AND ADMITTED

UAL Pilots 1 through 47 1072

CAL X-1

CAL X-2

CAL X-3

CAL X-4

CAL X-5

CAL X-6

CAL X-7

CAL X-8

1 P R O C E E D I N G S

2 ARBITRATOR EISCHEN: Good morning to you.

3 MR. FREUND: Good morning.

4 MR. KATZ: Good morning.

5 MR. POLLAK: Good morning.

6 ARBITRATOR EISCHEN: The panel is pleased
7 to be back with you, and we are ready to continue
8 with our proceeding.

9 MR. FREUND: Great. Just to put a, as you
10 refer to it, a tag in the record, just to remind
11 everybody, we're beginning the United pilots' direct
12 case.

13 As I told you at the end of the
14 Continental pilots' case, we will be putting on a
15 direct case. We will not be engaging during this
16 five-day period in any rebuttal with respect to the
17 list that was proffered by the Continental pilots.
18 We'll be saving that for the rebuttal time in June.

19 We will, of course, of necessity, in the
20 context of our affirmative case, be engaged in some
21 the other substantive points that the Continental
22 pilots made.

1 And as you see, I'm sitting second chair
2 today. Roger is going to put on our first and
3 second witness.

4 ARBITRATOR EISCHEN: Thank you very much.

5 MR. KATZ: And let me just note one thing
6 for the record.

7 Yesterday afternoon we received the United
8 Merger Committee's response to our earlier memo that
9 was submitted during the last round of hearings
10 regarding the certified Continental pilots'
11 seniority list, and we haven't really had a full
12 opportunity to review it and analyze it.

13 We will want to present some sort of
14 response of our own to their memo, but it's too soon
15 yet to say exactly what or when we'll be able to do
16 that.

17 I would like to note on the record that we
18 received the United Merger Committees' memo.

19 ARBITRATOR EISCHEN: So both memos -- we
20 have the April 17 memo submitted by the CAL
21 Committee and the UAL response memo or corollary
22 memo of yesterday.

1 MR. FREUND: Correct. And I think what we
2 had talked about at the last set of hearing days was
3 that we would be putting in a memo, as we did.

4 We would be putting some evidence on with
5 respect to issues raised in that memo. And that we
6 were going to leave for a final briefing after the
7 case any additional briefing on the subject.

8 If Dan feels the need to do something in
9 advance of that, we can talk about that, but I
10 thought that's where we had left it.

11 ARBITRATOR EISCHEN: Well, we do have a
12 blocked for each of you rebuttal time as well.

13 MR. KATZ: That's correct.

14 And we would just -- at this point, just
15 like to note that the document has been received.
16 And we're going to reserve on exactly how and when
17 we're going to respond so it.

18 ARBITRATOR EISCHEN: Very well. Thank
19 you, gentlemen.

20 We are ready to go.

21 MR. POLLAK: All right. The United pilots
22 would like to call Morris Garfinkle as a witness.

1 ARBITRATOR EISCHEN: Thank you,
2 Mr. Pollak.

3 Mr. Reporter, if you would kindly swear
4 the witness.
5 Thereupon,

6 MORRIS R. GARFINKLE

7 Called for examination by counsel for the
8 United pilots, having been duly sworn, was examined
9 and testified as follows:

10 DIRECT EXAMINATION

11 BY MR. POLLAK:

12 Q All right. As a big believer in
13 informality, we will address each other by our first
14 names.

15 And this is Mo Garfinkle.

16 Good morning, Mo, how are you?

17 A Good morning, Roger.

18 Q Welcome to the case.

19 Would you begin today by talking about
20 some of your qualifications before I proffer you as
21 an expert witness on airline economics and airline
22 mergers and acquisitions?

1 A Sure.

2 I graduated from the Wharton School in
3 1970, and Georgetown Law School in 1973.

4 I practiced law for approximately 15 or 16
5 years in the aviation area representing Southwest,
6 foreign airlines like Japan Airlines, Lufthansa,
7 Swiss Air.

8 In the mid 1980s, together with two other
9 people, I bought an airline, a U.S. airline, and we
10 flew as Air America, not to be confused with the
11 Vietnam Air America, but we flew L-1011s for a
12 couple of years.

13 I was still practicing law. We decided
14 that -- I decided the profit margins in the law
15 business were bigger than the profit margins in the
16 airline business, so we sold the airline.

17 Q That's a recurring theme?

18 A It has been a recurring theme.

19 I'm not sure it's going to be true in the
20 future given how law firms are declining and
21 airlines are picking up.

22 But, anyway, later on, not necessarily

1 chronologically with what else I'm going to say, is
2 I was one of the founders of the first incarnation
3 of Spirit Airlines, you know, which is an ultra
4 low-cost carrier today.

5 And a lot of my advice to airlines was
6 strategic positioning, how to compete.

7 Q Mo, let me interrupt for a minute.

8 Did you begin doing consulting work for
9 the airlines in the late 1980s?

10 A And then, as I did that consulting work in
11 how to compete, for a lot of my clients, it was an
12 awkward position for lawyers to be giving business
13 advice.

14 So when I began to represent Marvin Davis
15 and Kirk Kerkorian in the late '80s when we did the
16 LBOs in the airline industry, we formed a consulting
17 firm. And from the late '80s up through the current
18 time, I have been a consultant.

19 During that period, I did a lot of airline
20 restructuring, in and out of bankruptcy. For
21 Lufthansa, reconned the Frankfurt hub, and
22 developing the Munich hub together with a team.

1 I did creation of the hubs for each of the
2 big three Chinese airlines in Shanghai, Beijing, and
3 Guangzhou with my team.

4 I have done several bankruptcies.
5 Hawaiian, for the owners.

6 United bankruptcy, I started of
7 representing the Pension Benefit Guarantee
8 Corporation, and then worked as the industry advisor
9 for the creditor's committee.

10 I just finished my assignment as
11 representing the PBGC in the American bankruptcy,
12 just to name a few.

13 I did do -- when I was working for Marvin
14 Davis and Lufthansa, I had the opportunity -- I'll
15 call it that, to spend two and a half summers in
16 Houston -- as we looked at the acquisition of
17 Continental in the late '80s and early '90s, first
18 just for Marvin Davis and then for Marvin Davis and
19 Lufthansa.

20 So we -- I spent two summers, two and a
21 half summers there going through due diligence. And
22 I was there during the reign of Bob Ferguson and

1 Hollis Harris and then Gordon Bethune as he came
2 into Continental.

3 Q And have you done work on the creation and
4 management of international alliances as well as
5 domestic code sharing relationships?

6 A Yeah. When I was representing Lufthansa,
7 in making a decision as to which U.S. partner to
8 align with, which was in the mid to late 1990s, once
9 the decision was made to select United as the
10 partner, shortly after that, there was a small team
11 of us that developed the Star Alliance for them.

12 And subsequently, I have done a lot of
13 work -- I made -- I worked with Delta to decide to
14 switch from the smaller alliance it was in into
15 SkyTeam for all the Chinese airlines.

16 We made the evaluation as to which
17 alliance to join.

18 Q Did you do some advising work for
19 Continental, at one point, on a code sharing
20 relationship?

21 A I did. I did.

22 In I believe it was 1996, '97,

1 Continental, Northwest, and Delta agreed to apply to
2 the Department of Transportation for authority to do
3 a tripartite domestic code share ten-year agreement.

4 And I worked on behalf of Continental in
5 analyzing that, developing all the justifications
6 and sets of exhibits for the Department of
7 Transportation proceeding.

8 Q Have you done any other work for United
9 Airlines?

10 A I have.

11 I worked for United in -- I may have my
12 years off by a year or two, in 19 -- 1998, '99, when
13 they were working on the merger with -- and they had
14 announced the merger with US Airways, we did
15 economic analysis in that case for United.

16 And then while we were -- I was in the
17 bankruptcy, and I switched -- of United, and I
18 switched my role from representing the PBGC, the
19 Pension Benefit Guarantee Corporation, to the
20 Creditor's Committee.

21 My role in the Creditor's Committee was
22 really to be the Darth Vader in dealing with United

1 to analyze the business plans, to be the direct
2 contact with the management of United, to tell them
3 what the Creditor's Committee thought of their
4 plans, and to be the blunt communicator to United
5 when things weren't going the way the Creditor's
6 Committee wanted them to go.

7 As a result of that, I had extensive
8 conversations with the management throughout that
9 process, that very long bankruptcy. And including
10 Tilton, Glenn Tilton.

11 And subsequent to the bankruptcy, Tilton
12 asked me to have lunch. We had lunch, and we
13 developed an ongoing relationship subsequent to the
14 bankruptcy.

15 Q All right. And in the course of all your
16 advising, have you had the occasion to provide
17 expert advice on the full range of economic issues
18 confronted by participants in both the domestic and
19 the international airline industry?

20 A Quite frankly, my expert testimony
21 experience is very limited.

22 I was -- testified in the Pan Am

1 bankruptcy many, many years ago, when I was in
2 charge of selling the international routes of Pan
3 Am.

4 And somewhere in late 2000s, I represented
5 Anthony (phonetic) in New Zealand concerning an
6 issue involving the Auckland airport.

7 Q How about in your work with your client's
8 airlines, airports, the PBGC, and others --

9 A Right.

10 Q -- have you advised all of them on the
11 full range of economic issues that they might
12 confront in operating in the domestic and
13 international airline industry?

14 A Not only the economic issues, but the
15 strategic and competitive issues, how to compete,
16 what mergers to do, what mergers not to do, where to
17 fly, what carriers to align with.

18 So my expertise is limited to commercial
19 and strategic areas. I still don't understand how a
20 plane flies. Maybe some of these guys can tell me,
21 but I probably wouldn't understand it.

22 Q All right. Well, we won't put you in the

1 cockpit.

2 A Thank you.

3 MR. POLLAK: The United pilots would like
4 to proffer Mr. Garfinkle as an expert in airline
5 economics and mergers and acquisitions in the
6 airline industry.

7 MR. KATZ: Can I ask a question or two on
8 voir dire?

9 ARBITRATOR EISCHEN: You may.

10 VOIR DIRE EXAMINATION

11 BY MR. KATZ:

12 Q Good morning, Mr. Garfinkle. I'm Dan
13 Katz, representing Continental's Merger Committee.

14 We haven't met before, have we?

15 A No, sir, we haven't.

16 Q Not that I recall either.

17 In describing your experience, I didn't
18 hear you say that you advised on labor relations
19 matters.

20 Has that been a subject of your consulting
21 with these various airlines?

22 A Only once, and that was I represented Air

1 Jamaica in a representation matter in must have been
2 the late '80s, early '90s.

3 Q You represented the airline in connection
4 with an effort by some of the employees organizing
5 that union; correct?

6 And what was the employee group?

7 A TWU was the labor group.

8 Q But which craft or class of employee?

9 A You know, I'm not quite sure at this
10 point.

11 I was so long ago.

12 Q You don't remember?

13 A I do not remember.

14 Q And what was the outcome of that process?
15 Do you recall?

16 A The outcome of that process was we
17 negotiated a contract with the TWU, or we -- Air
18 Jamaica negotiated a contract.

19 Q Have you ever advised an airline or a
20 labor group, for that matter, about seniority
21 integration matters?

22 A No, I haven't.

1 Q Have you ever advised an airline about
2 what merger to do or not to do based on labor
3 relations issues?

4 A I think that labor relations issues is
5 part of the equation as to whether to do an
6 acquisition or not.

7 So it would be a factor in deciding
8 whether this merger would be easier or this merger
9 would be more difficult.

10 But if you're asking me whether I have
11 gotten into the details of the labor contracts and
12 labor integration in the context of a merger, the
13 answer would be no.

14 MR. KATZ: I think that we would agree to
15 the proffer of Mr. Garfinkle's ability to give
16 opinion testimony regarding airline economic issues.

17 MR. POLLAK: And he's also proffered as an
18 expert on mergers and acquisitions in the airline
19 industry.

20 MR. KATZ: Well, so long as it excludes
21 the labor relations aspect of it, I think he can
22 testify about -- give opinion testimony about the

1 airline economic aspects of mergers and
2 acquisitions.

3 MR. POLLAK: Well, he won't be giving an
4 opinion about the particularized labor issues
5 related to mergers and acquisitions.

6 But he will be discussing mergers and
7 acquisitions from a business perspective.

8 MR. KATZ: Okay. Fine. As long as it's
9 from the economic business standpoint, not labor
10 relations, or seniority integrations, or career
11 expectations of the pilots.

12 MR. POLLAK: That's fine.

13 MR. KATZ: Thank you.

14 BY MR. POLLAK:

15 Q All right. Mo, I think to begin with, you
16 had three kind of high level points which you're
17 going to discuss in the context of your exhibits
18 this morning.

19 Would you like to present those opinions
20 here at the outset before we get into the details?

21 A Sure.

22 The first is, putting these two airlines

1 in a historical context.

2 They were never comparable airlines in
3 terms of their geographic reach or their footprint
4 or their brand by any traditional metric, whether
5 you take that period in 2000 or 2010 or any time in
6 between.

7 I'm not going to get into details now, but
8 keeping it a headline at this point, if that's okay.

9 The second is that there's been lots of
10 talk and publicity about Mr. Tilton and United and
11 how they were walking around with a sandwich board
12 to sell the airline because they were desperate or
13 because Mr. Tilton wanted a big check or something
14 like that.

15 I met Tilton on the second day on the job.
16 I was bringing in Air China executives to meet with
17 United.

18 And I will say from the first minute I met
19 Mr. Tilton -- the first day is probably more
20 accurate -- up until now, he has been on, I think, a
21 single-minded crusade of an industry restructuring
22 and consolidation, and the need for consolidation,

1 not just for United, but for the industry.

2 He comes from a very different industry,
3 where actually there is a structure. And there are
4 people -- companies do make money.

5 And his first impression of this industry
6 was it's too fragmented, too much capacity. We need
7 to have a structural change in the industry so that
8 companies can earn a return on invested capital.

9 And that single-minded focus was his
10 overarching objective from day one on the job until
11 after the merger of Continental and United, I guess,
12 it was announced in May of 2010.

13 And that overarching objective drove a lot
14 of the decision making process that you saw at
15 United both in the bankruptcy and after the
16 bankruptcy.

17 He was doing things to facilitate a
18 merger, to make the merger easier in an industry
19 where mergers --

20 (Sneeze - Interruption.)

21 ARBITRATOR EISCHEN: Bless you.

22 MR. POLLAK: Bless.

1 THE WITNESS: Gesundheit.

2 Where mergers have traditionally been
3 difficult, and so he made a lot of decisions to
4 facilitate it. And he didn't do a lot of things to
5 facilitate it.

6 I think the third thing is that the
7 industry -- and this is very important. We have all
8 heard throughout our times at, you know, what a
9 terrible industry this is. Private equities call it
10 toxic at times.

11 Starting with the Delta/Northwest merger
12 in 2008, this is -- that is the seminal moment of a
13 structural industry change that was the catalyst for
14 other mergers and for the industry change that I
15 talked earlier about that Mr. Tilton was discussing
16 for decades people had said this industry needed.

17 It's a very different industry today than
18 it was before that merger. And we went from a
19 fragmented industry to a consolidated industry.

20 Standalone strategies, which some people
21 preferred before the Delta/Northwest merger, were
22 really not sustainable in an industry where the

1 landscape had changed.

2 And I guess -- I guess I have done three,
3 but I'll take a couple more, if it's okay, Roger.

4 One, is that it's important that the
5 relative perspectives of both United and Continental
6 on mergers really changed from the really initial
7 discussion in 2006 to 2010, you know, by the time of
8 the 2010 merger, both Continental and United wanted
9 a merger.

10 But, actually, when you looked at the
11 industry, Continental needed a merger at that point
12 much more than United did.

13 United was stronger.

14 It came out of the financial crisis of
15 2008 and 2009 stronger, and it had real M&A options
16 that Continental didn't have.

17 I think I'll stop there.

18 BY MR. POLLAK:

19 Q All right. Do you have some exhibits to
20 present to the Panel?

21 A Yes, I do.

22 MR. POLLAK: All right. Does everyone

1 have their books?

2 (Thereupon, United Pilots Exhibit Nos. 1
3 through 47 were marked for identification and
4 received into evidence.)

5 BY MR. POLLAK:

6 Q All right. MO, at Exhibits 1 through 8, I
7 think you have addressed the first prong of your
8 opinion regarding the historic comparability of the
9 airlines.

10 Would you like to start at Exhibit 1?

11 A Sure. If you look at -- and I'm not going
12 to spend, unless somebody wants me to, a lot of time
13 on all these exhibits. I'm just going to give
14 highlights.

15 But if you look at Exhibit 1, by what I
16 would call the traditional measurement metrics,
17 whether it's revenues, departures, ASMs, or points
18 served, yeah, United and Continental were in
19 different classes.

20 United was in that big three, American,
21 United, and Delta. Continental was in the next tier
22 down of airlines.

1 That was structural. That was historical.

2 And when you take, you know, revenues,
3 which is on page 1 of Exhibit 1, of where United's
4 revenues were double, Continental's or departures
5 were -- they were almost double.

6 Or if you look at page 2, ASMs more than
7 double, and domestic points, 50 percent more, also
8 on page 2.

9 They were just airlines that were just
10 different classes based on a history and structure.

11 Q And, Mo, what's the time period on these
12 exhibits?

13 A 2000 is the time period.

14 And I picked 2000. I could have picked
15 any year. It wouldn't have made much difference
16 what year I picked.

17 But I picked the year before the decade of
18 turbulence in the industry, before 9-11.

19 This was the -- as we started in 2000, we
20 come through a relatively benign decade in the 1990s
21 compared to what was lying ahead for the industry.

22 Q It's all relative in the airline industry.

1 A That's right.

2 Q That's why there's turbulence.

3 A Right.

4 Q Turning to Exhibit 2.

5 A Exhibit 2, it just talks about the size
6 and scope of the network, the hubs of Continental
7 and United in 2000.

8 And if you look at page 1, which is
9 Continental. And then you flip to page 2, which is
10 United, you can see very different geographic
11 structural networks.

12 You know, Continental had two hubs. Once
13 you got west of Houston, there was nothing, nothing
14 in the upper Midwest.

15 Whereas, United, even in 2000, had a nice
16 mix, geographic diversity of hubs spread across the
17 United States. An East Coast presence, Midwest
18 presence, and West Coast presence.

19 And I'm not saying that this was a perfect
20 network, but it was a much more comprehensive and
21 complete network than Continental's was.

22 Q And in Exhibit 3, is this reflected in

1 their relative dominance in their routes and
2 passengers?

3 A Yeah. I would call this their presence,
4 their domestic market presence.

5 And I'll explain the background of this,
6 but if I'm an airline CEO and most of my M&A work
7 and strategic work has been at the chief executive
8 level in the U.S. airline industry and elsewhere,
9 but in the U.S., this is one of the most important
10 things they would looked at.

11 What does my domestic footprint look like?

12 And how do I compare in the U.S. market to
13 my -- to other U.S. airlines?

14 And that's important because, as we have
15 entered this phase of global airlines, you know, it
16 is important to have an international presence.

17 But you can't have a international
18 presence without a strong domestic network. That is
19 the backbone of any network. It's the backbone of
20 being able to operate successfully internationally.

21 And you just can't be a global airline in
22 the U.S. without a strong diverse domestic system.

1 Q Mo, would you -- on page 1 of Exhibit 3,
2 explain using the table on the left side of the
3 page, how this is set up because you use this
4 comparator several times throughout your testimony.

5 A Sure. What we have done here -- and I
6 have done this many times for clients -- is we have
7 taken the domestic O&D market.

8 So first of all, this is just domestic,
9 and it's domestic origin and destination traffic.

10 And we have -- for each carrier we said by
11 passengers, which is page 1, and by revenue, which
12 is page 2, where the carriers in each of those 100
13 domestic markets, whether they're one, two, three,
14 four, how they rank versus the competitors.

15 Q So in passengers, a ranking for -- a
16 number one ranking would be, say, Chicago, if you
17 had the most passengers in and out of Chicago?

18 A Right. Or for Southwest, Delta, or
19 something like that. That's right.

20 And, again, Newark for Continental.

21 And so what we have done here is for all
22 the carriers in the top 100 markets, we have taken

1 the markets where they're one, where they're two,
2 and where they're three. And on the right-hand
3 column where it says "total," we have added them up.

4 And one -- the chart on the left of page 1
5 of Exhibit 3 is the top 25 markets, and on the
6 right-hand side is the top 100 markets.

7 And I have done that because some people
8 in the industry prefer to be very big in a few
9 places, and some people prefer to have a much more
10 diverse comprehensive network.

11 So whether you take the top 25 or you take
12 the top 100, it really makes little difference.

13 What you can see from this then, in 2000,
14 United had a greater domestic footprint presence in
15 one, two, and three markets than Continental, you
16 know, by a factor of seven or by a factor of four.

17 It's -- it just shows relative -- I'm not
18 trying to say whether it's seven times or four
19 times, but United, clearly in a relative position to
20 Continental, was in a much stronger domestic
21 presence.

22 And I said that's important for developing

1 a comprehensive global network. Same is true when
2 you look at page 2 for revenue.

3 United, you know, is -- not only the gap
4 widens from passengers, but it widens in some cases
5 significantly.

6 And as I said, some airlines prefer to
7 look at revenues; some prefer to look at passengers.
8 I think you need to look at both, quite frankly.

9 But in either case, United was clearly in
10 a league separate from Continental in terms of
11 domestic presence.

12 Q All right. What do you show at Exhibit 4?

13 A Exhibit 4 is we have taken the world by
14 region.

15 And you can see the regions that are
16 identified on page 1 and tried to determine the
17 relative presence of Continental and United in each
18 of those regions by frequency, seats, routes, to
19 show their presence as part of a global network.

20 And when you look in 2000, you know,
21 United was strong in many more regions of the world
22 than Continental was.

1 The two Continental regions in Latin
2 America, which was not surprising, and Micronesia,
3 which I think is a separate animal unto itself.

4 It's not really -- it's not really
5 connected. It's not connected to the Continental
6 network in any way. It's an O&D market more than it
7 is a connecting market for the network.

8 It's mostly flown with narrow bodied
9 airplanes. It's, in my view -- and, as I said, I
10 have spent two and a half summers looking at this
11 and other opportunities -- it's not a core asset to
12 the network. It's not connected to the network in
13 an industry that is a network industry and where you
14 really need to be connected to the network.

15 Q And you return to that at the end of the
16 slides; yes?

17 A Yes.

18 And so I'm happy to run through pages 2
19 through 10. But, you know, I think just a quick
20 look. It's just comparative of United and
21 Continental in every region of the world.

22 And a summary is on page 1.

1 So I don't think it's time efficient,
2 unless you think otherwise, to go through each of
3 these pages of Exhibit 4, other than the headlines
4 on page 1, which is that United was -- had much more
5 presence in many more regions of the world than
6 Continental did in the year 2000.

7 Q All right. Why don't you turn to Exhibit
8 5, then, and describe that?

9 A Yeah. Exhibit 5 tries to look at the
10 international character of both airlines and whether
11 they were operating in the same theaters and they
12 were comparable.

13 And what I did was to break this down by
14 mileage bands.

15 So you have, in Exhibit 5, page 1, you
16 have less than 500 miles; more than 500, but less
17 than 1,000; 1,000 to 2,000; 2,000 to 5,000; and what
18 I call a long, long haul, which is the more than
19 5,000.

20 And you can see, or at least I can see,
21 from page 1 of this chart the very different
22 character of the international operations of

1 Continental and United.

2 Continental is blue. So if you look at
3 frequency share on the left-hand chart on page 1,
4 you see Continental's strength is really in the zero
5 to 1,000 mile range in the international theater,
6 which means really for the most part, Mexico,
7 Central America, Caribbean.

8 Again, 1,000 miles is maybe a two-hour
9 flight. So it's from here to maybe St. Louis or
10 Omaha, or something like that.

11 Whereas, United's strength was in the long
12 haul markets. Particularly, the long, long haul
13 markets. Where, you know, they had 28 percent of
14 their frequencies were in that market compared to 2
15 percent for Continental.

16 You see the same thing in the ASM chart,
17 where in the long, long haul, United -- in the long,
18 long haul, 5,000 would be primarily Asia, India,
19 theaters like that, where United had a much stronger
20 presence.

21 And if you -- what I -- so this is just
22 how each carrier's international operations break

1 down into mileage bands.

2 So it's very obvious from this chart that
3 Continental's strength is leaning toward the short,
4 short haul, less than 1,000 miles. And United's is
5 leaning toward the long, long haul, over 5,000
6 miles.

7 But even when you look, for instance,
8 where on the map on the right side, the 2,000 ASMs,
9 where Continental's ASMs for more than 2,000 miles
10 is 59 percent, this actual numbers, actual ASMs,
11 they flew less -- that represented less ASM flying
12 than Continental -- than United's 36 percent.

13 And you'll see that on the next page, page
14 2 of Exhibit 5, where I took the numbers of not just
15 percentages, but of frequencies.

16 And you can see, for instance, on the
17 right-hand side the more than 2,000, that
18 Continental's 59 percent is 208 million, and
19 United's 36 percent is 227 million.

20 You can see, when you add up the ASMs
21 that, you know, United was flying much longer haul
22 markets than Continental, which was flying, as I

1 said before, primarily in the 1,000 mile and less
2 category.

3 Q And, Mo, is there a correlation between
4 the type of equipment that gets used and the short
5 versus long haul markets served?

6 A Yeah, obviously.

7 You don't use a 777 or a 747 in the less
8 than 1,000, and probably don't use it in the -- in
9 the up to 2,000 mile range.

10 You know, that's clearly in the less than
11 500 and up to -- up to 1,000 miles, you could use
12 narrow bodied airplanes for sure.

13 You use -- Continental used a lot of RJs,
14 regional jets, in those markets. You can't use a
15 regional jet or a narrowbody airplane in 2,000 or,
16 for the most part, in 5,000 mile stage length.

17 So this is really reflective of United's
18 widebodied equipment, whether it's 777 or 747,
19 advantage in the long haul markets.

20 Q All right. Slide No. 6?

21 A 6 is, you know, when we talk about a
22 global carrier, it's not just flights.

1 It's lots of things. It's your presence.

2 In Asia and Europe, in particular, it's
3 your infrastructure, how long you have been there,
4 your established presence.

5 And United, through acquisitions of Pan Am
6 assets, which we'll discuss later, United had, I
7 would say, unique or privileged incumbent positions
8 at both Narita and at London Heathrow.

9 And the Narita position, in 2000, was
10 extremely important because we didn't have
11 technological --

12 (Sneeze interruption.)

13 THE WITNESS: Gesundheit, again.

14 No problem. You probably woke some of the
15 people in the back. I'm probably putting them to
16 sleep.

17 You didn't have mission capable airplanes
18 of both flying to many of these points like
19 Singapore and Hong Kong and Bangkok.

20 And so a Narita presence was particularly
21 important, and United had it. One of the two U.S.
22 airlines, together with Northwest at that point,

1 that had incumbent positions at Narita, which gave
2 them enormous access from the U.S. to Narita, which
3 other airlines either didn't have or had just
4 limited rights.

5 And it gave them the right to fly beyond
6 Narita to all of these places that are pictorially
7 described in the right-hand side of page 1.

8 I want to say the title of the left-hand
9 side says "current routes." That's actually current
10 as of 2000. So this is a 2000 schedule.

11 BY MR. POLLAK:

12 Q All right.

13 A And these Narita rights, while we have now
14 an Open Skies agreement with Japan that allows U.S.
15 carriers to fly anywhere, they remain valuable
16 today.

17 It's still -- these routes are still
18 operated by both now Delta and United. And they
19 remain important pieces of the global presence of
20 these airlines.

21 And if you look at these beyond routes --

22 Q In the picture on the left side of the

1 page 1, Exhibit No. 6?

2 A Page 1 of 2, these routes are flown with
3 wide bodied airplanes.

4 These are not -- these distances are
5 pretty. The traffic is pretty thick. So these are
6 not narrow bodied airplanes, obviously, not regional
7 jets. These are wide bodied airplanes that are
8 flying these routes.

9 If we go to page 2 of Exhibit 6, what I
10 said about having entrenched, incumbent, and
11 valuable position at Narita, the same is true at
12 Heathrow.

13 Heathrow is one of the most restricted
14 airports in the United -- in the world. You want to
15 get a slot, you have to pay a lot of money for it,
16 as Continental has demonstrated.

17 In 2000, United was in Heathrow.

18 Continental couldn't be in Heathrow
19 because the U.S./U.K. bilateral would not permit
20 anyone, other than United and American, to be in
21 Heathrow at that point.

22 And United and American, but clearly

1 United had rich route rights both from the United
2 States to Heathrow and beyond Heathrow, which at
3 various points in time, 2004, carrier -- United
4 exercised to fly to points in Europe and India and
5 places like that.

6 They really -- unlike the routes in
7 Narita, the beyond rights, my professional opinion,
8 from Heathrow were less valuable because these were
9 routes that we could fly with, quite frankly, change
10 of gauge, narrow bodied airplanes, for the most
11 part.

12 And by the time 2000 rolled around, the
13 Star Alliance had been formed, and most of these
14 routes could be flown with your partners in some
15 fashion or another.

16 And if you have a slot at Heathrow, which
17 is a very scarce economic resource, you're going to
18 use that slot to fly long haul.

19 If you're United, you're going to use it
20 to fly from the U.S. to London. You're not going to
21 use it to fly from London to Amsterdam. It's a very
22 poor use of a very, very valuable economic resource.

1 ARBITRATOR EISCHEN: Let me just back you
2 up, if I could, to page 1 of Exhibit 6, on the
3 right-hand side.

4 THE WITNESS: Uh-huh.

5 ARBITRATOR EISCHEN: Who is flying those
6 routes today?

7 THE WITNESS: Well, you -- we have a map
8 later on that shows that.

9 But if you look at Singapore, Taiwan,
10 Bangkok, I'm not sure about Korea, but clearly
11 Singapore, Bangkok, Taiwan are currently still being
12 flown by United.

13 You also have, in addition to that, you
14 have a Singapore, Ho Chi Minh City, which is being
15 flown by United today.

16 So it's -- I believe it's -- it could be
17 Hong Kong. It may be Hong Kong that it's being
18 flown from. But United and Northwest, Delta, are
19 still flying these routes, some of these routes
20 today.

21 ARBITRATOR EISCHEN: I thought I heard you
22 say Delta.

1 THE WITNESS: Delta.

2 ARBITRATOR EISCHEN: Yeah.

3 THE WITNESS: Delta, which is the
4 successor to Northwest's incumbency position.

5 ARBITRATOR EISCHEN: Uh-huh.

6 THE WITNESS: They're both flying these
7 routes today.

8 They both have maintained their -- I call
9 it their Fifth Freedom hub at Narita.

10 ARBITRATOR EISCHEN: Yeah.

11 THE WITNESS: And for United, it's of
12 particular importance because United is a partner
13 with ANA, which is a Japanese airline, of course, in
14 Star Alliance.

15 And so they have the ability at Narita to
16 funnel traffic to each other, ANA taking a lot of
17 the domestic traffic and other points.

18 And so in my view, that Narita position of
19 United has become more valuable, not less valuable
20 because of the Star Alliance/ANA relationship
21 between -- with United.

22 ARBITRATOR EISCHEN: Thank you.

1 BY MR. POLLAK:

2 Q Turning to Exhibit 7, did you have
3 something to share with the Panel about historic
4 acquisition of the two carriers?

5 A Yeah.

6 I think this is very telling to me is
7 that, you know, I talked about 2000 and the lack of
8 comprehensive networks of -- domestic networks of
9 the airlines, Continental and United.

10 Well, as we go back a little bit in time,
11 when, in the '80s, when these carriers were -- when
12 really the Continental that we knew before the
13 merger with United was in formation, the formation
14 with the Continental that existed then was really
15 the result of a combination of domestic
16 acquisitions.

17 And during this period, Continental
18 focused on building up a domestic network to try and
19 get a more complete domestic network compared to
20 what it had when it exited -- when we exited
21 deregulation.

22 So it acquired People Express, which

1 brought Frontier. Continental bought People
2 Express. And then you had the combination of New
3 York Air, and Frontier, and People Express into
4 Continental.

5 During this period, they focused
6 exclusively on domestic acquisitions to build up
7 that important domestic network, while United, which
8 already had that domestic network, was focused on
9 really developing, reaching out, extending its
10 international franchise.

11 So you know, in 1985, it bought the Pan Am
12 Asian franchise and the Japan incumbency status, an
13 extremely important acquisition.

14 In 1990, it bought Pan Am's London
15 Heathrow incumbency status, again, a very important
16 franchise changing, franchise addition move.

17 And in 1992, it bought Pan Am's Latin
18 American routes.

19 So it was focused from being -- building
20 out its global brand, while Continental had to, for
21 good reason, focus on building out its domestic
22 brand.

1 Q All right. And in Exhibit 8, could you
2 talk a bit about the alliances and the United's
3 formation of the Star Alliance and how that factored
4 into creating a global airline?

5 A Sure. Alliances are a relatively new
6 phenomenon in the airline industry.

7 Global alliances are.

8 And they're important because of the
9 ownership laws that we have in this country that
10 really prevent -- and around the world, not just
11 this country, I should say, that prevent a carrier
12 from one country from really operating in another
13 carrier -- another country, or from acquiring a
14 cross-border merger.

15 You can't do it in the aviation sector for
16 a variety of reasons.

17 So by law, carriers are basically limited
18 in what they can offer from their own country and
19 with certain exceptions in the Fifth Freedom markets
20 that we talked about.

21 What alliances first started out to do was
22 really to expand the brand, the product offering of

1 an airline on a computer reservation system. So I
2 would code share -- United would code share with
3 Lufthansa, and it could offer Munich, Stuttgart,
4 Hamburg, Dusseldorf, just picking a few places.

5 And on the computer reservation screen,
6 you would see United flying from Chicago to all of
7 these places when, of course, it didn't really fly
8 there itself. It flew to Frankfurt and connected on
9 a code share basis with Lufthansa.

10 This enabled airlines to put more products
11 on the shelf, is really what it did. And it enabled
12 them to have a much more global presence in markets,
13 and in a much more efficient way.

14 Because, in a capital intensive business,
15 they didn't need to go out and buy a piece of
16 equipment to fly to Hamburg. They just piggy-backed
17 on -- United just piggy-backed on Lufthansa.

18 And this system was really developed by
19 KLM and Northwest several years before, 1997. But
20 the Alliance -- the Star Alliance was created in
21 1997. And it was a way to be a global airline to
22 offer more products without capital risk.

1 And a way, quite frankly, to live within
2 the ownership laws that were around the world, while
3 trying to seek out some efficiency.

4 Q And how did the Star Alliance come to be?
5 Who started it?

6 A It was really United, Lufthansa, and at
7 that point probably we had Air Canada involved as
8 well.

9 And it was done in 19 -- we really
10 negotiated documents in 1996, '97. So it was really
11 '97 when it was legally structurally formed.

12 And I would say that United and Lufthansa
13 and SAS, at that point, the Scandinavian Airline
14 System, took full advantage of what they could do
15 under the Star Alliance in terms of product
16 offering.

17 Continental, in 1997, wasn't in the
18 Alliance. It, in fact, came to the alliance game
19 reasonably late, in 2004, when it joined SkyTeam,
20 the international alliance game.

21 Q What was SkyTeam?

22 A SkyTeam was a -- second of three global

1 airline alliances. It was Delta, KLM, Northwest,
2 and Korean, I believe, at that point.

3 You know, and basically what happened is
4 there were three alliances, and carriers paired off
5 in one alliance or another for the most part.

6 And, you know, Continental joined SkyTeam
7 in late 2004.

8 So while this set of exhibits is really
9 talking about 2000, I decided to use 2008 for the
10 alliances. Because if I had used 2000, there
11 wouldn't be anything to show for Continental.

12 And since it started in late 2004, I
13 figured I would give it a couple of years so it
14 could implement to get a good feel for something
15 that was, I think, more representative than taking
16 2000.

17 But even after, you know, three years of
18 living in SkyTeam, the presence, the alliance
19 presence of Continental and United were miles apart.

20 United had a much deeper presence in every
21 part of the world than Continental did, except for
22 domestic where Continental needed the code shares,

1 which came from the Continental-Delta-Northwest
2 tripartite code sharing agreement.

3 And all three were at this point in
4 SkyTeam. They needed that because they have a
5 rather incomplete domestic network.

6 United didn't need a domestic code share
7 because it had a comprehensive network.

8 But in every region of the world, you
9 know, United had a far more robust code share
10 alliance representation and presence because this
11 enabled United to offer, because of its code shares,
12 many more products than Continental was able to
13 offer.

14 Q And in Exhibit 8, pages 2 through 10.

15 A Yeah. I should say, when I'm talking
16 about products, I'm really talking about markets.

17 I'm trying to commoditize the business a
18 little bit.

19 Q And in Exhibit 8, pages 2 through 10, you
20 have maps that provide backup to each of the lines
21 on page 1.

22 Is that right?

1 A That's correct.

2 Q Moving on to part 2 of your testimony --

3 ARBITRATOR EISCHEN: Roger, this may be a
4 point where we just take a brief recess.

5 MR. POLLAK: Sure.

6 ARBITRATOR EISCHEN: All right.

7 We're going to take five, folks.

8 Thank you.

9 (A recess was taken from 9:58 until 10:14.)

10 BY MR. POLLAK:

11 Q Mo, where we left off was a shift to Part
12 2 of your testimony, which I think you have called:
13 "As a Smallish Airline, Continental Preferred a
14 Fragmented Industry."

15 Would you like to begin at Exhibit 9,
16 where you left off?

17 A Sure.

18 So if we look at this period, which is
19 really pre-2008, and Northwest and Delta's
20 combining, we had an industry that, if you go back
21 to Exhibit 1, page 1, we have 12 airlines. It's a
22 highly fragmented industry, as every industry person

1 acknowledges.

2 The maps on the four pages of Exhibit 9
3 really show that every carrier, every U.S. carrier
4 had a niche, a place where they were strong. None
5 of them -- no U.S. carrier had what I would call
6 truly comprehensive domestic presence.

7 You know, whether it was Northwest what
8 was strong in, you know, upper northwest in
9 Minneapolis and Detroit, or US Airways that was
10 strong on the East Coast, or America West, or
11 AirTran, or Alaska, or Continental, which had two
12 niches, but not a domestic presence.

13 But even United, which as I said before,
14 had a domestic -- probably the most comprehensive
15 domestic network.

16 There's things that I would like to add to
17 this to make it stronger.

18 In this environment, being a smallish
19 airline, you can -- you can survive quite well.

20 And it's kind of like the days -- and I
21 don't know if anybody is here from Washington --
22 before we had the big box stores, Hechinger's could

1 do well in Washington.

2 But when the big boys came in, Home Depot
3 and Lowe's, they had to go. Same with department
4 stores, whether it's department stores in New York,
5 like Abraham & Straus, or department stores here in
6 Washington like Lansburgh's and Hahn's and places
7 like that.

8 When it's a fragmented industry, the
9 smaller guys can do well. When it gets to be a
10 bigger industry, which was beginning to occur with
11 Northwest and Delta, it's much more difficult to
12 survive in that environment.

13 But the Continental management -- and I'm
14 now talking primarily of Kellner and Smisek -- they
15 preferred to remain independent in the smallish
16 environment. And, you know, that drove a lot of
17 their early thinking on mergers.

18 And Exhibit 10, page 1, really shows that
19 even in 2006, which is, you know, on the onset of
20 the -- the US Airways bid, hostile bid for Delta
21 when Delta was in bankruptcy, that the Continental
22 view of life was fragmentation is good.

1 I prefer to remain independent.

2 There's a lot of talk about consolidation,
3 but very little action. And so, you know -- and
4 quite frankly, that made sense for Continental.

5 If I had come through a period of extreme
6 stress when I had CAL Lite -- two bankruptcies and
7 CAL Lite, and a period of -- and since I was there
8 for a lot of it, the tumult that occurred in that
9 carrier while they switched from Hollis Harris to
10 Gordon Bethune as CEO.

11 And given Larry Kellner's very, very
12 conservative accountant's mentality, I fully
13 appreciate why they preferred to remain independent.

14 That was my whole point.

15 Q Well, what was CAL Lite and what was the
16 era in which it came into existence and then was
17 shut down?

18 A CAL lite was an experiment, let's call it
19 that, by the then CEO, Continental CEO, Bob
20 Ferguson, to basically respond to the low-cost
21 carriers.

22 He shifted a lot of airplanes from -- and

1 this is in the 1993 period.

2 He shifted a lot of airplanes away from
3 network routes to point-to-point routes. And it
4 grew, you know, grew from 19 airplanes in 173 daily
5 departures, to 114 aircraft and over 1,000 daily
6 departures.

7 Like many of the other legacy carriers'
8 attempts to build LCC airlines within an airline, it
9 was a disaster, and it led to the ultimate departure
10 of Ferguson. Hollis Harris then came in as CEO, and
11 was shortly replaced by Bethune.

12 Q And was it scaled down?

13 A No. It wasn't scaled.

14 Q CAL Lite?

15 A No. It wasn't scaled down.

16 It was eliminated.

17 Q Was there any other reason in the 2006
18 period where -- that beared on Continental's
19 remaining separate?

20 A Yeah. Yes. We're jumping ahead a couple
21 of years, but it's fine.

22 In 1998, as I said earlier, Northwest

1 acquired, I think, it is a 14 percent equity and a
2 56 percent voting interest in Continental.

3 They actually bought the air partner's,
4 David Bonderman, share that he had acquired when he
5 bought them out of bankruptcy. That was contested
6 by the Justice Department.

7 And in 2000, there was settlement with
8 Northwest and the Justice Department and Continental
9 which, quite frankly, led to the tripartite code
10 sharing agreement.

11 But also gave Northwest what we have
12 called the golden share over Continental, which gave
13 them the right to -- veto right, in essence, over
14 substantial transactions including, mergers and
15 acquisitions.

16 And so -- and that share, that golden
17 share, that restriction on Continental could only be
18 lifted by a few defined events. One of those was,
19 you know, Northwest's acquisition by somebody else.
20 And that, of course, occurred when the
21 Northwest/Delta acquisition occurred.

22 So in 2006, there wasn't a Northwest/Delta

1 acquisition. So, you know, you could say
2 Continental was still handcuffed in that period.

3 Q All right. Now, turning to Exhibit 11,
4 have you produced a nice outline of what
5 Dr. Campbell called a decade of the oughts or the
6 2000s?

7 A I have.

8 It was actually very enjoyable for me to
9 see what happened in that ten-year period, kind of
10 reliving a little history for me.

11 But my point in this is -- in this
12 exhibit, which really goes back a little bit before
13 the decade of the oughts, to describe some events
14 that are important.

15 But I have been in this industry since
16 1973. So I have lived through, I guess, just like
17 Dr. Campbell, we're probably close to contemporaries
18 in this business.

19 This decade was by far the most turbulent
20 decade in the industry that I had ever witnessed,
21 and anything that occurred before.

22 My belief, there was maybe a period of 18

1 to 24 months of relative tranquility. This is the
2 airline business, so tranquility has to be put into
3 context.

4 But there are events in this period that I
5 don't think we have seen before, and I sure hope we
6 haven't seen after, and I sure hope we don't see
7 again. It was a tumultuous time in the business.

8 So what I did in this exhibit, if we go
9 the page 2 -- I'll come back to page 1 in just a
10 quick second -- but I took five categories of events
11 and kind of -- I tried to separate them.

12 One was the price of fuel, which really I
13 started in the year 2000 and went through the year
14 2010 because that was obviously when fuel goes from
15 13 percent of your operating costs to 45 percent of
16 your operating costs.

17 And I'm using numbers that probably aren't
18 accurate, but are clearly representative. It has an
19 impact, obviously, on the industry and the carriers.

20 Then I took what people call exogenous
21 events, the economy or global events, in a separate
22 category. I took industry events that did not touch

1 directly, did not involve directly Continental or
2 United. Then I took events that involved either
3 Continental or United.

4 And finally, I took another category
5 events that were both of the carriers were involved.

6 So if I go back to page 1 for a minute,
7 the only things I want to highlight in that period
8 were we had the two Continental bankruptcies, '83,
9 and '90. We had the 1998 acquisition by Northwest
10 of the interest in Continental, which I just
11 described.

12 I'm not going to go through every flag on
13 this page, but this, to me, really sets a nice
14 background for everything that happens in the decade
15 of the oughts.

16 If we go to page 2, which is now 2000,
17 2001, obviously, it's -- for those of us that
18 remember, the end of the bubble of the dotcom era.

19 So we had the United/US Airways merger
20 announcement. Then we had the United/US Airways
21 merger termination.

22 9-11.

1 And then 9-11 was quickly followed by
2 Continental, like every other airline, cutting jobs
3 and reducing aircraft in the fleet.

4 And as we flip through these pages -- and
5 I'm not going to mention until we come to 2008,
6 fuel -- but look -- fuel is relatively hanging
7 around the dollar range here and dollar per gallon
8 range. And it's -- remains pretty steady until we
9 get up to the unfortunate period of 2008.

10 And you know, in 2002, 2003, in page 3,
11 we're right after 9-11, in 2002, so we had the US
12 Airways bankruptcy. We had the
13 Continental/Delta/Northwest tripartite code share.

14 We had United applying to the Air
15 Transport Stabilization Board for an emergency loan,
16 and we had that loan application rejected.

17 We then had United's bankruptcy, followed
18 by SARS.

19 The Iraq war.

20 And then we go to 2004, we see a little
21 spike in fuel. But I think the carriers would have
22 loved to have that spike in 2008. And spike is

1 probably not the right word.

2 In 2004, we had the United -- US Airways'
3 second bankruptcy.

4 We had, in 2004, end of 2004, Continental
5 saying that it needed a -- I don't think they called
6 it a restructuring, but they needed significant cost
7 reductions.

8 They needed at least a billion six in cost
9 reductions, 500 million at a minimum, their words,
10 not mine, coming from labor.

11 And those restructuring, cost
12 restructuring activities were finalized in, I think,
13 February of 2005.

14 We then had, in 2005, the US
15 Airways/America West merger, really not necessarily
16 a merger, but anyway that's what they called it.

17 We also had Hurricane Katrina in this
18 period, and then we had both Delta and Northwest
19 filing for bankruptcy.

20 Again, you know, if you look at 2001, 2004
21 and '05 on page 4, and 2006 and '07 on page 5, you
22 notice fuel beginning to creep up from \$1 a barrel

1 at the beginning of 2004, up to \$2 a barrel at the
2 end of 2005, and kind of staying that way pretty
3 steady until the end of 2007.

4 2006, you had the US Airways bid for
5 Delta, a hostile bid for Delta while Delta was in
6 bankruptcy. United finally emerged from bankruptcy
7 in January of that year.

8 And then at the very end of 2007, we get
9 the onset of the 2008, 2009 financial crisis, which
10 obviously permeated everything for the next 18
11 months, at least, if not two years.

12 Notice on page 5 where fuel is at the end
13 of 2007. And then look at 2008. We kind of reached
14 the top. Second quarter of 2008, \$140 a barrel
15 fuel.

16 The financial crisis is in full swing with
17 the Economic Stabilization Act.

18 I don't need to repeat bad history for
19 everybody, you know, Indie MAC, Bank of America,
20 Merrill Lynch, Lehman Brothers, all that stuff is
21 going on on an exogenous plane, while the industry
22 is trying to grope with survival. Not any carrier

1 in particular, but every carrier has to restructure
2 because nobody has a business plan that can
3 accommodate \$140 fuel and a huge drop in demand for
4 traffic that the financial crisis occasioned.

5 So it was a period of when the industry,
6 not the carrier, but the industry was in extremis.

7 April 2008 is the seminal event, as I
8 mentioned earlier. That's the Delta and Northwest
9 merger announcement. And that brought on the
10 United/Continental talks, which I call really round
11 2, those kind of talks in 2006.

12 Those talks began. They ended, I would
13 say rather abruptly.

14 US Airways and United talked after that.

15 And then you quickly had in that period,
16 three events that were important. You had United
17 announced cuts twice, 30 airplanes and then 100.

18 Continental announced cuts, 3,000 jobs and
19 67 airplanes.

20 But right after the talks between United
21 and Continental ended on April 727, the next day,
22 Tilton called up Kellner and invited Continental

1 into the Star Alliance, which was very much
2 appreciated and accepted by Kellner.

3 Throughout this process, you'll see in
4 2008 and 2009, the blue flags which are Continental,
5 Continental is in a period of raising huge amounts
6 of money, non-aircraft money. Money for general
7 corporate purposes to really -- to use to fund
8 operations and survive, itself.

9 2009 and 2010 is we have -- finally, we
10 have another seminal event. Kellner announces his
11 retirement in July of 2009.

12 We have the fact that at this point,
13 Continental has now joined Star.

14 We have U.S. -- in the first quarter, we
15 have US Airways/United merger talks, which lead
16 to --

17 (Sneeze interruption.)

18 THE WITNESS: God bless you, again.

19 ARBITRATOR EISCHEN: Off the record.

20 (A discussion was held off the record.)

21 THE WITNESS: And the merger talks between
22 US Airways and United provide a catalyst for the

1 then new CEO of Continental, Jeff Smisek, to call
2 Glenn Tilton.

3 And as we'll talk about later, tell him he
4 needs to marry the pretty girl, not the ugly girl.

5 BY MR. POLLAK:

6 Q All right. Let's flip to Exhibit 12.

7 You were going to tell that story in a
8 little more detail.

9 A Yeah. I alluded to this earlier, and you
10 know, the exhibits that are in here really reflect
11 what I said, and I'll point out just a couple of
12 things.

13 I probably knew, maybe know, Tilton better
14 than most people from an industry perspective, not
15 from a personal basis. As I said, I met him the
16 second day on the job.

17 He had an overarching, as I described
18 before, view that this industry, for lack of a
19 better phrase, was totally screwed up.

20 He came from an industry that was much
21 more structured, actually carriers -- where
22 companies made money.

1 He felt this industry needed to be
2 restructured. And that was a kind way of saying
3 consolidated, less capacity. Some things you don't
4 ordinarily, you know, say in public.

5 Less carriers, less capacity.

6 Coming from an industry and a company
7 where they made money and they had shareholders that
8 really actually urged a return on invested capital,
9 he felt the only way this industry could earn a
10 return on invested capital was to consolidate.

11 And that was what drove all of his public
12 speeches, all of his private decisions about merger.

13 A merger of United was, in his view,
14 necessary. But it wasn't sufficient. The industry
15 had to merge. The industry had to consolidate.

16 So if you had a United merger and nobody
17 else merged, it wasn't going to do very much good.
18 Because when you have 12 people on a committee and
19 you try and make a decision, as opposed to four or
20 five, it gets very difficult.

21 That's how he viewed it.

22 We need, you know, four or five players in

1 an industry so we can have rational capacity
2 decisions, rational pricing decisions. And you
3 know, that was a fundamental principle that from day
4 one to today, he has never forgotten.

5 That view drove a lot of the decision
6 making that he made both during the bankruptcy and
7 after the bankruptcy.

8 He wanted to structure United to
9 facilitate a merger, make it easy.

10 I mean, he had seen all the terrible
11 mergers in the industry. And he wanted -- so he did
12 things to facilitate a merger. And he didn't do
13 things so that the merger could be facilitated. And
14 that drove the decision making process throughout
15 this period, from the day he got there until, you
16 know, May of 2010.

17 The news clippings here all basically
18 reflect things he said that -- about you know, the
19 industry, and consolidation, and the need for that.
20 And so you have, in the first one, you know, where
21 he said a JP Morgan, the industry must -- telecom
22 industries play with over capacity commoditization,

1 so as the airline industry --

2 (Interruption by the court reporter.)

3 THE WITNESS: Sorry.

4 BY MR. POLLAK:

5 Q All right. No, they speak for themselves.

6 A They do. Thank you.

7 And so I think that's very important to
8 keep in context, is this overriding view of industry
9 structural change, consolidation, not just United,
10 but the industry had to change.

11 Q And starting at Exhibit 13, I think you
12 were going to tell in a little more detail some of
13 the steps leading up to the ultimate merger decision
14 in May of 2010.

15 A Yeah.

16 Q And, again, the newspaper articles are
17 background.

18 A Will speak for themselves.

19 Q Yeah.

20 A So let's -- there were three attempts at a
21 merger, 2006, 2008, and the successful one in 2010.

22 The 2006 merger talks, and I probably

1 wouldn't be fair to call them talks. They occurred
2 right after the US Airways bid to acquire Delta in
3 bankruptcy.

4 They were defensive.

5 And Continental, as I said, preferred to
6 remain independent.

7 Most people didn't believe that the US
8 Airways bid would succeed. And so just purely as a
9 defensive measure, the two carriers got together.

10 And, you know, even at that point, you
11 know, Continental's hands were still tied by the
12 golden shares.

13 So, you know, even if Continental and
14 United had agreed, I'm not sure that they could have
15 done anything in 2006 without Northwest's blessing
16 or Northwest doing something first.

17 Those talks broke off.

18 And in fact, when they broke off, Kellner
19 was reported in the press to say he was happy,
20 relieved, you know, he liked the industry the way it
21 was.

22 When Delta and Northwest announced their

1 merger, the Continental view changed. I think
2 appropriately changed.

3 And if you look at Exhibit 14, page 1, you
4 know, this is the quote, in bold. "This merger will
5 change the competitive landscape for Continental and
6 the entire airline industry."

7 It's at this point, after that first
8 structural industry change, that first megamerger,
9 that Continental view of us remaining independent,
10 going it alone, changes because the industry
11 landscape structure has changed.

12 And I would say from that point on,
13 Kellner was reluctantly in support of the merger.

14 And he had reason to be supportive of the
15 merger because, in a changed landscape, as he called
16 it, it was a very different industry, and one in
17 which Continental was vulnerable.

18 Q Do you have a couple of slides at Exhibit
19 15 to exemplify your point?

20 A I do.

21 If you look at Exhibit 15, this is what --
22 and so I'm looking at this like Larry Kellner and

1 Jeff Smisek would look at this in 2008.

2 They now have a megacARRIER that has a
3 much more comprehensive network, with a combination
4 of Delta and Northwest.

5 And because Delta had a very close code
6 share relationship with Alaska, this combination had
7 a virtual presence in Seattle as well.

8 Today it's nothing more than a virtual
9 presence, but, anyway, this is what they were
10 looking at in 2008.

11 If you look at Slide 2.

12 Q Page 2 of Exhibit 15?

13 A I'm sorry. Page 2 of Exhibit 15. Thank
14 you, Roger.

15 This is what they were looking at in
16 term's of a domestic presence, O&D market, that I
17 was discussing early on in Part 1.

18 All the sudden, you have got a
19 megapresence carrier that is 87 -- you know, one,
20 two, and three positions in 2010, and 90 in terms of
21 revenues versus, you know, where Continental is at
22 the bottom.

1 From my perspective, it's a very
2 frightening thing if you think that not only is this
3 going to happen, but this is going to provoke other
4 things to happen.

5 And if you look at -- when I'm talking
6 about other things, remember that in 2008, you not
7 only had Delta and Northwest, but you had United
8 talking to US Airways. And so not only are Kellner
9 and Smisek looking at the impact of Delta, but
10 they're looking at what happens if there's a
11 United/Airways merger.

12 And they see, if we look at page 3 of
13 Exhibit 15, they see what I would now regard as a
14 pretty complete or comprehensive system. There's a
15 couple of holes, but, you know, much better than it
16 was before with what they have here.

17 And if you look at page 4 of 15, they're
18 looking at now two megacarriers if United and
19 Airways merged in 2008, two megacarriers.

20 And really, you know, it's a very
21 difficult environment in which to remain
22 sustainable. And I think that's clearly what they

1 were looking at.

2 In 2008, after the merger, there were
3 extensive talks between United and Continental.

4 Depending upon who you talked to, they
5 were 12 hours away or 18 hours away from announcing
6 merger. They had gone through all the due diligence
7 that you would expect.

8 They had done route ration -- optimization
9 and rationalization. They had done fleet, you know,
10 rationalization and optimization.

11 Network, if you're going to announce a
12 merger in 12 to 18 hours, you have done all the
13 homework for the merger.

14 That's for sure.

15 Q So, Mo, does that mean they would have had
16 a chance to consider what a jointly arrayed fleet
17 might look like in the event they went through with
18 the merger?

19 A Of course.

20 I mean, they went through network
21 optimization. Network optimization means, not only
22 were you going fly, but what you're going to fly and

1 how many times you're going to fly.

2 They were going through fleet
3 rationalization.

4 They clearly understood which airplanes
5 they were going to keep and which ones they were
6 going to shed.

7 Q When mergers get announced, they --
8 airlines always talk about the synergies. In other
9 words, the gains of merging together.

10 Those are the sorts of things they derive
11 when they do that kind of joint planning in
12 premerger discussions?

13 A Right.

14 Well, they talk about -- that's part of
15 it.

16 Obviously, there's cost synergies involved
17 and revenue synergies. And then there's the
18 integration of costs. But, yes, that's what they
19 talk about.

20 And all those synergies had been agreed
21 upon between the two carriers with some skepticism
22 by Kellner, I might add, but nevertheless.

1 So at the last minute, about April 25 or
2 April 26, I don't remember the exact date, Kellner
3 pulls the plug on the merger.

4 And I would say that if you look at -- in
5 2008, when the plug was pulled, I'm not sure that I
6 would have made a different decision than Kellner
7 made, given his character.

8 Setting the scene, you had a -- this is
9 the middle of 2008. If we all remember, we were on
10 tenterhooks. We didn't know whether our hiney was
11 going off the cliff. Fuel is \$140 a barrel. You
12 didn't know -- the uncertainty surrounding fuel and
13 the financial crisis was, you know, enormous.

14 Larry Kellner, by his very nature and
15 accounting background, is a very conservative guy.
16 You know, where was the money going to come from to
17 fund the integration, which is about a billion
18 dollars.

19 And I think there was a belief at
20 Continental, at that point, that it would fare
21 better going forward in this period of uncertainty
22 than United.

1 United was, from its first quarter
2 results, looked like it was entering a really rough
3 patch for sure.

4 Continental had come off a relatively good
5 2007. And so I think that the decision to withdraw
6 from the talks at the merger at that point was
7 probably a sanguine one given the overlay of the
8 financial crisis.

9 And more importantly, you know, Delta and
10 Northwest had just merged. They merged into a
11 financial crisis. Nobody knew whether that was
12 going to be successful or not.

13 So uncertainty is always a bad thing for
14 an accountant. And the accountant said, let's just
15 put this on hold for a while.

16 Q Mo, did they put all of their efforts to
17 cooperate on hold?

18 A The on hold lasted for about 24 hours, I
19 think, because what happened was, the next day,
20 Tilton called Kellner and said -- invited him to
21 join the Star Alliance.

22 And you will see that really on Exhibit

1 17. This is the announcement. This is not the
2 telephone call on, I think, April 28 because between
3 April 28 and June 19, the two carriers had teams
4 that were putting together things they could do in
5 the Alliance that would make life more efficient.

6 And I -- this invitation to join the
7 Alliance, I think, was a win-win and a very
8 brilliant move.

9 It was a win-win for both Continental and
10 United and a brilliant move by United.

11 It was a win-win because Continental was
12 really the odd airline out in SkyTeam at this point.
13 It was the stepsister. It was the unwanted child,
14 however you want to describe it.

15 If you look at Exhibit 18, you can see
16 what happened to Delta -- to Continental's code
17 sharing flights in SkyTeam after the Northwest/Delta
18 merger.

19 What happened with the Northwest/Delta
20 merger is Continental is really no longer needed
21 because you had Delta, and Northwest now had New
22 York, Kennedy from Delta, and they had Latin America

1 from Atlanta from Delta.

2 So they really didn't need Continental.

3 They didn't need the code share.

4 And this is very reflective that, you

5 know, Kellner is -- Continental is really the

6 unwanted airline in Star -- in SkyTeam.

7 And Kellner says that in subsequent

8 publications. But he had to get out of SkyTeam. He

9 had to go somewhere. He wasn't going to OneWorld,

10 as he testified, I believe, before Congress, or

11 somewhere that wasn't really a good alternative for

12 him. So this was a win for Continental.

13 It was a win for both of them because they

14 were doing things in the framework of the Alliance

15 that were really things you would ordinarily do once

16 you merged, facility utilization, information

17 technology, procurement, lounges, frequent flyer

18 programs, all kinds of cost efficiencies that they

19 were doing pre-merger that you would -- that

20 historically, you would have done post merger.

21 And that in the face of the financial

22 crisis, these were all good things for both

1 carriers.

2 So it was a very beneficial win for both
3 carriers. It was a necessary, I think, move for
4 Continental. But, as I said, this wasn't just the
5 traditional airline joining an alliance.

6 This was like -- and some of these
7 articles alluded to the fact of dating before you
8 marry. This was like living together, seeing how
9 the other party squeezes the toothpaste tube.

10 This was as close to a marriage -- or
11 maybe this was a common law marriage -- as close to
12 a marriage as you could get without actually getting
13 married.

14 They were doing all the things they would
15 do in a merger before the merger happened, except
16 formally tying the knot.

17 Q All right. Moving on to slide Exhibit 20,
18 21, 22.

19 I think you were going to talk about a few
20 of the adjustments that the carriers made in
21 response to the crisis of 2008.

22 A Yeah. I mentioned earlier, you know, what

1 Continental did in response to the financial crisis.

2 But, you know, United, I think, did a lot
3 of heavy lifting that some would argue they should
4 have done in bankruptcy.

5 And we can certainly discuss that.

6 But the point is that after there was --
7 after the merger was taken off the table in April of
8 2008, Continental -- United got to the task of
9 realigning or aligning its operations to match the
10 economy, and it was really a two-step process.

11 The first was, you know, right after the
12 end of April, beginning of May -- and I'm not sure
13 which it was -- where they cut 30 airplanes out of
14 their fleet. And then the subsequent reduction of
15 100 airplanes in June of 2008.

16 Q And, Mo, that was the 30 and then an
17 additional 70 for a total of 100?

18 A That is correct; right.

19 And of the 100, it was 94 737s, old
20 generation or classics, as we call them, classic
21 737s and six 747s.

22 Exhibit 22 is, to me, gives you great

1 insight into Continental's thinking.

2 During this period, I was talking with
3 Larry Kellner frequently. I wouldn't say a lot.
4 And I had known him, you know, since he first joined
5 Continental.

6 This was, in my perception, it was the
7 most somber and depressed that I had ever seen him
8 for someone that generally had, given his
9 conservative nature, a positive attitude.

10 You know, so this is -- we're in the
11 middle of 2009. Things were really bad. And I
12 think, you know, the view that they had in April of
13 2008, that Larry had in 2008, that they would fare
14 better in a period of uncertainty than United, I
15 don't know how you would want to gauge that.

16 But clearly, my view is that Kellner
17 believed that they fared much worse in 2008 and 2009
18 than they thought they would when they made that
19 decision in April. And this interview with Kellner
20 really just reflects that.

21 I mean, there's comments in here that, I
22 think, are so likely. He's saying, There's no

1 indication the industry is close to pulling out of
2 the doldrums. The business cycle is continuing to
3 decline.

4 And then you have -- it -- what weighed on
5 him at that point was not only the record fuel
6 prices, the drop off in traffic, he was deeply
7 affected by having to lay off people because he, you
8 know, very much cared about his employees.

9 And then he had the crash of the
10 Continental jet, and then the Buffalo Niagara
11 regional jet crash that killed 50 people.

12 So from April 2008 up until 2010, the
13 Continental view of the world, view of themselves
14 changed dramatically.

15 And during this period, they went to the
16 well many times for money to fund continuing
17 operations and for general corporate purposes.

18 These on Exhibit 23, about a billion four
19 of money they needed to fund continuing operations.

20 As I point out, this is not aircraft
21 financing related capital. This is all capital for
22 general operating purposes. I haven't included any

1 of the other money they raised for airplanes at that
2 point.

3 Q Mo, do you want to say a couple more words
4 about why you would need to raise cash for general
5 operating purposes?

6 What happens if you don't raise cash?

7 A Sooner or later, you run out of money, I
8 guess.

9 And you can draw your consequence -- you
10 know, at some point you eventually file for
11 bankruptcy or go out of business. And in the
12 airline business, that tends to be a much longer
13 period of time than it should be in any other
14 industry.

15 I tell this story, and it's not a joke.
16 It's serious. I guessed the right month that TWA
17 was going to go out of business. I just guessed the
18 wrong decade.

19 Airlines can live a long time.

20 Q Exhibits 24 and 25, you have some -- and
21 really 26, some discussion of the financial position
22 of Continental and also United heading into the

1 merger in 2010?

2 A Sure. As I said, I think the Continental
3 view of life changed from 2008, April 2008 up
4 through the April merger, April 2010 merger
5 discussions with United.

6 And, yeah, that's reflected by the
7 operating and financial performance. I guess, it's
8 more financial performance of Continental during
9 this period.

10 If we take that, we had a horrible
11 financial crisis period, 2008, 2009, up through the
12 first quarter.

13 Continental, on an operating basis, lost
14 money in eight of those nine quarters.

15 If you look at -- that's Exhibit 24.

16 If you look at Exhibit 25, as we get
17 closer into the merger, as I said before, United
18 really, after making those deep cuts, the 100
19 airplanes in June of 2008, and pruning the
20 operations or realigning them, the pruning seemed to
21 have worked.

22 They came up much more robust.

1 And in the four quarters before the merger
2 announcement, they made profits. Continental made a
3 profit in one of those quarters. And they're
4 operating more margins, which are the right-hand
5 side of page 1 of Exhibit 25.

6 Their operating margins outperformed
7 Continental significantly.

8 And, you know, if we just take, quite
9 frankly, the first quarter of 2010, admit to -- you
10 know 3.9 percentage point difference in operating
11 margins between the two carriers might not seem like
12 a lot. But this is not quite the grocery business,
13 but four percentage points, four points of operating
14 margin is a huge, huge number, you know, going to
15 the bottom line.

16 Q And, Mo, I take it United lost money in
17 2008, too?

18 A Absolutely. Absolutely.

19 And that was the period that I would call
20 their realignment or restructuring.

21 You know, and you prune -- you prune, and
22 the flowers don't grow right away. It takes time

1 for that to run through the system. And that's
2 exactly what was happening.

3 Q What do you show in Exhibit 26?

4 A In Exhibit 26, if you look at the same --
5 making the same point, that United came out of the
6 financial crisis.

7 And in the four quarters before the merger
8 announcement, they outperformed Continental in
9 whether it's operating margins, profits, or on a
10 PRASM or even a RASM basis, which you'll see on page
11 2 of this chart.

12 But on a PRASM basis, they outperformed,
13 they lost less in the third and fourth quarters, and
14 they earned significantly more in the first and
15 second quarters of 2010.

16 PRASM is Passenger Revenue Per Available
17 Seat Mile.

18 And if you go to slide -- page 2 of
19 Exhibit 26, this is just revenue per available seat
20 mile. And I used both because if I only used one,
21 someone would criticize one or the other.

22 But, you know, on a RASM basis, the same

1 headline is there, that they -- United outperformed
2 Continental in those four quarters leading up to the
3 merger.

4 And, again, you know, the difference
5 between 15.2 cents and 16.7 cents is only a penny
6 and a half. And I say only, but you know, it's a 10
7 percent difference per ASMs, and it's billions of
8 ASMs.

9 So it adds up to a lot of money.

10 It's a significant difference.

11 And the RASM also, unlike the PRASM, the
12 RASM reflects the fact that it's cargo and passenger
13 revenue.

14 And given United's route structure,
15 particularly United's deep presence and widebody
16 presence in Asia, where most of the cargo originated
17 from or which still originates from, you know, the
18 cargo recovery adds to a more robust airline and a
19 more robust recovery.

20 Q And just to keep the record straight, on
21 Exhibit 26, page 1 of 2, I think you're not showing
22 absolute levels of passenger revenue, are you?

1 You're showing the rate of improvement?

2 A I'm showing the year-over-year change by
3 quarter.

4 Year-over-year change by quarter, as
5 opposed to quarter by quarter because there's
6 seasonality involved. And so you traditionally take
7 the year-over-year change in quarterly results.

8 So as I said, that interview with Larry
9 Kellner in May 27 -- in May of 2009, in my -- my
10 perceptions from talking to him and meeting with him
11 during this period, was he was the most downbeat I
12 had ever seen him.

13 You can draw your own conclusions why, but
14 in July it was announced -- July of 2009, that
15 Kellner announced he was retiring from Continental,
16 and that Jeff Smisek would become the chairman and
17 chief executive beginning in January, January 1 of
18 2010.

19 And as I mentioned earlier, this was a
20 significant event in facilitating the
21 Continental/United merger.

22 That's because, as I said earlier, Larry,

1 by his nature was very conservative, skeptical of
2 synergies, didn't like the tumult of a merger.

3 And Jeff had a very different personality.

4 Larry is the Captain. Jeff is the Texas
5 lawyer. That he has a little swagger, little
6 bravado, younger, much more willing to take risk.
7 And that's, you know, my perception of having had
8 several conversations with both of these gentlemen.

9 Q So, Mo, you're saying us lawyers are known
10 for our wild behavior.

11 Is that accurate?

12 A I said Texas lawyers.

13 Q Texas lawyers. Okay.

14 A I didn't say all lawyers.

15 I was very careful about saying that.

16 But you can broaden it if you want to,
17 Roger.

18 But what happened after this is, this is
19 July 16. Somewhere in the end of July, and I don't
20 remember the date and no reason to, I called Tilton
21 and I said something to effect of, Game on. Here's
22 the opening to do the merger.

1 We just need to bide our time until Jeff
2 takes over.

3 There was agreement not -- not to do
4 anything, at least until the integration of
5 Continental into the Star Alliance --

6 MR. KATZ: Excuse me.

7 I'm going to object to this narrative
8 testimony. He's talking about an agreement.

9 We don't know whether the agreement is
10 between the witness and Mr. Tilton or between
11 someone else.

12 We don't know when this conversation --
13 when this agreement was supposed to have been made.
14 We don't know whether it's in writing or oral, or on
15 the telephone, or a face-to-face meeting.

16 None of that foundation has been provided.

17 So I object to a narrative description at
18 this point.

19 MR. POLLAK: I'll simply ask the witness a
20 couple more questions on the subject to clarify what
21 he meant when he referred to an agreement.

22 ARBITRATOR EISCHEN: Okay.

1 Let's start there.

2 MR. POLLAK: All right.

3 BY MR. POLLAK:

4 Q Mo, you referred to an agreement.

5 Were you simply referring to a discussion
6 that you had with Tilton?

7 A Much better choice of words.

8 Absolutely. Sorry.

9 Q Mo, just for the record, what -- were you
10 consulting to Mr. Tilton at this point in time?

11 A I would say I was part of his kitchen
12 cabinet.

13 We were clearly aligned in our interests
14 here. And while I didn't ask for or receive any
15 financial compensation, if I wanted a flight upgrade
16 or if I need something, I would -- and referrals is
17 what I was looking for.

18 Q But --

19 A But generally, it took so little time for
20 what I needed to do or what I felt needed to be
21 done, it didn't -- no money could have compensated
22 me for that.

1 Q But the views you're sharing are going to
2 be your views of what was going on in the industry
3 and your perceptions about conversations you may
4 have had?

5 A They're my views and conversations -- my
6 views of conversations I had.

7 Q Go ahead then.

8 A Okay.

9 MR. KATZ: I'm going to ask that if the
10 witness is going to testify about conversations he
11 had with Mr. Tilton, that the questions be put to
12 him as to what was said by Mr. Tilton, what was said
13 by the witness, and not his interpretations or
14 mental machinations of what he derived in a general
15 sense from a telephone call.

16 If it was a phone call that this witness
17 is testifying about, let's find out what Mr. Tilton
18 said and what the witness said, and not some
19 subjective impressions that the witness may have
20 drawn from the conversation.

21 ARBITRATOR EISCHEN: We seem to be moving
22 maybe a little bit of a shift now from description

1 of expert analysis of the industry and the
2 positioning of these parties, now into a personal
3 involvement.

4 And I think we have to be careful about
5 drawing those lines.

6 Go ahead.

7 BY MR. POLLAK:

8 Q All right. Mo, I think given the
9 direction from Arbitrator Eischen, I think in moving
10 ahead with your discussion of the events of the
11 merger, I would try to limit it to describing the
12 events rather than your personal involvement.

13 And where you describe your personal
14 involvement, try to be specific about things that
15 you said versus things that Mr. Tilton said to you.

16 But I would -- in order to function in
17 your role as an expert, you -- I know from our
18 discussions prior to today, that you have plenty of
19 opinions about why things happened based on public
20 comments by Mr. Smisek and others, as well as
21 Mr. Tilton, all of which provide foundation for your
22 opinions today.

1 MR. KATZ: Thank you.

2 ARBITRATOR EISCHEN: Thank you, Roger.

3 MR. KATZ: So what's the question?

4 MR. POLLAK: I'm going to have him go on
5 to continue to describe the events leading up to the
6 merger.

7 BY MR. POLLAK:

8 Q So, Mo, would you please continue forward
9 in describing the events leading up to the merger
10 announcement date in May of 2010?

11 Thank you.

12 A Sure. So in my call to Tilton, I said I
13 think we should wait. He said, fine. Let's get --
14 okay, let's talk again in November.

15 So in November, I, on my own, set up a
16 dinner with Larry Kellner and Jeff Smisek. I
17 remember the date because it's December 7.

18 I informed Mr. Tilton I was having the
19 dinner. I believe it was by text message. And I
20 didn't get a response.

21 I had that dinner. And it was -- I asked
22 for the dinner with Larry because I wanted -- it was

1 a farewell dinner. I wanted to say goodbye to him
2 for leaving the industry, and it was Larry Kellner
3 and Jeff Smisek and myself.

4 And there was a lot of discussion at that
5 dinner about the industry, nothing which is largely
6 relevant here. But I -- Jeff did make it clear to
7 me that -- and to Larry, that he was eager to do a
8 merger under the right conditions.

9 But that he wasn't going to forsake Larry
10 and throw Larry under the bus. He didn't say those
11 words, but that was the tone I got from it.

12 Q All right. So now, what events then led
13 up to the ultimate consummation or decision by the
14 parties to consummate the merger?

15 A So it was clear to me in my experience in
16 dealing in this merger stuff, and particular
17 Continental and United for a long time, that -- and
18 Jeff being astute as he is, that Continental wanted
19 a merger.

20 They needed a merger. United wanted a
21 merger.

22 Continental's CEO, Smisek, however,

1 wouldn't -- needed a reason, a justification for in
2 effect reversing the decision of Kellner.

3 He needed it, not only because of his
4 relationship with Kellner, but also because he
5 needed to be able to go to his workforce and say,
6 you know, we need to do this because, if we don't do
7 this, we are at a competitive disadvantage to the
8 industry.

9 And as I said, my view is that Jeff was
10 very much a -- much more of a risk taker, and had a
11 little more bravado than Kellner did. And he wanted
12 to do this. He just needed a platform to do it.

13 Q And what event occurred that provided a
14 basis for Continental's decision, in your view?

15 A Well, the merger talks between US Airways
16 and United, which occurred in the first quarter of
17 2010, were substantive and serious.

18 But they were designed in large part --

19 MR. KATZ: I'm going to object to the next
20 part of the testimony because it's -- he's saying
21 the talks were designed.

22 And I don't know who he's saying was

1 speaking. Who was thinking? Where he's drawing the
2 inferences that he's drawing?

3 I object, and I think this is precisely
4 the area where the record needs to reflect whether
5 the witness is testifying from analysis of airline
6 economic events from personal conversations with
7 Larry or Glenn or what.

8 So I object.

9 ARBITRATOR EISCHEN: I think I concur with
10 that and reiterate my earlier request that we try to
11 make that bright line between a participant in a
12 negotiations or a consultant to a negotiation, and
13 someone analyzing the situation.

14 MR. POLLAK: Understood.

15 BY MR. POLLAK:

16 Q Mo, given the direction from the Panel,
17 why don't we skip to Exhibit 31, and talk about how
18 Continental -- in your expert opinion, how
19 Continental may have viewed the advent of a
20 potential US Airways/United merger.

21 I think you talked a little bit about this
22 before, and now you have a little bit more detail on

1 the subject.

2 A So, again, sitting in now Jeff Smisek's
3 chair as CEO and chairman of Continental, and
4 reading the press reports or leaks, as some have
5 called it, of the US Airways/United negotiations,
6 and, you know, Jeff Smisek admitting or stating
7 clearly in several forms including, you know, the
8 interviews, the public interviews that when he heard
9 about those negotiations between United and US
10 Airways, he immediately called Tilton to say, marry
11 the pretty girl not the ugly girl.

12 Those are his words in effect.

13 Q And that's what's reflected in Exhibit 30?

14 A Correct.

15 Q And what was it that Continental
16 management may have been concerned about, starting
17 at 31?

18 A Well, they were concerned about being
19 marginalized in, I think, Jeff Smisek's own words,
20 or worse.

21 And I think they had -- from an industry
22 position, they had reason to be concerned that if

1 there were a Delta/Northwest and a US
2 Airways/United, that their future looked bleak, I
3 think is a fair way to put it.

4 So if you look at Exhibit 31, page 1, you
5 can see what the comprehensive United/US Airways
6 network, had they merged, would look like.

7 And the Delta with Alaska piece thrown in
8 there, what it would look like versus what
9 Continental's domestic network would look like.

10 It's a -- sitting there as a CEO, I
11 wouldn't be very happy if I were on the
12 right-hand -- had the right-hand map as my network.

13 Q The right-hand map of page 1?

14 A That's correct.

15 I wouldn't be happy if I were Continental
16 if I had to face those prospects.

17 And the same is true if you look at page 2
18 and page 3, which are the top 100 O&D markets. Page
19 2 by passengers, you know, you had the megacarriers.
20 You would have had the megacarriers Delta and
21 Northwest and US Airways and United.

22 And you -- looking at it with rose-colored

1 glasses, you would have been marginalized.

2 There's a lot of other words that one
3 might use to describe the situation, that
4 Continental would have been in would that happened.

5 And the same is true on Exhibit 3.

6 And as I said, one is passengers. One is
7 revenue.

8 Q Page 3 of Exhibit 31?

9 A Correct.

10 And if you look at Exhibit 4 and 5, it's
11 the same metrics we used at -- I believe in Exhibit
12 1, revenues, departures, seat miles, and domestic
13 points served.

14 You know, Continental would have clearly
15 been a smaller carrier facing two gargantuan
16 carriers that had both domestic presence,
17 international presence, frequent flyer programs.

18 And it's not a -- not a situation that I
19 think any carrier from a strategic or competitive
20 perspective would want to find itself in.

21 Q And on Exhibit 32, I think, can you --
22 looking at Exhibit 32, can you address whether

1 Continental had other options to merge, other than
2 United?

3 A Yeah.

4 So one option was to stand alone, which I
5 think I have described, I don't think was a very
6 appealing option for Continental.

7 One option was to try and go after US
8 Airways itself. And then, you know, break off any
9 discussions between Airways and United. That
10 wouldn't have work on a number of levels.

11 First of all, both the Airways management
12 team and the Continental management team would have
13 wanted to be the successor management team.

14 And that was not true in Continental --
15 that was not true with any -- any carrier that
16 merged with United because the United management
17 team was very happy in order to facilitate a merger
18 to hand the operating -- or the operations of the
19 airline over to a successor provided they were
20 competent.

21 But looking at it on a level that's on
22 Exhibit 1, the merger of Continental and US Airways

1 would have left still huge gaping holes in a
2 domestic network. And you would have had a
3 regulatory and maybe just an operating problem with
4 the overlap between Philadelphia and Newark, you
5 know, which were big hubs.

6 Philadelphia was a big hub for Airways.

7 And obviously, Newark is a big hub for
8 Continental. And that would have caused problems.

9 So it wasn't a very appealing competitor
10 option or response.

11 If you look at page 33.

12 Q Exhibit 33?

13 A Exhibit 33, page 1, the other option was
14 to pursue a merger with American, which had a few
15 years earlier been broached.

16 But this was even more problematic for
17 Continental and for American because, if you look at
18 the map on the right, you still had some weaknesses,
19 but you had overlap, overlap, overlap. And a lot of
20 this overlap really couldn't be fixed, you know,
21 within the antitrust laws without significant
22 divestitures.

1 So, for instance, in JFK and Newark, you
2 couldn't do both. You would have to give up one to
3 a competitor so you would, in effect, be funding a
4 new operation for a competitor at the airport, which
5 you would ultimately give up.

6 Now, you know, Continental had invested a
7 lot of money in Newark. American had invested \$2
8 billion in Kennedy, and there was not a very
9 appealing option.

10 So there really wasn't -- if Airways, US
11 Airways and United merged, Continental didn't have
12 any -- any promising competitive alternative to the
13 two megamergers.

14 It would not -- it would have been very
15 difficult to survive. And I think if you look at
16 Exhibit 34, when Continental's CEO, Smisek,
17 testified before the House and the Senate, the
18 testimony is the same really, the written prepared
19 testimony is the same for both committees, in that
20 he said, So we built a great airline, and I'm proud
21 of it. We have done a good job. But we're eking
22 out a hand-to-mouth existence.

1 And as far as I can see, we'll continue to
2 eke out a hand-to-mouth existence, standing alone.
3 But by merging with United, you know, great things
4 can happen.

5 And I -- I think that, you know, that
6 view, which is, in my expert opinion, is absolutely
7 correct, that life would have been tough at
8 Continental if there had been that merger. But the
9 two together are a significant force in the
10 industry.

11 And if you go to the testimony that Smisek
12 gave in a lawsuit in San Francisco, which is on
13 Exhibit 34, page 2. And it's not Maloney, I think
14 it's Malaney, so there's a typo there.

15 Smisek saying that if United went forward
16 with US Airways, they would be marginalized, in the
17 first question.

18 In the second question, he felt he would
19 be crushed by Delta/Northwest in New York, whether
20 crushed is the right word or not, and he ultimately
21 says colloquially, it's okay.

22 And then, you know, at the end he says,

1 you know, I had a concern that if we didn't merge
2 with United, that our future competitiveness would
3 be materially adversely affected -- he's been
4 reading too many SEC reports -- which could result
5 in not being able to remain in business over a long
6 period of time.

7 So clearly, he felt the competitive
8 pressure and the need for the merger.

9 You know, by the time 2010 rolled around
10 and he called Tilton, there wasn't much to discuss.
11 They had already gone through it in 2008, all the
12 details.

13 And he obviously had to update your
14 materials, or your route rationalization. But
15 things they had talked about in 2008 about doing
16 once they merged, some of that had already been done
17 through the alliance agreement, through the aircraft
18 disposition programs that both implemented after the
19 2008 financial crisis.

20 So, you know, it basically came down to
21 who is going to run the airline and what's the logo
22 on the tail of the airplane, and where are the

1 headquarters?

2 And with some of the investment bankers
3 getting in on share valuation.

4 And those issues were pretty much decided
5 and in a very short period of time.

6 MR. POLLAK: I'm going to suggest that
7 this would be a logical moment to take a break.

8 But that we not break for lunch, that we
9 take a short break and come back and try and push on
10 to conclusion before somewhat later lunch.

11 MR. KATZ: That's fine.

12 ARBITRATOR EISCHEN: Sounds good.

13 MR. POLLAK: Is that fine, Dan.

14 MR. KATZ: That's fine with me.

15 ARBITRATOR EISCHEN: Let's take five.

16 Thank you very much.

17 (A recess was taken from 11:25 until 11:39.)

18 BY MR. POLLAK:

19 Q All right. Mo, in Slides 35, I think, to
20 the end of your slide package and your testimony
21 today, I believe you have a series of exhibits
22 related to your views about the comparability and

1 position of United and Continental prior to the
2 merger.

3 Is that right?

4 A Yes.

5 Q And would you like to start Exhibit 35 and
6 take the Panel through the thoughts that you have?

7 A Sure. The merger announcement in May of
8 2010, had the theme that this was a merger of
9 equals.

10 And, you know, it was a merger of equals
11 in the sense that the number of seats on the Board
12 of Directors was equally split and the shares
13 valuation was almost equally split. It's in
14 United's favor, but, you know, not huge gaps.

15 But on a strategic basis, on the assets
16 brought to the deal, this was not a merger of
17 equals.

18 It was important to say publicly that it
19 was a merger of equals. It was important to Smisek
20 to say that, for his relationship with Keller, to
21 his own unions, and I think to the United unions,
22 which didn't particularly care for Mr. Tilton.

1 And so it was a good rallying call for
2 everybody.

3 But if you look from the airline's
4 operations perspective and you look at revenues,
5 network, global franchise, widebody flying,
6 alliances, domestic presence, frequent flyer program
7 power, the assets brought to the table were heavily
8 tilted in favor of United.

9 And, you know, if you look at Exhibit 35,
10 which is -- and we're looking at the period just
11 prior to the merger, 2009 up through some various
12 points in the first quarter of 2010.

13 And you look at the revenues generated at
14 the hubs, whether you look at the revenues generated
15 at the hubs or in the top ten O&D markets of 25, 50,
16 or 100, in every category, United is, I would say,
17 significantly larger than Continental in terms of
18 revenue produced.

19 And the same is true at the bottom of page
20 1 of Exhibit 35, is the market presence in the top
21 10, 25, 50, and 100 markets, you know, United is
22 significantly larger than Continental.

1 Q Mo, do you know, on page 1 of Exhibit 35
2 at the bottom, whether that's passengers or
3 revenues?

4 Probably revenues?

5 A It's revenues. It's a revenue slide.

6 Q Great.

7 A If you look at page 2, what I did was take
8 the -- all of the markets the domestic O&D markets
9 where the carriers generated over \$100 million of
10 revenue in 2009, and listed them, you know, in
11 descending order of revenue generated.

12 The ones on the right are obviously
13 Continental. The ones on the left are United. And
14 there's 16 markets where United generated revenues
15 of over 100 million, and seven for Continental.

16 You know, United has a much more -- less
17 concentrated, more diffuse presence, a greater
18 presence in really significant markets.

19 Once you get past really No. 2 for
20 Continental, which are Newark, which is obviously a
21 very important market, and Houston, you drop down
22 dramatically from 700 million to 260 million. And

1 there's a lot -- there's five -- four, United
2 markets in between those two. So it's a much more
3 comprehensive presence in the domestic markets.

4 If you look at the Exhibit 36, and the
5 yield performance of the carriers in 2009 and 2010
6 by Form 41 entities or regions, you can see that in
7 every region, United did better than Continental in
8 2010 and on a year over-year-change, significantly
9 outperformed Continental in every area except the
10 domestic, which they still outperformed, but it was
11 a small difference.

12 Q Just to make sure the Panel understands
13 how you did the chart, can you go across on the
14 Atlantic line and show -- just describe what it's
15 showing in terms of the yields in '09 and '10, and
16 then what the percentages represent?

17 A Sure. We'll take Atlantic, as you
18 suggested, Roger.

19 And in 2009, United's yield was 12.3
20 cents, and Continental's was 11.22. And in 2010,
21 United was 14.83, and Continental was 12.74.

22 The percentages are like 20 percent for

1 United. That represents the change in 2010 over
2 2009. United yield, 20 percent increase in yield.
3 Continental is 13 percent of the 12.72 cents in 2010
4 versus the 11.2 cents in 2009 -- 11.22 cents in
5 2009.

6 Q Mo, is this, again, trying to show the
7 strength of the rebound that Continental had coming
8 out of the turbulent 2008, versus the --

9 A The strength at United.

10 Q Relative strength of United versus
11 Continental's rebound?

12 A Correct. Correct.

13 And I -- and this is not only important to
14 show that, but this is such a transparent industry,
15 this is information that Continental and United had
16 when they were negotiating or starting to negotiate
17 in April of 2008.

18 They had, clearly, in 2009, they knew
19 where they were relatively in the first quarter of
20 2010. And it -- to me, it shows the relative views
21 of the management as to where they stood relative to
22 each other in terms of strength, robustness, you

1 know, ability to compete in the environment in the
2 industry.

3 Q All right. And Exhibit 37, you return to
4 your comparisons on the top?

5 A On my charts; right.

6 Q Right.

7 A And so if you look at it by passengers,
8 which is page 1, or revenues, which is page 2, you
9 can see that the domestic footprint of United is
10 significantly larger in the top 100, and four times
11 as large in the domestic passenger market.

12 And the same is true in revenues, that --
13 and, you know, this, as I said, very early on, this
14 is indicative of your domestic presence. And your
15 domestic presence is the backbone of your network.

16 And you need the domestic presence in
17 order to be successful flying globally.

18 Q And say a couple more words about why
19 that's -- why do you have to have a strong domestic
20 network to fuel an international business?

21 A Otherwise, you would be Pan Am.

22 Q What do you mean by that?

1 A This is a network business. You need
2 passengers.

3 As much as people tend to look down on the
4 domestic U.S. market, it's still the second largest
5 market in the world, now, behind China.

6 It's a thick market. It, obviously,
7 produces a lot of traffic. There's an enormous
8 amount of business and corporate traffic. And that
9 traffic has to get from Des Moines to Stuttgart.

10 And you have got to have a domestic
11 system. And not all traffic originates, you know,
12 in New York, contrary to what people from New York
13 City may believe, that there is a place outside of
14 New York.

15 So you need to have the feed system into
16 your hubs. Whether it's New York, or Philadelphia,
17 or Chicago, or Washington, or San Francisco, or Los
18 Angeles, or Houston, you need a feed system in order
19 to distribute incoming traffic and to collect
20 outgoing traffic.

21 Without that, you become a basically
22 point-to-point international carrier, which nobody

1 has successfully -- nobody has been shown to be a
2 successful business plan.

3 Q All right. And Exhibit 38, you return to
4 the format you used early in the presentation?

5 A Right. And it just shows that, at the
6 time that they were engaging in the merger
7 announcement in 2009, it wouldn't be any different
8 in outcome than 2010, that United still was -- had
9 greater presence in more geographic areas than
10 Continental did.

11 Continental still had its presence in
12 Europe, and Latin America, and Micronesia, which we
13 have addressed before.

14 And I don't think I need to go through
15 every one of the slides in here.

16 Q Right. There are maps behind page 1 of
17 Exhibit 38 that provide more backup for the
18 comparisons in each region, Mo?

19 A Yes, Roger.

20 Q Okay. Starting at Exhibit 39, do you have
21 some discussion about the Latin America business in
22 Continental's -- Continental's Latin American

1 business?

2 A I have a couple of points to make.

3 One is, you know, the Continental pilots
4 have talked about their franchise to Latin America
5 and the Caribbean.

6 And their operation to Houston --
7 Continental's operation at Houston is very robust to
8 Latin America. And it's clearly, you know, one of
9 their two network strengths.

10 But it's -- in one of the exhibits that
11 was provided in the last session, some of it,
12 particularly in regard to Mexico, was referred to as
13 a monopoly.

14 And I thought it's important to put the
15 franchise, the Houston franchise in, in the context
16 of how I think it would be seen in the industry.

17 MR. KATZ: Excuse me, Mr. Garfinkle.

18 I just want to note for the record that,
19 while Jeff and Roger did say they were going to save
20 their rebuttal evidence for their rebuttal case,
21 what we're into now is specifically rebuttal
22 evidence, not a direct case in chief.

1 MR. POLLAK: Yeah. Let me speak to that.

2 The witness was going to present materials
3 about Latin America. It didn't make sense to us to
4 parse out and be nonresponsive to obvious things
5 that were there and hold those back until late June
6 as a matter of efficiency.

7 And just frankly, and pragmatically, it's
8 probably fairer for them to hear his thoughts about
9 this now. They can respond to them in June instead
10 of -- initially, instead of having to wait until
11 after they do their rebuttal in June, and we come
12 back, you know, and do our rebuttal after their
13 rebuttal, if you know what I mean.

14 So I don't think there's any disadvantage
15 at all to the Continental pilots in allowing their
16 to be some responsive material mixed in here. And
17 it's certainly much more efficient from Mo's
18 perspective.

19 We would hope not to have to bring him
20 back to do just a couple of points.

21 MR. KATZ: I wasn't objecting to your
22 wrapping rebuttal in with direct.

1 It's just I wanted to point out it's
2 noted, but go ahead.

3 MR. FREUND: Well, in fairness -- and I
4 don't mean to infringe on Roger, but I'm going to
5 infringe on Roger --

6 MR. KATZ: So I'm going to have to deal
7 with the two of you instead of just one of you?

8 MR. FREUND: You're going to have to deal
9 with two of us because I --

10 MR. KATZ: Well, that would make it a fair
11 fight.

12 MR. FREUND: I'm the one that laid it down
13 in the first place.

14 I have said repeatedly that, of necessity
15 we're going to be engaged in a certain amount of
16 rebuttal in the context of this case, and this is
17 the current system.

18 ARBITRATOR EISCHEN: Well, I'm going to
19 focus my attention on Dan's comment that he doesn't
20 really object to you doing it.

21 MR. POLLAK: Right.

22 And there we go. Okay.

1 MR. FREUND: So why he said something in
2 the first place is beyond me.

3 MR. POLLAK: All right.

4 Back to Mo's testimony, and on we go.

5 THE WITNESS: So maybe I should take my
6 reference to Texas lawyers out and just leave it at
7 lawyers.

8 Having been one myself, I understand.

9 So I wanted to put the Houston Latin
10 America operation of Continental in context.

11 If you look at page 2, Latin America,
12 Houston is certainly big for Continental, but it's
13 really -- in the context of the industry, it's less
14 than half the size of American's Latin America
15 revenues. And it's -- but Delta, with its ever
16 burgeoning hub at Atlanta and now Kennedy nipping at
17 its heels.

18 So it's among the big three.

19 As I said, it's a very nice asset. And
20 it's important to Continental. But in the context
21 of the industry, they're still second to American.

22 The results of this concept that they

1 were -- that Continental somehow, at least the
2 impression was that they were shielded from
3 competition or they had some kind of monopoly
4 position at Houston.

5 Of course, this is a network business so
6 the traffic that we're talking about to Latin
7 America isn't Houston to Latin America only or
8 primarily. It's really the United States to Latin
9 America through Houston as a connecting point.

10 And you can see on page 3, that all that
11 connecting traffic that comes from other points in
12 the United States, that's going to Latin America,
13 that Continental drags over Houston, all that
14 traffic is susceptible to competition from other
15 carriers at other gateways.

16 And this map just describes to all the
17 points that Continental serves in Latin America, all
18 the competition that exists from U.S. carriers,
19 primarily.

20 BY MR. POLLAK:

21 Q And we have a little more detail on that
22 pages 4, 5, and 6 of Exhibit 39?

1 A Yeah. One thing I would want to say about
2 page 3, and then getting into page 4, 5, and 6, that
3 there was this -- I believe in Dr. Campbell's
4 testimony, he talked about the desire of the U.S.
5 Airlines, the legacy of U.S. Airlines to move out of
6 domestic competition and more into international
7 competition.

8 And maybe move out isn't the right word,
9 but to diversify and have more international
10 operations as a percentage of their overall
11 operations.

12 And part of the reason that he explained
13 for that was, because in a domestic market, they
14 were subjected to LCC competition, which has grown
15 significantly in the decade of the '90s and the
16 2000s. And this was a way for them to get away from
17 that competition, in part.

18 In the context of what Dr. Campbell
19 said -- and I agree with what he said: Latin
20 America, or at least northern South America, Mexico,
21 Central America, and the Caribbean are no different
22 than domestic U.S.

1 The LCC carriers are all in these markets
2 today or beginning to develop markets here.

3 So if you're trying to go -- if you're
4 going to Latin America to get away from the LCC
5 competition, you picked the wrong market because
6 they're coming at us.

7 And when you look at pages 4, 5, and 6, I
8 think 4, 5, and 6, by, I would say, subregion of the
9 Latin America, if you look at page 4, the Caribbean
10 and Central America.

11 On the left side, you see the Continental
12 routes from Houston. On the right side, you see the
13 carriers that are in competition for that traffic,
14 and you have a list of carriers flying in those
15 markets on the right side.

16 In Central America and the Caribbean, it's
17 not only your legacy airlines. It's not only what
18 we call, traditionally, our LCC airlines that are
19 flying, AirTran and Jet Blue, but we have a new
20 breed of LCC in this country, which is called the
21 ULCC, which is the ultra low-cost carrier.

22 And there's really, at this point, there's

1 two, which are Spirit and Frontier. Spirit is being
2 very aggressive in this market. They will continue
3 to grow.

4 So as I said, if you're running away from
5 LCC competition and trying to diversify into Latin
6 America, you better think twice.

7 Page 5 is exactly the same methodology
8 with respect to South America. In deep South
9 America, as we would call Brazil and Argentina and
10 Chile, you can see that's primarily -- not
11 primarily. That is what I would call traditional
12 competition.

13 In north South America and in Caracas,
14 Bogota, and Lima, you have the LCC and the ULCC
15 competition.

16 But, you know, the competition is very
17 robust for this traffic.

18 In Mexico, where I think the reference was
19 made to Continental enjoying a monopoly at Houston,
20 they may have a monopoly at Houston, but, you know,
21 most of the traffic doesn't originate in Houston.

22 And every carrier generally has a monopoly

1 at their hub because you don't find -- except for
2 Chicago, you don't find too many -- two carrier hubs
3 in the United States.

4 Every carrier kind of picks out its open
5 hub and niche. And so having a monopoly at Houston
6 really is largely irrelevant because the traffic --
7 and I think it's something like 8 percent of
8 Continental's Latin America traffic over Houston
9 originates behind Houston, from other points in the
10 United States.

11 But in Mexico, you really have panoply of
12 competitors. Every LCC, ULCC, and all the legacy
13 carriers are in this market.

14 Q And you're looking at page 6?

15 A And I'm looking at page 6.

16 Q Of Exhibit 39?

17 A Right. And you know, in this regard, I
18 think the second point that I really want to make is
19 that Mexico is, in addition to being an LCC market,
20 too, Mexico in the context of looking at airlines
21 in the global presence, Mexico is very much like
22 Canada.

1 It's a transborder market.

2 It's a market you fly with narrow bodied
3 airplanes or regional jets, or in the case of
4 Continental, a lot of 50-seat airplanes to a lot of
5 very small markets in Mexico.

6 And it's -- by quirk of DOT, formerly COB
7 reporting, Canada's included in domestic U.S.

8 It's Canada and -- it's domestic and
9 transborder. And transborder only includes Canada,
10 but Mexico is not included in transborder to
11 domestic. It's included in Latin America.

12 So when you look at Form 41 data and try
13 and say, Who is really an international carrier, you
14 can't do that because neither Mexico and Canada are
15 both included, should be included in what would be
16 called domestic, or they both should be
17 international or a new category, transborder.

18 Q Let me stop you for just a second.

19 Let's touch on the subject at pages 13,
20 14, and 15 of Exhibit 39. And then have you go back
21 to finish your discussion with some points about
22 Latin America and flying?

1 A Right. Okay. So ...

2 Q Exhibit 13, did you show the comparability
3 of Continental's Mexico service with United's Canada
4 service?

5 A Right. So as I said, from a DOT reporting
6 perspective, it doesn't really address whether
7 something is international or domestic.

8 So if you believe that Canada is a
9 transborder market and Mexico is a transborder
10 market, you really need to look at them together.

11 And what this does is take -- look at an
12 apples-to-apples comparison of how United serves
13 Canada and Continental serves Mexico. And, you
14 know, they are very much uncannily close to each
15 other in any of the metrics.

16 And on page 14, in order to really compare
17 apples to apples, you take both carriers' Mexico
18 operations and both carriers' Canada operations, and
19 the right-hand column is the total that you get.
20 You know, very, very close in metrics.

21 And in page 15, this is kind of like a
22 cafeteria view of life. The first column, you know,

1 the DOT Form 41, this is how it's reported to DOT,
2 with Canada being part of domestic.

3 So international operations don't reflect
4 Canada, but they reflect Mexico.

5 If you throw Canada and Micronesia in
6 here, you get the numbers in the second column. And
7 my view here is that I don't think you can use Form
8 41 data to determine -- I know you can't use Form 41
9 data to determine the international footprint of a
10 carrier because you're excluding a very important
11 market, which is Canada.

12 But under any scenario that you choose to
13 agree with or disagree with here, the RPMs in 2010
14 show United was larger than Continental.

15 Q And RPMs stand for what?

16 A Revenue passenger miles, I'm sorry.

17 I didn't mean to get into the weeds there.

18 Q So, Mo, if you look at the -- if you look
19 at the second column, which includes Canada and
20 Micronesia, would that -- for United and
21 Continental, would that include all flying between
22 the United States and international points, as well

1 as point-to-point flying internationally, United
2 into Asia?

3 A Inter-Asia flights?

4 Q Yeah. As well as Continental's flying
5 into Micronesia.

6 A Right.

7 Q So that's the entire international
8 picture.

9 A Right.

10 Q All right. And how many more RPMs
11 annually in the year 2010 did United fly
12 internationally than Continental?

13 MR. KATZ: What exhibit are we on?

14 MR. POLLAK: We're on Exhibit 39, page 15.

15 THE WITNESS: What's your question, Roger?

16 I'm sorry. Under what column?

17 BY MR. POLLAK:

18 Q The second column, with all international
19 operations including Canada and --

20 A Forty-five billion.

21 Q Let's try that again.

22 The second column, which is all

1 international operations including Canada and
2 Micronesia, can -- for the Panel, can you just
3 compare the total RPMs of the two of them?

4 A United is larger.

5 What do you want me to ...

6 Q By about eight billion?

7 Eight -- yeah, about eight billion RPMs?

8 A Six, six billion.

9 It's about six billion.

10 Q But the second column, Mo, where it's
11 comparing the 47 billion, 426 million --

12 A Eight, I'm sorry, eight, right.

13 I was looking at the first. I apologize.

14 Q All right. Having covered that topic, do
15 you want to go back to slide Exhibit 39, page --

16 A Well, let me go to probably page 10 at
17 this point.

18 Q All right.

19 A Which is that, you know, one of the -- not
20 only is Continental currently susceptible to
21 competition in all of its Latin America markets, as
22 I explained, a lot of that competition is behind --

1 is other points other than Houston because a lot of
2 traffic doesn't originate in Houston.

3 But going forward, the Houston/Latin
4 America operation is going to be subjected to direct
5 Houston competition from Southwest, which was
6 involved in a rather heated debate with the City
7 Council of Houston as to whether Southwest could
8 start international operations at Hobby.

9 And Continental was vehemently opposed to
10 that.

11 Ultimately, Southwest won that
12 application.

13 And as to what Exhibit 39, page 10 shows,
14 is it lists, whether they're blue or white, in the
15 first column, all the routes that Continental flies
16 currently from Houston to points in Latin America.

17 Q Mo, let me stop you just for a second.

18 Of course Continental doesn't exist
19 anymore. And what we're really talking about here,
20 since this happened after the merger, is what would
21 have happened had Continental been standalone in
22 terms of its susceptibility to competition in

1 Houston.

2 Is that correct?

3 A That's correct. That's correct.

4 Q Just to clarify --

5 A That's right.

6 Q -- the terms here.

7 A Okay. And so you can -- and the ones in
8 blue -- I think there's 21 of those of the 55 on
9 this page.

10 The ones in blue are the routes that
11 Southwest and its consultant have identified are the
12 routes that Southwest would fly or were projected to
13 fly.

14 And you can see that, of the total onboard
15 passengers, which are listed at, you know, 5
16 million, 388, that 3,900,000, rounding it up
17 slightly, would be susceptible to competition by
18 Southwest. And that's nearly 73 percent.

19 That's 72.3 percent or something like
20 that.

21 And these numbers, these routes in the
22 blue, I didn't make up. I didn't create. These

1 were routes that were identified in the study that
2 was done for Southwest in support of its application
3 to inaugurate international service at Hobby.

4 And page 11 and 12 is a copy of that
5 study, which was prepared for Southwest by
6 Dr. Campbell's shop.

7 And page 12 of Exhibit 39 is the highlight
8 page from Dr. Campbell's study. And it says many
9 things. But if you look at the third from the last
10 bullet, it says: Travelers in Houston international
11 markets will receive approximately \$255 million per
12 year in fare savings," 171 million of that savings
13 is for IAH passengers, which are Continental
14 passengers over --

15 Q Mo, at this point, United passengers.

16 A At this point, United passengers.

17 Q And what do fare savings mean for an
18 airline that's competing with Southwest on this 73
19 percent of its business?

20 A It -- so if there's savings, it means the
21 fares are lower, which means that the revenues are
22 going to be lower for the airline, you know, the

1 beneficiary at this point, the \$171 million fare
2 savings.

3 Q So this is just another example of the
4 advent of low-cost carrier competition in the Latin
5 market on what was historically Continental's system
6 there?

7 A Yes. I think that's fair to say.

8 Q In Exhibit 40, I think you had about --
9 some information about the relative scope of the
10 Latin international markets on the eve of the merger
11 that were served by the carriers versus the Pacific
12 and Atlantic businesses?

13 A Continental was very strong in Latin
14 America for sure.

15 But putting Latin America in the context
16 of both the Pacific and the Atlantic in terms of
17 revenues, it's a relatively small potato compared to
18 the Pacific and the Atlantic.

19 And that shouldn't be surprising because,
20 you know, Latin is generally short haul from
21 Houston, whereas the Pacific -- you know, from
22 wherever you fly in the United States, it's long

[illegible]

1 And I don't -- I'm not saying that what
2 Continental had in Houston to Latin America wasn't
3 valuable. It certainly was valuable. But it has to
4 be put in context of everything else that was
5 valuable in this transaction.

6 The United presence in Asia, the United
7 widebody fleet, United -- the iconic brand and
8 franchise that it brought to the table.

9 Q All right. And turning to Exhibit 41.
10 Do you have some comments on the Heathrow
11 service of the carriers?

12 A Yeah. This is something, actually, when I
13 looked at it, I was very surprised to see.

14 As we discussed, you know, the Heathrow
15 slots are scarce economic resources. They're very
16 valuable. If you weren't one of the incumbent
17 carriers, or if you try and you had -- and you had
18 to get into Heathrow, you generally, in the last few
19 years, you had to buy the slots.

20 Q Turn to Exhibit 44 for a second.

21 I'm sorry for interrupting.

22 A Or lease those spots.

1 Q Because you can address that.

2 A Right.

3 Q Looking at Exhibit 44.

4 A So when the U.S. and the United Kingdom
5 agreed to an Open Skies regime, which permitted
6 carriers other than United and American to fly to
7 Heathrow, U.S. carriers -- the agreement was U.S.
8 carriers could fly to Heathrow, but they had to fly
9 their slots.

10 They weren't going to be given slots for
11 free. And clearly, they wanted to fly more
12 services.

13 So if we look at the -- on the left-hand
14 side of Exhibit 44, page 1, the period immediately
15 before the merger, when Continental was actually
16 flying to Heathrow, at this point it was flying to
17 Cleveland. It has since closed that down.

18 To the -- you know, United has almost
19 double the number of slots at Heathrow that
20 Continental did.

21 And as I have said, many of these carriers
22 had to buy slots. And Continental, in early 2008,

1 when it was beginning service to Heathrow, after the
2 U.S./United kingdom Open Skies agreement, it paid --
3 excuse me, \$209 million for slot pairs.

4 And by slot pair, I mean a daily service
5 in and out of Heathrow.

6 So if you extract that value to the
7 Continental slots and the United slots they held at
8 the time, there's a great -- there's about an \$800
9 million asset that -- slot value asset that United
10 would be bringing to the table.

11 I'm not suggesting that every slot is
12 going to go for \$50 million or something like that,
13 but clearly, you know, United, with its portfolio of
14 154 slots and its entrenched position at Heathrow,
15 clearly was bringing a valuable asset to the table.

16 But the other point to make from this is
17 that, in order to fly at Heathrow, you have got to
18 pay a lot of money for a slot. It's a very
19 valuable, scarce resource.

20 And if you look at Exhibit 41, page 1, you
21 can see that Continental was using, at this point, I
22 believe it was flying four daily flights, one with a

1 777. But it was flying three times a day with a
2 757, a narrowbody airplane, into the largest
3 business -- premium business market in the world.

4 From a network planning perspective, this,
5 to me, is quite surprising. No other carrier that
6 was flying in the New York, London, Heathrow market
7 was flying narrow bodied airplanes.

8 British Airway had mission capable
9 airplanes. American had mission capable airplanes.
10 Delta had mission capable airplanes. And when I say
11 mission capable, I mean 757s, that they could have
12 put in this market. Nobody was flying 757s in this
13 market.

14 Yeah. I could speculate why they were
15 using 757s, but I won't do that. But just the fact
16 that they're flying into a valuable premium market
17 that they paid a lot of money to get access to, and
18 using a narrow bodied airplane when they probably
19 had other airplanes available, is quite surprising
20 to me.

21 And they were using 757s in other markets
22 where their competitors were using 767s. And that's

1 what Exhibit 42, page 2 shows, where those
2 competitors had 757s that they could have flown into
3 those markets.

4 So in Amsterdam -- I'll just use Amsterdam
5 as an example -- Continental was flying 757, but
6 Delta was flying a 76, and from both JFK and from
7 Newark, while Continental was only flying the 757.

8 So, yeah, the 757, I think, was not an
9 optimum aircraft to use to Europe. It was actually
10 reconfigured, technically, to be able to fly that
11 mission.

12 I think the purpose was to get them out of
13 the domestic network, as Dr. Campbell explained it,
14 running away from -- hell, everybody was trying to
15 run away from LCCs. And it -- the use of the 757s
16 in certain of these markets seems very peculiar.

17 Q Did you have some further testimony about
18 United's position at Narita on Exhibit 42?

19 A Yeah.

20 I talked earlier about the incumbent
21 position and how valuable it was before U.S./Japan
22 Open Skies, and it's extremely valuable now.

1 And an interesting point is -- and I
2 believe it was Dr. Campbell, and I could be wrong --
3 excuse me, said that after the Open Skies agreement
4 with Japan, the number of slots available at Narita
5 doubled. So anybody could fly.

6 So the implication of that was that the
7 Narita franchise that United had was less valuable.

8 In fact, what really has happened in the
9 marketplace is that, despite the doubling of slots
10 at Narita, since the Open Skies agreement, no U.S.
11 carrier has chosen to increase their service or map
12 new services over and above what they had except
13 United itself, which has the Denver flight in there.

14 In fact, both American and Delta,
15 Delta/Northwest have decreased their services by one
16 daily frequency in the market.

17 And before I forget, there's a typo on
18 this page. If you look at American DFW, that 14
19 across should continue to 2013. I don't know why
20 it's not there. I apologize.

21 But what this shows is that it's not as
22 simple as a market opens up and you put a plane in

1 the market, and you have got a presence.

2 To fly to a market, to fly to Narita, it's
3 a complicated process. It's not just the plane.
4 It's you know, your distribution system, your
5 infrastructure, not only your slots and your gates,
6 but, you know, you have had an -- your market --
7 your brand.

8 The market knows your brand.

9 If you're going to start a new service to
10 a new destination, you have got to be prepared to
11 lose a lot of money to break into that market.

12 And so it's not just the market opens up
13 and I'll put a plane there and everything is fine.
14 You're flying a 150, \$200 million asset into a new
15 market. It's very capital intensive, very risky
16 proposition.

17 And in this new environment industry
18 structure we have, we have carriers -- U.S. carriers
19 that have earned a degree of financial discipline
20 and are very loathe to go out and embark on new
21 routes like this.

22 So that incumbency position and that

1 franchise, and in Asia, that was anchored by Narita
2 for United is extremely valuable.

3 And if you look at Exhibit 43, Continental
4 said the same thing when they were applying for a
5 route to Haneda, which, putting it in perspective,
6 is the La Guardia or the Reagan DCA airport.

7 It's the close-in airport.

8 And for two decades or maybe longer, it
9 was primarily almost exclusively a domestic airport,
10 except for flights to Taiwan. And then the Japanese
11 decided to open it up to international flights. And
12 so part of the U.S./Japan Open Skies agreement was
13 that the U.S. would get three new routes to Haneda.

14 And Continental and Continental Micronesia
15 applied representatively for a route from Newark and
16 from Guam.

17 And I'm not going to read all of these
18 things, but the tenor of pages 1 through 7, which
19 are the Continental exhibits in the case, you know,
20 Continental has the smaller share of the Tokyo/U.S.
21 mainland market among carrier.

22 United has nearly three times the Tokyo

1 market share of Continental. American has twice the
2 U.S. market share. Continental has the fewest
3 frequencies. Delta has four times as many
4 frequencies.

5 And so, you know, Continental itself, at
6 this point, right, and this is, you know, premerger,
7 recognized how valuable flights into Tokyo were.

8 And what a minimal position it had.

9 Q And what happened with its application for
10 service to Haneda?

11 A They were not one of the three carriers
12 that were awarded a route.

13 Q Move now to Exhibit 45.

14 And you mentioned Air Micronesia earlier,
15 and its separateness from the rest of the
16 Continental network.

17 A Just a lot of the international points
18 that are listed in the -- let's call it the
19 Continental column, are points that come from the
20 Continental/Micronesia system.

21 And a lot of these, I would say secondary
22 Japanese airports, which is the list at the top of

1 the chart, are there. And then there's a lot of
2 places that probably, unless you're World War II
3 buffs, people have never heard of coming out of
4 Guam.

5 Continental Micronesia is really a vestige
6 of the Vietnam war history. It was created by Bob
7 Six, the founder of Continental. And it was
8 designed originally to -- as an R&R place for
9 Vietnam soldiers. But also it was designed as
10 the -- it was -- Guam was the honeymoon, the Niagara
11 Falls of Japan. The Japanese would go to Guam for
12 their honeymoon.

13 I guess that's because the guys could play
14 golf. There's a lot of golf courses in Guam. I
15 don't know what else they did, but -- and that's why
16 you have all this service to primarily the secondary
17 cities.

18 It was never connected, never connected to
19 the network. There's no hub. If you call Guam a
20 hub, and maybe a hub for Continental Micronesia, if
21 you call Guam a hub, there's to hub-to-hub flying
22 through Houston, Cleveland to Newark, any of those

1 hubs.

2 It is really a standalone operation that's
3 not part of Asia. It's not Australia, New Zealand.
4 It's really just Micronesia.

5 And while it puts a lot of routes in the
6 Continental column, if you look at page 2 of 45, in
7 the upper left-hand corner, you see that 86 percent
8 of these flights are operated with narrow bodied
9 airplanes, and 60 percent are flown at four or less
10 times weekly.

11 And if you want to talk in terms of
12 markets served or routes served, you know,
13 Chuck-Guam is not equivalent to Chicago to Hong
14 Kong, or Majuro to Guam is not equivalent to San
15 Francisco-Beijing.

16 So quantity is not reflective of quality.
17 And I think that's important.

18 That being said, if you look at page 2 of
19 Exhibit 45, you will notice that from the year 2000
20 to the year 2010, in the lower left-hand corner, the
21 amount of connecting traffic that Continental
22 Micronesia has operated, has gone down close to 50

1 percent.

2 The local traffic has stayed, I would say,
3 reasonably the same because, you know, the airplane
4 is the highway for people in Guam, and so that
5 traffic is going to stay roughly the same.

6 If you look in the supper right-hand
7 quadrant, what is very different than you'll see in
8 most other markets, is that the local market
9 represents 77 percent of the Guam flying. It's
10 point-to-point flying.

11 People are going from Guam to Chuck or
12 Guam to Majuro or Guam to -- Hong Kong to Guam, to
13 Manila. They're not going from Manila to Guam to
14 Chuck, or Manila to Guam to Honolulu.

15 It's only 23 percent in connecting
16 traffic, which is -- you know, in a network
17 business, that is -- the percentages are reversed
18 from what you would ordinarily expect.

19 Q And, Mo, does that also underline your
20 point about the Air Micronesia business being
21 essentially isolated from the rest of the
22 Continental route network?

1 A Continental Micronesia business?

2 Q Yes, sir.

3 A Yeah. Well, it is isolated. It's a
4 standalone operation.

5 It's not core to the network. And at one
6 point, it was very attractive business. But it
7 was -- it's the 80/20 rule. You might spend 80
8 percent of your resources, time, and energy for
9 something that was worth 20 percent.

10 It's really not core to the business.

11 Q All right. Mo, the last subject you were
12 going to address today concerns United's wherewithal
13 premerger to have acquired additional aircraft had
14 it decided that it wanted to.

15 Could you speak to that point?

16 MR. KATZ: We're on Exhibit 47.

17 MR. POLLAK: We're on Exhibit 46 and
18 Exhibit 47.

19 BY MR. POLLAK:

20 Q For example, did United have the financial
21 wherewithal to be able to acquire additional
22 aircraft in the 2009, 2010 period?

1 A As I said earlier, a lot of the decisions
2 that United made when it went into bankruptcy were
3 to facilitate a merger, make a merger easier.

4 And of course, one of the most -- other
5 than seniority list integration, one of the most
6 complicated integration issues is fleet.

7 And throughout the bankruptcy process,
8 when I was butting heads with Mr. Tilton, his view
9 was very firmly -- United's view was very firmly,
10 we're not ordering aircraft now.

11 We have got to earn, and we want to see
12 who our strategic partner is because that will
13 determine what aircraft we need to order.

14 If United merges with Airways, I would
15 probably end up more of an Airbus customer.

16 If United merges with Continental, I
17 surely end up a Boeing customer.

18 And the mix of widebodies and narrowbodies
19 and what carriers have on order, all of that -- you
20 know, all of those issues are part of the thinking
21 that went into, I'm going to wait to order my
22 airplanes until my strategic partner is determined.

1 And that's -- you know, Tilton made no
2 secret of that. That's basically what Exhibit 47,
3 pages 1 and 2 say.

4 And if we -- and you know, the gut
5 reaction to that is, yeah, but you're losing out on
6 your ability to get in the production line to get
7 the airplanes sooner and/or the ability to finance
8 them.

9 So neither of those is true.

10 United had the financial wherewithal to
11 order airplanes at any time, beginning with the
12 beginning of bankruptcy through the time of the
13 merger.

14 In this industry, a lot of the airplanes
15 are either prefunded by the manufacturer, or the
16 manufacturer issues backup guarantees for financing
17 because it wants to deliver airplanes to airlines,
18 or the leasing company takes the risk.

19 And if you want to talk about financial
20 condition and ordering airplanes, the best example
21 is, you know, American Airlines, which lost \$10
22 billion in the decade of the 2000s, on the eve of

1 its bankruptcy, four months before it filed for
2 bankruptcy -- and everybody knew that this airline
3 was going to file for bankruptcy -- it orders 460
4 narrow bodied airplanes without a balance sheet to
5 support it, but with the manufacturer's backup
6 guarantee.

7 The same is true with Virgin America,
8 which hasn't made a dime in the airline business
9 since its existence. Yet, Airbus continues to
10 finance them, but with airplanes.

11 And January 11, they added an order that
12 tripled the size of the current fleet. And Airbus
13 was more than willing to accommodate them.

14 I mean, I could go on and on.

15 The issues that the other two listed here,
16 Lion Air in Indonesia, orders of close to 500
17 airplanes when it has 50 airplanes in its fleet and
18 it's had seven air crashes and it was banned in
19 Europe. And both Boeing and Airbus give them
20 airplanes.

21 You know, you can say a lot of things
22 about United, but United was certainly in better

1 shape than Lion Air, as was Continental's.

2 And so both United's balance sheet and the
3 real world market financing conditions would not
4 have prevented United from ordering airplanes at any
5 point in time.

6 Indeed, you know, if there was no backup
7 financing available, you know, you look at page 2 of
8 Exhibit 46 and what Continental had, they had
9 commitments for airplanes, and they had backup
10 financing for some of them.

11 But it says in the one, two, three, third
12 paragraph down in the line beginning with however,
13 it says: "However, we do not have backstop
14 financing or any other financing currently in place
15 for the balance of the Boeing aircraft on order,
16 including the aircraft we ordered in February of
17 2008. Further financing will be needed to satisfy
18 or capital commitments for our firm aircraft and
19 other related capital expenditures. We can provide
20 no assurance that such further financing will be
21 available."

22 Well, of course, Continental is going to

1 get the financing because, you know, they're an
2 important customer.

3 And the same is true about, you know, if
4 United orders airplanes, wants to order airplanes --
5 and it's not going to order 50 airplanes or 75.
6 It's number is going to be a couple of hundred or
7 this -- in the narrowbodied, and maybe 45 and 45, 45
8 firm and 45 options in the widebodied -- and I'm
9 just picking numbers, but it might be middle or high
10 single digits on the widebodies and hundreds on the
11 narrowbodies, neither Boeing or Airbus is going to
12 say I'm sorry, you're going to have to go to the
13 back of the line.

14 This is one of the largest aircraft orders
15 that they would have on the books for the year.

16 And both manufacturers have fudge in their
17 slot delivery positions to accommodate carriers like
18 this.

19 And if I'm going to order 250 airplanes
20 and I'm United, and Boeing is going to turn me down,
21 I'm going to go to Airbus. So why would Boeing turn
22 me down?

1 I mean, if one manufacturers turns them
2 down, you're going to go right to the other
3 manufacturer.

4 So the manufacturer is not going to let a
5 Grade A customer, like United or like Continental,
6 go away, or like American go to another
7 manufacturer. That's the worst thing they could do.

8 So they had the financial wherewithal.
9 They had the financial ability to do it.

10 They would haven't been standing at the
11 back of the line.

12 But they determined for strategic purposes
13 to wait and see who their partner was before an
14 aircraft order was ultimately entered into.

15 Q And, Mo, once a decision to merge had been
16 made, then would airlines, in essence, view -- make
17 their decisions based on their expected joint fleet
18 position?

19 A Of course. You know, you look at Carrier
20 A and Carrier B and what they have, in current
21 fleets and what's going to be redundant.

22 And then you look at the order books to

1 see what future deliveries are, both narrowbodies
2 and widebodies.

3 And then you determine where your aircraft
4 shortfall is or where you want to shed some aircraft
5 in the rationalization that you can make up for in
6 the future orders.

7 And, you know, as I said, neither
8 manufacturer, given the opportunity to supply United
9 airplanes in the numbers that United would order
10 them, would turn them away and let them go to the
11 other manufacturer.

12 MR. POLLAK: All right.

13 That's all I have for you right now.

14 THE WITNESS: I didn't like the right now.

15 MR. KATZ: Can we go off the record for
16 just one minute and talk about timing?

17 ARBITRATOR EISCHEN: Yes, sir.

18 CROSS-EXAMINATION

19 BY MR. KATZ:

20 Q All right. Mr. Garfinkle, preliminary to
21 getting into the substance of the evidentiary
22 presentation today, I would like to ask you some

1 questions about time frames that you used. It will
2 help us evaluate what questions to ask.

3 So, for instance, looking at what I would
4 call the nostalgia period, you have -- the first six
5 exhibits seem to be all related to the year 2000.

6 Is that right?

7 A That's correct.

8 Q And then Exhibit 7 is the period of the
9 '80s and the early '90s; correct?

10 A Correct.

11 Q Exhibit 8, you go to the year 2008, for a
12 typical midweek in -- a typical week in the middle
13 of June 2008; right?

14 A Right. I can explain why I did that.

15 Q Well, let me just go through a few of the
16 others --

17 A Sure.

18 Q -- then I'll ask you for an explanation
19 once I -- I'm sure I confirmed what they are.

20 And then in 9, we're back to the year
21 2000.

22 Is that correct?

1 A Correct.

2 Q 10 is 2006; right?

3 A 10 is 2006, right.

4 Q And then the timeline in 11, because that
5 covers the entire period from '82 through 2010?

6 A I cover -- just to be totally accurate,
7 Mr. Katz, I cover really through the merger
8 announcement and I stop there.

9 Q You stop at May 3, 2010?

10 A At the merger announcement.

11 Q Okay. And then in 12, there's a
12 collection of newspaper articles from 2005 and '07,
13 2005 through 2007.

14 A That's right.

15 Q And the same in 13, 14, you continue that
16 through 2008, the same period of time?

17 A What was the exhibit where you stopped
18 looking? 14?

19 Q Yes.

20 A Well, I guess it was 15; right?

21 Q Yes. The newspaper articles.

22 A Correct.

1 Q But then I got a little confused, 2008 is
2 displayed on the first page of Exhibit 15.

3 A Right.

4 Q But then the charts that follow that are a
5 collection, some 2010, some 2008.

6 A Well, they're all 2008 except for page 2.

7 Q Page 2 it says it's from the year ended
8 2010.

9 A I said they were all except for page 2,
10 which was 2010.

11 Q I see. And the others are 2008.

12 A Uh-huh.

13 Q And then turn to 18, please.

14 You have code share flights shown 2005 in
15 a typical week in August, 2005 through 2010. Is
16 that right?

17 A Correct. The code share flights of
18 Continental with SkyTeam carriers.

19 Q Okay. 23, you have got an analysis of
20 what I believe to be the entire period, 2008 and
21 2009.

22 Is that right?

1 A I think that's correct, yes.

2 Q But then in 24, when you say it's 1Q 2008
3 to 1Q 2010, that's a period of eight quarters.

4 Is that right?

5 A Nine.

6 Q Nine?

7 Could you include the first quarter of
8 2010 as well?

9 A I'm sorry. Up to the period of the merger
10 announcement.

11 Q And then on the next exhibit, 25, it's
12 four quarters?

13 A Four quarters before the merger
14 announcement.

15 That's correct.

16 Q And then the following exhibit, 26, you
17 broke out quarter by quarter for six quarters, and
18 there's also a one-year period in there.

19 Is that how that works?

20 A Yeah. The 2008 was to give us historical
21 context; correct.

22 Q And then you're showing --

1 A The six quarters before the merger
2 announcement.

3 Q And then the next page --

4 A Including the merger announcement.

5 Q The next page you use seven quarters up to
6 the consummation of the merger; right?

7 A Correct.

8 Q And Exhibit 31, what period of time is the
9 data in that exhibit?

10 A Year end third quarter 2009.

11 Q Is that true of all the pages?

12 A It's true 2 and 3.

13 Q 1, 2, and 3 are the 12 months ended?

14 A Well, 1.

15 Q 1 is a snapshot of the time?

16 A Right.

17 Q 2 and 3 are for the 12 on September 30,
18 2009?

19 A Uh-huh, correct.

20 Q And then pages 4 and 5?

21 A I think -- I believe it's 2009.

22 I will double check on that.

1 Q Would you, please?

2 A Yeah.

3 Q And then the fourth and fifth pages are
4 what period of time?

5 A '10, 2010.

6 Q The calendar year 2010?

7 A Yes, sir.

8 Q And Exhibit 35, is that the Calendar Year
9 2009?

10 A Yes.

11 Q And then in 36, you're comparing Calendar
12 Year 2009 to the Calendar Year 2010?

13 A Yes.

14 Q What about the next exhibit, 37?

15 A 2010, calendar year.

16 That's true for pages 1 and 2, and also
17 for Exhibit 38. Exhibit 38 is the year 2000, but
18 it's a typical week in August. So it's not the
19 entire calendar year, obviously.

20 Q Right. I think a lot of them are
21 self-explanatory from here on out.

22 44 is -- you have indicated down at the

1 bottom from a typical week of August, 2009.

2 A Right.

3 Q So I guess now you suggested you would be
4 happy to explain why you used these different
5 periods of times.

6 So my question to you is, given all the
7 various periods you have chosen to display, is there
8 any systematic method to what you have collected and
9 shown to the Arbitration Board?

10 A I think there's a systematic mechanism
11 here, but you may disagree with it.

12 I'm trying to show with different
13 exhibits, different perspectives at various
14 different periods of time.

15 This isn't a -- while telling the story of
16 the industry from 2000 to up until the merger, you
17 can't take a snapshot at any one period of time.

18 As I said at the very beginning of my
19 testimony, you know, carriers' positions and
20 carriers' perspectives and carriers' relative
21 strengths and weaknesses evolved and changed during
22 this period of time.

1 So what I tried to do when I was trying to
2 describe -- make a particular point, was to use what
3 I thought was the most relevant period of time with
4 respect to the point I was trying to make.

5 And, you know, what happened in 2000 is,
6 from my perspective, useful for history.

7 What happened in 2008 in the financial
8 crises is relevant to determine what happened, what
9 the carriers did, the relative strengths and
10 weaknesses in the context of that period.

11 And in the context of the 2010 merger
12 negotiations between United and Continental, what
13 they were looking at at the time of the merger,
14 relative -- in terms of their relative strengths and
15 weaknesses going into those merger talks was
16 relevant, and that's why I used the period before.

17 And it's not going back to 2006.

18 So to use a constant period of time to
19 tell a story, I think, would not only not tell the
20 story, but would actually be quite destructive to
21 giving an accurate representation of it.

22 Q So is it fair to say that for some

1 purposes you thought it was most help to go back to
2 2000 and look and see what happened since 2000.

3 For other purposes, you thought it was
4 most helpful to the Panel to look at four, six, or
5 seven, or nine quarters in 2008, '09, and '10?

6 A The 2000 period, Mr. Katz, is only in
7 there for historical, you know, to kind of lay the
8 background of what these carriers were and where
9 they were positioned as we came into that period,
10 the decade of the oughts and the decade of
11 turbulence.

12 It's not trying to make a point as to how
13 the carriers looked like in 2008 or 2009 or 2010.

14 MR. KATZ: All right. Thank you,
15 Mr. Garfinkle.

16 That's really what I wanted to cover at
17 the outset.

18 ARBITRATOR EISCHEN: Gentlemen, do you
19 have anything at this point?

20 Thank you very much, Mr. Garfinkle.

21 We'll ask that, in accordance with the
22 understanding discussed by counsel, both

1 Mr. Garfinkle and Mr. Akins stand ready, and we'll
2 know more at the end of lunch.

3 MR. KATZ: Will you provide your usual
4 caution about conversations with Mr. Garfinkle?

5 ARBITRATOR EISCHEN: Yeah.

6 You are now subject to cross-examination,
7 potentially within the next hour to 90 minutes.

8 You're, in effect, quarantined from
9 discussing the case with anyone. We maintain a
10 fiction of continuum that you're on the stand, and
11 we immediately go to cross.

12 THE WITNESS: Understand. Thank you very
13 much.

14 (A discussion was held between arbitrators.)

15 ARBITRATOR EISCHEN: And off the record.

16 (A recess was taken from 12:58 until 3:05.)

17 ARBITRATOR EISCHEN: We're on the record.

18 EXAMINATION

19 BY MR. KATZ:

20 Q Good afternoon, Mr. Garfinkle.

21 A Good afternoon, Mr. Katz.

22 Q Would you turn to Exhibit 44, please?

1 A Did you say 44?

2 Q Right.

3 A All right.

4 Q One thing that confused me about this,
5 Mr. Garfinkle, is it just looked like one of these
6 exhibits where the time periods you were measuring,
7 you were hopping around like a kangaroo.

8 Because on the right side you have got the
9 summer of 2008. On the left side you have the
10 summer of 2009.

11 Can you explain why you did that?

12 A Yeah. I can tell you that the BAA website
13 didn't have slot numbers for 2009 on the website.

14 Q The British Airports Authority.

15 A British Airports Authority.

16 Q Didn't have the slot numbers for 2009?

17 A Right, correct.

18 Q So you took 2008?

19 A Right.

20 Q But then you got the flights from OAG
21 data -- or Innovata for 2009?

22 A Correct.

1 Q And if you'll follow along, it's showing
2 77 total United weekly services in 2009 and 154
3 slots.

4 A Correct.

5 Q Is that because when you land, it's
6 helpful to have a takeoff slot to leave again, so
7 you double the number of services to get the number
8 of slots?

9 A Right. And I can see I made a
10 mathematical error here.

11 Q Well, that was my question.
12 Would you explain to the panel what the
13 error is?

14 A Sure. Sure. It's the slot on the
15 right-hand side, it's the value per slot pairs, not
16 for individual slots.

17 So the number should have been 77 there
18 because I took the 154 off the website. I should
19 have divided by two because those are the slots. So
20 it should be 77. And corresponding, the value
21 should be instead of 1.16 billion, it should be 500
22 million .08, 510 million.

1 Still doesn't change the thesis that they
2 had greater access to Heathrow and a large portfolio
3 of slots, but it should be corrected, and I
4 apologize.

5 Q 508 million would be the correct number;
6 right?

7 A That's correct.

8 Q And this valuation that you performed was
9 derived from the price that Continental paid in
10 2008.

11 And you attributed that to United slots as
12 well.

13 A What I think I testified to earlier was in
14 2008, Continental paid 52.5 million per slot pair.

15 And I believe I testified that not every
16 slot pair was going to be worth 52 million.

17 There were going to be -- I took that
18 transaction, but that doesn't mean that every slot
19 pair is worth that.

20 Q So the number, the 508 number, as
21 corrected this afternoon, may be off depending upon
22 the value of the particular slots that United was

1 operating.

2 Is that what you're saying?

3 A It may be off, may be higher, may be
4 lower, correct.

5 Q And you didn't do any separate analysis to
6 determine the times of day and other slot
7 transactions that might bear more weight on the
8 analysis?

9 A I didn't do a complete comprehensive
10 time-of-day analysis because, as you would expect,
11 slot values change from season to season and from
12 year to year.

13 Q And from time of day, one time of day to
14 another?

15 A If I can finish, yes, sure, and from time
16 of day.

17 So if you have a time of day that's not
18 what we call commercially viable for an operation to
19 the U.S., the slot would be worthless to a U.S.
20 carrier that's operating a U.S. service into
21 Heathrow.

22 Q All right. In preparing for your

1 testimony here today and preparing these exhibits, I
2 take it you examined the SEC filings of these two
3 companies, for example, the 10K reports?

4 A I examined certainly some of them, yes.

5 Q I would like to show you an excerpt, I
6 would like marked as Continental Pilots' Exhibit X-1
7 from the 10K for the calendar year into 2010.

8 (Whereupon, Continental Pilots Exhibit No.
9 X-1 was marked for identification and received into
10 evidence.)

11 MR. KATZ: I'll explain while it's being
12 passed out.

13 This is the cover page of a document so
14 you can see where it's from. And then the one page
15 that we're interested in is page 108 of the SEC 10-K
16 form, which is a footnote to the financial
17 statements of UAL, at this point, the owner of
18 United Airlines, Inc. and Continental Airlines, Inc.

19 Please give a copy to the witness.

20 THE WITNESS: Thank you.

21 BY MR. KATZ:

22 Q Are you familiar with this document, the

1 10-K, of 2010?

2 A Yes.

3 Q And doesn't it show a breakdown of the
4 goodwill and other tangible assets of United
5 Airlines and Continental Airlines?

6 A It looks like it does.

7 I would have to read it carefully, but I
8 assume that's correct, Mr. Katz.

9 Q And under airport slots with United, which
10 is the first item after Unamortized Intangible
11 Assets, it shows \$201 million for the United
12 Airlines slots.

13 And under Continental, it shows airport
14 slots at \$796 million.

15 A That's what it shows.

16 Q And if you add up the slots and the route
17 authorities, you get 1.3 billion for each of these
18 companies.

19 Isn't that correct?

20 A The mathematics is correct.

21 I don't know how it's relevant, but yes.

22 Q Isn't it a requirement of the filings to

1 do an accounting every year reflecting the value of
2 the airline's goodwill and other intangible assets?

3 A Well, these are unamortized.

4 So airport slots are amortized just as
5 other assets have been amortized. And they don't
6 reflect market value. They reflect the book value
7 of the unamortized value of the asset.

8 So if I were to look at this, I would say
9 that -- I look at Continental 796, because this is
10 what, 2010, and they had -- they bought slots in
11 2008. They haven't had a chance to -- chance may
12 not be the right word. They haven't amortized the
13 slots, so they have a higher unamortized intangible
14 asset value compared to United, which has had slots
15 for a considerably long period of time, where they
16 have been able to, in the parlance, depreciate the
17 airport slots.

18 Q Well, if you look above the part I just
19 showed you to the Amortized Intangible Assets, do
20 you see 72 million for the United amortized slots
21 and gates, and 45 million for the Continental slots?

22 A Right. That's what it says.

1 But I don't know what the footnotes 9 and
2 4 say. And I don't know what the depreciation
3 schedules were. And of course, what you have is
4 United having gone in bankruptcy, so a lot of this
5 stuff is fresh accounting basis.

6 So, again, this doesn't tell me anything
7 about the market value of those slots or those
8 routes.

9 This tells me what the book value is.

10 Q You're not aware of any requirement to
11 reflect the market value and modify that annually?

12 A I don't know.

13 Q You don't know whether it's the market
14 value or book value in this?

15 A If I could see footnote 4 and footnote 9,
16 it might help me.

17 Q Well, there will be a break after the
18 proceeding, and I'm sure you can look that up.

19 Would you turn to Exhibit 1, please?

20 A Right. I'm there.

21 Q In analyzing the two companies, I see you
22 have looked at revenues, departures, ASMs, and

1 domestic points served for the two carriers;
2 correct?

3 A Correct.

4 Q Did you look at the block hours at this
5 point or for a later point in time?

6 A I did not.

7 Q And why was that, sir?

8 A Because in -- as I understand it, it is
9 relevant in terms of pilot negotiations.

10 It's, as a strategic planner, a route
11 planner, a network planner, you don't look at block
12 hours.

13 These are the metrics that, in terms of
14 M&A, are trying to compare airlines in a strategic
15 sense, these are the things that you would look at,
16 not block hours.

17 Q I understand you haven't testified in one
18 of these cases before, Mr. Garfinkle, but you
19 appreciate, don't you, that block hours are a metric
20 that corresponds to the amount of work that the
21 pilot groups are bringing to the merger?

22 A I understand that.

1 But that was not the purpose of my
2 testimony.

3 Q All right. In this -- in these charts
4 you, I think, referred to a division within the
5 industry of the big three versus the next tier?

6 A Excuse me. When you say in these charts,
7 are you talking about the same exhibit, or are you
8 talking about something different?

9 Q Same exhibit.

10 A Okay. I just wanted to be clear.

11 Q That's where I wrote down in my notes that
12 we were talking about the big three versus the next
13 tier down.

14 And I just wanted to confirm with you that
15 that's the division that you were drawing from
16 looking at these charts.

17 Is that correct?

18 A Well, in the parlance of the industry in
19 that time, the big three were American, United, and
20 Delta.

21 That is correct.

22 Whether it's Exhibit 1 or other exhibits,

1 the big three and then there was the next tier down.

2 And I think what this shows is there were
3 the big three and the next tier down, with the
4 exception of the departures for Southwest because it
5 was a high frequency operator, managed to get into
6 the departure chart, but not into any of the other
7 charts in the big three.

8 Q Well, I was about to ask you about that
9 because they have more departures than American or
10 United.

11 A Correct. At that point, they were a high
12 frequency, short haul carrier.

13 Q Is this analysis in Exhibit 1 limited to
14 domestic revenues and departures, or does it go to
15 international as well?

16 A I believe this is total.

17 Q And I think that you would see in --
18 domestic points served on the second page.

19 A Page 2 of Exhibit 1?

20 Q Right.

21 A Right.

22 Q That while United, Northwest, and Delta

1 are the three largest, USAir and American, one of
2 the big three and one of the not big three, are
3 pretty close behind.

4 Isn't that correct?

5 A Pretty close behind Delta?

6 Q They're pretty close behind Delta; right.

7 A Correct.

8 Q In fact, there have been a lot of
9 different categorizations in the industry.

10 At one time, there were trunks and
11 regionals when you started practicing at the CAB?

12 A Yes, there were.

13 Q The among the trunks were Continental,
14 Northwest, for example?

15 They were considered trunk carriers,
16 weren't they?

17 A Yes.

18 Q And then the categorization shifted to
19 airlines that were taking it over a billion dollars
20 in revenues, and they were considered majors?

21 A That's correct.

22 Q And when that division shifted,

1 Continental and Northwest, again, were considered
2 majors, weren't they?

3 A Sure.

4 Q Was there a separate CAB categorization of
5 the big three?

6 A No. There was not a CAB. There was not a
7 DOT categorization of the big three.

8 Q Would you turn to Exhibit 6, please?

9 A 6?

10 Q Yes.

11 You have some additional information on
12 slots in Exhibit 6, do you not, or is it just Fifth
13 Freedom rights?

14 A I'm sorry. Are you on page 1 or page 2?

15 Q Let's start with page 1.

16 This is about Fifth Freedom rights?

17 A This is -- the left-hand side, it was the
18 Fifth Freedom -- actual Fifth Freedom operations in
19 2000.

20 The right-hand side is pictorial, as I
21 explained in my testimony, representative of the
22 Fifth Freedom authority that Northwest, and at that

1 point, both United and Northwest had in 2000.

2 Q And was United, at that time or any time,
3 flying from Narita to Taiwan?

4 I'm looking at the right side, the picture
5 where it shows an arrow from Narita to Taiwan.

6 Is that a route that United operated in
7 2000 or since then?

8 A As I explained, this is representative of
9 the authority they had, not the routes that they
10 actually flew.

11 So I don't know whether they -- somewhere
12 between 2000 and 2010, when they acquired their
13 rights from Pan Am, they actually flew to Taiwan
14 from Narita.

15 Don't know the answer to that question.

16 Q We know they're only flying to Seoul,
17 Shanghai, Hong Kong, Bangkok, and Singapore,
18 according to chart on the left; correct?

19 A In 2000, but that doesn't tell me what
20 they flew in 1996, '97, '98, '99, 2001, and 2002,
21 and so on and so forth.

22 In the -- if you look at the chart, in the

1 right-hand side, for instance, these are the same
2 authority that Northwest had.

3 And at one point, Northwest flew U.S.,
4 Narita, Australia.

5 Q Right. And Northwest did a lot of service
6 from Narita all over Asia, much more than United did
7 with its own airplanes.

8 Isn't that true?

9 A With its own airplanes, in 2000, it wasn't
10 flying with any other airline.

11 So it was flying with its own airplanes
12 and flew the routes on left-hand side, and at
13 various times it flew other routes.

14 Q And it flew them with A-320s, and it flew
15 them with 757s at versus times, didn't it?

16 A Not in 2000, I don't believe.

17 Q In 2002, didn't Northwest fly these routes
18 and others?

19 A On Northwest.

20 Q Yeah.

21 A I thought you were talking about United.

22 Q No. I'm talking about Northwest now.

1 A Oh, yes, Northwest.

2 They used a lot of narrowbodied equipment.

3 Q And they used A-320s and 757s at various
4 points in time; correct?

5 A They used narrowbodies.

6 I don't know whether it was an A-320 or a
7 757, or a 737 -- they wouldn't have 737s, so I don't
8 know the answer to that question.

9 But they did use narrowbodies for a very
10 short period of time, actually.

11 Q And would you tell the Panel what the
12 value of these routes are if they weren't using
13 them?

14 I'm now talking about United, not
15 Northwest.

16 A For what period of time are we talking
17 about?

18 Q Let's talk about the year 2000, that's
19 what you -- did they have some value to United in
20 the year 2000, if they weren't operating?

21 A They certainly did have value because at
22 some point in time they could have decided to

1 operate, for example, from Narita to Jakarta, or
2 Narita -- if they didn't fly to Taiwan to Taiwan, or
3 they could have flown to Kuala Lumpur from Narita.

4 So they certainly had value.

5 Even though they weren't flying a route
6 didn't mean they didn't have value. They have
7 optionality to use the routes when market conditions
8 warranted.

9 Q Do you know how many of the five routes
10 that were being operated, as shown on the left part
11 of the page, were flown once a day by United in the
12 year 2000?

13 A I'm sorry. How many were flown once a
14 day?

15 You mean daily service?

16 Q Yeah. A daily service.

17 A I know there were 49 weekly frequencies.

18 So I don't know the answer to that
19 question, how many they flew to each destination.

20 Q Forty-nine a week would indicate that --

21 A Seven a day.

22 Q Seven times --

1 A Seven.

2 Q -- is 49.

3 But there are only five routes, so they
4 must have been flying some of them.

5 A They must have been flying a double daily
6 to some of the routes?

7 Q Yeah.

8 A Probably to Hong Kong and maybe Seoul, but
9 I don't know what they were flying.

10 I don't know which they were flying a
11 double daily to. Certainly, we can find out for
12 you.

13 Q Let me ask you a question. Would you
14 consider seven flights a day to be a hub?

15 Is that pretty small to be a hub?

16 A Seven flights a day to be a hub.

17 Q Yeah. They're doing 49 a week. That's
18 seven a day.

19 A Correct.

20 Q So the hubs I have read about in airline
21 literature, Atlanta, Chicago, becoming 200, 300, or
22 more flights a day, not seven a day.

1 Isn't that the normal analysis that
2 airline economists use?

3 A I never heard there being a normal level,
4 threshold of flights for economists to use to be a
5 hub.

6 Clearly in the industry, Narita was called
7 a hub. And, you know, I view a hub as a place where
8 you connect passengers, which served as a connecting
9 complex for passengers.

10 Whether it's what you would call a hublet
11 or it's an Atlanta hub, that's the degree to which
12 the hub had scope and density.

13 But, you know, a hub -- you know, and if
14 you use it in a lot of network industries, a hub is
15 where things are connecting.

16 Q All right. And in this situation, unlike
17 the Northwest hub where Northwest was flying people
18 into Narita, and then on the same or another
19 airplane, flying them from Narita to places like
20 Singapore, Bangkok, Hong Kong --

21 A Excuse me.

22 Q -- so -- and many other places.

1 United was flying people to Narita and
2 connecting them to ANA to a large extent. Isn't
3 that true?

4 A In 2000?

5 Q Yes.

6 A That may have been the very beginning of
7 when ANA was in Star.

8 Star was formed in 1997, so it could have
9 been the beginning of the ANA codeshare
10 relationship, quite possible.

11 Q And do you know, are you aware that at the
12 present time and in 2010, United was not flying to
13 all five of these Fifth Freedom cities, but only to
14 Bangkok, Hong Kong, Seoul, and Singapore?

15 A So another way of saying that, Mr. Katz,
16 is that they weren't flying to Shanghai.

17 Q They weren't flying to Shanghai, and they
18 hadn't added any other of the Freedom destinations
19 either.

20 A Your question was do I know whether they
21 were flying to only those destinations?

22 Q Only those four that I named.

1 A Okay. Well, clearly in 2000, China was a
2 burgeoning market.

3 I have had -- I had from 1996 to 2011, I
4 had three offices in China. I did all the Chinese
5 Airlines work.

6 When United got appropriate authority to
7 fly nonstop from the U.S. to China, it only made
8 sense to overfly Narita and go straight to Shanghai.
9 So, yes.

10 But I would also add that if you look at
11 this map in 2010, you have a Hong Kong-Ho Chi Minh
12 flight, which is -- they did not have in 2006. So
13 they're using their Fifth Freedom authority in a
14 very appropriate fashion.

15 The fact that they had a relationship,
16 which was at best burgeoning, with ANA in 2000, but
17 is now a pretty full relationship because of
18 antitrust immunity and the joint venture they have
19 with ANA, I think that's a huge plus that they had
20 that Continental did not have.

21 Because, as I explained earlier, the
22 ability to fly your own widebody plane into Narita

1 and then distribute those passengers to pick the
2 number, even just Japanese cities, you're at 30 or
3 20, whatever there are on someone's else carrier,
4 gives you a whole bunch of products to sell, and
5 where you don't have to use your equipment.

6 So I think that was a significant plus.

7 Continental didn't have that relationship
8 in SkyTeam, and they didn't get it until they were
9 invited into the Star.

10 Q So you're saying from a business
11 standpoint, there was a value to United's delivering
12 these passengers to Narita for ANA and other
13 carriers to pick them up and fly them somewhere.

14 But my question is, what good does that to
15 the pilots of United Airlines if they're not doing
16 the flying?

17 A Not an unsurprising question in view of
18 life.

19 To the extent that you strengthen the
20 network, you make it thicker by adding more, let's
21 call them spokes, into Narita. The more long haul
22 widebody flying you can do from Narita to the U.S.

1 because you now have, not only your own distribution
2 system in the U.S. where you're collecting
3 passengers to take them to Narita, you have a
4 distribution system in Narita to distribute them.

5 And it wasn't just Japan where ANA was
6 distributing.

7 You have a true hub to distribute
8 passengers through, let's just call it north central
9 Asia.

10 And so you now have really a hub-to-hub
11 operation where you have passengers connecting at
12 one end, going beyond the other hub. And you have a
13 much thicker system that enables, instead of, you
14 know, short haul or short long haul flying inside
15 Asia, you now have the ability to fly Narita to more
16 destinations in the U.S.

17 So to me, the more you strengthen that
18 network with the spokes that other people can fly,
19 the more you strengthen the ability to fly long haul
20 and other options for United in this case.

21 Q What was the hub-to-hub reference in your
22 last answer?

1 One of the hubs, I assume, is the five or
2 six or seven flights --

3 A No.

4 Q -- out of Narita.

5 What's the other hub?

6 A Let me be more articulate so I can help
7 you.

8 You have United flying from, for instance,
9 Chicago, San Francisco, Los Angeles, now Denver,
10 Washington. And let's just take one of those just
11 to be -- use as an example, let's say San Francisco.

12 So in San Francisco, if United is flying
13 San Francisco-Narita, they're collecting passengers
14 from everywhere east of San Francisco, and in this
15 case the entire United States, funneling them
16 through San Francisco to Narita.

17 So if this were just a United operation,
18 okay, and you pictured it, you have let's just pick
19 20 spokes coming into San Francisco and a lay
20 (phonetic) going to Narita, and maybe in your mind
21 you can picture four or five of these United spokes
22 out of Narita.

1 If you add ANA, which has a hub operation
2 at Narita, you bring to Narita another 20 spokes
3 from Japan.

4 So you have got 20 spokes feeding into
5 Narita, feeding into San Francisco, feeding into
6 another 20 spokes in the United States.

7 And this gives you the ability to not only
8 offer to your Des Moines-San Francisco-Tokyo
9 passenger -- Des Moines-San Francisco-Tokyo, but you
10 can offer that passenger Des Moines, San Francisco,
11 Tokyo and 20 more places beyond Tokyo because you
12 now have a hub-to-hub codeshare operation.

13 So the ability to expand your product
14 base, the markets you serve, the ability to attract
15 customers is exponentially greater because every
16 time you add a spoke in Narita, you have 20 spokes
17 in the United States, which can now offer a service
18 to that point.

19 Twenty times 20, and the numbers, of
20 course, are -- the 20 in the U.S. is wrong by a
21 degree of probably -- it's probably 400, maybe 250,
22 I don't know what the number is, but it's not 20,

1 it's well over 200.

2 So, you know, having a hub-to-hub
3 operation expands exponentially your product base,
4 expands your ability to attract corporations,
5 expands your ability to attract revenue. And quite
6 frankly, in a competitive environment, expands your
7 competitive advantage over your competitors that do
8 not have the ability to offer the same thing that
9 you are offering.

10 Q So wouldn't the justification for adding
11 flights from San Francisco to Narita depend on the
12 profitability of that operation?

13 A I'm not sure I understand your question.
14 Is that -- are you asking what an airline
15 would necessarily --

16 Q When we started this conversation out, I
17 asked you what good does it do the United pilots if
18 ANA pilots are picking people up at Narita and
19 flying them to the various points on ANA's system.

20 And you were talking about it's a
21 hub-to-hub operation.

22 A Right.

1 Q And so you brought in San Francisco.

2 A Uh-huh.

3 Q And said this is going to provide more
4 flights for the United pilots to fly from San
5 Francisco to Narita, is what I understood that last
6 answer.

7 A Or the ability to turn an unprofitable
8 flight that they would otherwise have to cancel into
9 a flight that is either marginally profitable or
10 very profitable that they keep in the system.

11 Q Yeah. So that was my follow-up question.

12 Is that the justification for either
13 retaining the flight from San Francisco to Narita or
14 adding a second one would depend on the
15 profitability of that operation; correct?

16 A You would hope that airline route
17 decisions are based on P and L, route P and L,
18 profit -- route profitability.

19 Sometimes they're not based on route
20 profitability. They're based on other things in the
21 airline business, but you would hope that that would
22 be the case.

1 Q A rational airline planner would look to
2 the profitability; correct?

3 A An airline planner who is focused only on
4 the financial results would look at that.

5 But I wouldn't say that someone who
6 decides to add a second flight between San Francisco
7 and Narita to quash competition or to sandwich
8 someone else's flight is acting irrational.

9 There's lot of factors that go into why
10 you fly a route.

11 Q The section page of this exhibit has a
12 similar analysis of the Fifth Freedom Authority that
13 United served in the year 2000 to Heathrow; correct?

14 A No.

15 You said that United served. The United
16 didn't serve the system. The route authority that
17 they had as a result of their acquisition of Pan
18 Am's incumbency position at Heathrow.

19 I didn't say that they served. These are
20 the authorities. That's what the title says.

21 Q Which of the locations that you have shown
22 on the right side of the page did United actually

1 serve?

2 A In 2000?

3 Q Yes.

4 A No idea.

5 I know at one point United was flying, and
6 I may have my beyond destination incorrect, but I
7 believe it was U.S.-Heathrow-Bombay or Delhi.

8 And before that, when Pan Am had the
9 authority, they were flying around-the-world service
10 over Heathrow.

11 Q Pan Am was flying?

12 A I'm sorry. Pan Am was flying.

13 But as I explained in my testimony, to me,
14 it would be a very bad use of a scarce and valuable
15 economic resource to fly from Heathrow beyond to
16 those other points in short haul flights in Europe.

17 Q And in truth, in 2010 and at the current
18 time, isn't it a fact, Mr. Garfinkle, that none of
19 the routes shown on the right side of the page is
20 being served today?

21 A Being served today by United?

22 Q Right.

1 A With their own airplanes?

2 Q Right.

3 A That's correct.

4 And that is exactly why its makes -- why
5 the alliance is so important. So they can serve
6 these routes with -- without having to put short
7 haul airplanes or actually use in a very inefficient
8 way long haul planes to fly an hour sector from
9 London to Amsterdam.

10 That is correct.

11 But this authority was very important from
12 the time United acquired it until there was an Open
13 Skies agreement with the U.S. and the U.K.

14 Because during that period, only those
15 carriers that had the authority to operate from
16 London -- beyond London to points in Europe, could
17 codeshare with carriers in that area.

18 And so that really left American and
19 United, at that point, the only carriers who had the
20 underlying route authority in order to enable them
21 to codeshare.

22 Q So this Exhibit 6, page 2, when it speaks

1 of the value of a Fifth Freedom Authority beyond
2 London Heathrow, is really here for purposes of
3 nostalgia more than anything else.

4 Is that correct?

5 A I think the valuable Fifth Freedom
6 Authority is not just nostalgic.

7 The position at Heathrow, which United
8 acquired from Pan Am in the 1980s, I believe it was
9 '89, but I could be wrong.

10 Q You have 1990 on the next page.

11 A 1990, so okay.

12 The -- that authority gave United a
13 corporate structure and a corporate presence, an
14 entrenched position in Heathrow, along with the
15 valuable slots.

16 So the valuable shots are not nostalgic.
17 They're real. They didn't pay for them in the sense
18 that Continental paid for them. They acquired the
19 route authority from Pan Am.

20 And having that incumbent established
21 position in one of them -- in London Heathrow, is
22 extremely important for a global presence because,

1 in a global market, you need to serve your corporate
2 clients and the corporate clients demand Heathrow.

3 ARBITRATOR EISCHEN: Mr. Katz, may I just
4 one -- just purely factual.

5 Could you tell us the effective dates of
6 the respective Open Skies agreements, U.S./G.B. and
7 U.S./Japan?

8 THE WITNESS: Japan is '10.

9 I can't tell you -- I can certainly give
10 you the exact date.

11 And I'm not sure of the U.K. I would say
12 it was -- it must have been 2007, 2008 because
13 Continental acquired its slots in 2008. So it would
14 have to be -- they could only acquire those slots
15 subsequent to the agreement for an Open Skies
16 relationship between the United States.

17 So it's probably late 2000, maybe 2008 for
18 U.S.

19 ARBITRATOR EISCHEN: Thank you, sir.

20 Counsel, maybe we can just get a
21 straight-up stipulation on that factual point at
22 some point in the proceeding.

1 MR. KATZ: Okay. I'll make a note.

2 We can do that.

3 ARBITRATOR EISCHEN: Thank you.

4 BY MR. KATZ:

5 Q The next exhibit, 7, does have the years
6 for these United acquisitions from Pan American,
7 does it not?

8 A It does.

9 Q And in connection with these Heathrow
10 routes, are you aware that there was an arbitration
11 between the representatives of the United pilot
12 group and the Pan Am pilot group with regard to how
13 many pilots would be entitled to transfer with the
14 Heathrow routes from Pan Am to --

15 A Trying to even the odds?

16 You know, you're jogging my memory. And
17 yeah, now that you have raised it, I remember it.
18 But I remember in passing.

19 I wasn't anywhere involved, intimately,
20 not involved at all in that arbitration, but I do
21 remember.

22 Q Let me suggest to you that -- and I think

1 the counsel for the United Merger Committee can
2 verify this, if they don't know off the top of their
3 heads -- but the arbitrator was Herbert Fishgold.

4 And he determined that 42 Pan American
5 airmen should transfer to United, with the groups.
6 And he did a calculation based on three cockpit crew
7 members per airplane because they had flight
8 engineers in those days. And there were two
9 airplanes were flying. Three crew members, times
10 two airplanes, times seven crews per plane.

11 So that this route justified two
12 airplanes' worth of flying, according to Arbitrator
13 Fishgold.

14 Does it surprise you that that's all that
15 translates to in terms of pilot jobs?

16 A I don't have the calculation, and you're
17 out of my area of expertise. I don't know. I would
18 have to understand it in the context of other
19 arbitrations and pilot jobs.

20 All I know is that acquiring Pan Am's
21 route authority, London Heathrow route authority in
22 1990, was an extremely advantageous acquisition for

1 United because London Heathrow, at least up until
2 2008, so 18 years, that 18 years of incumbency in
3 one of the most premium markets and closed markets
4 in the world.

5 It sounds like a good deal to me.

6 It's not quite a monopoly, but it's as
7 close as you get in the airline industry sometimes.

8 So I come from this industry, as you must
9 appreciate, Mr. Katz, from a very different
10 perspective than you do. Okay.

11 When I was doing the acquisition of
12 Northwest where Marvin Davis and I come up with the
13 idea of going to see KLM about investing. And so
14 Mr. Davis and I went to meet the CEO of KLM. And he
15 started to lecture us on how the airline should be
16 run when Marvin Davis bought it.

17 And then he asked Mr. Davis what he
18 thought about how KLM thought Northwest should be
19 run. Mr. Davis, in his very thick New York accent,
20 turned to the CEO and said, Listen, if you want to
21 know about the airline industry, talk to the kid.
22 If you want to know how to make money, talk to me.

1 So that's what I'm going to tell you. I
2 know strategic planning, M&A bankruptcy
3 restructuring. I'm not a pilot expert.

4 You asked me that question in the very
5 beginning. So I can't tell you whether, you know,
6 two airplanes or five airplanes and what an
7 arbitrator decides it should look like makes sense
8 or not.

9 All I know is that these were limited
10 designation routes, extremely valuable, and it was a
11 great acquisition by United.

12 Q Right below the entry for London Heathrow,
13 you have a 1992 entry for Pan Am Latin American
14 routes.

15 A Right.

16 Q Were these the ones that you testified on
17 direct you sold to United?

18 A Correct.

19 Well, there were other bidders as well.

20 It wasn't just the Latin American routes.

21 At the point, Pan Am had the IGS, the
22 Internal German System, which we sold. And they had

1 other assets as well, international assets, which I
2 was selling, yes.

3 Q Was Pan Am shut down at that point?

4 A I believe so.

5 I'm not sure. Don't know.

6 Q Didn't they shut down in 1991?

7 A Yeah. I think so.

8 You know, I remember these Latin American
9 routes. I had -- I had American. I had Don Carty
10 and Crandall in one room, and I had Steve Wolf and
11 Larry Nagan in the other, who were doing a bake-off
12 for the routes.

13 Q Isn't it true that United is not operating
14 any of these Latin American routes that were
15 purchased from Pan Am in 2010, at the present time?

16 A Could be. I don't know.

17 Q You haven't investigated that?

18 A No.

19 Q Let's look at Exhibit 42, while we're
20 talking about slots and the routes in the
21 international arena.

22 This is headed: "Despite the doubling of

1 Narita slots since U.S./Japan Open Skies in 2010" --

2 A Uh-huh.

3 Q -- "not a single U.S. carrier attempted to
4 increase service to Narita in the face of the
5 entrenched positions of United and Delta - except
6 United."

7 That's your characterization of the
8 information that's in the chart below that; correct?

9 A Right.

10 Q And if you look at the UA/Continental line
11 that's there in red, do you see Denver, seven slots
12 in 2013?

13 When you go all the way to the right?

14 A It's frequencies.

15 Q Seven frequencies a week?

16 A A daily service.

17 Q Daily service.

18 That's Denver to Narita.

19 Isn't that the route that --

20 A That's the 787 route.

21 Q 787 route?

22 A Yeah.

1 Q So it's not really being flown by a 787
2 yet, but didn't the city of Denver offer tremendous
3 incentives to United to pick up that route?

4 A Are you asking me whether I know that?

5 Q Do you know that?

6 A No.

7 Q You don't know?

8 A No.

9 Q All right.

10 A How about if you ask me whether I used to
11 represent a lot of airports who were trying to
12 attract international service.

13 Q No. I didn't ask you that.

14 A Okay.

15 Q And I guess --

16 A If they did --

17 Q -- if you don't know the answer to my
18 question, please don't answer some other question.

19 All right. At Newark and Honolulu, were
20 they flown by Continental before the merger, the
21 next two lines?

22 A Yes.

1 Q And then further down, you see JFK?

2 A Yes.

3 Q It looks like United dropped out of
4 JFK-Narita sometime in 2006 or 2007, didn't it?

5 A It sold the route to Delta.

6 Q And then in the next line, LAX, did it
7 sell that route to Delta, too?

8 Because it dropped from 14 to seven weekly
9 frequencies in 2006.

10 A No.

11 What I suspect happened is, as you asked
12 me before, Mr. Katz, about alliances, the alliance
13 with ANA made it possible and, in fact, economically
14 advantageous in New York for ANA to fly that route
15 instead of United.

16 So United, despite the fact that it didn't
17 have a metal presence, an airplane presence, it had
18 a product presence and a customer presence in that
19 market.

20 In LA, what probably happened is as
21 they -- ANA and United aligned its operation, they
22 decided that ANA should take on one of the

1 frequencies.

2 Q Would the same be true of the next line
3 where from Chicago to Narita, in 2009, it appears
4 that United dropped one frequency and presumably ANA
5 picked it up?

6 Is that what you're saying?

7 A Could be.

8 I'm not sure if ANA, at that point, was
9 flying to Chicago, but it could have been.

10 Q And these would be instances where the
11 business plan from a business perspective, that
12 you're explaining to the Arbitration Board, would be
13 a value to United Airlines to do this.

14 From the pilot standpoint, the value is
15 only indirect, let's say. Is that correct?

16 A It depends how you look at it, Mr. Katz.

17 If the route was otherwise unprofitable at
18 14 frequencies, it makes sense to -- rather than cut
19 it entirely, get it off the computer reservation
20 screens, to have someone else fly it.

21 If it meant taking that airplane that was
22 flying on that frequency and putting it into a more

1 profitable route where the pilots had a -- where the
2 route had a chance of earning a profit and the
3 pilots had a chance of having a more sustainable
4 airline, much better deal for the pilots would be my
5 view.

6 Q Well, in 2009, you testified on direct
7 that six 737s were parked in the desert and taken
8 out of service by United Airlines; correct?

9 A Correct?

10 Q So if it was taken out of service because
11 it wasn't profitable or because ANA was going to fly
12 it, that wasn't what I would consider a direct
13 benefit to the United pilot group.

14 Wouldn't you agree?

15 A You know, you're looking back at 2009 as
16 if it were just a normal year.

17 Everybody was cutting aircraft everywhere
18 because of the reasons I explained in my testimony.

19 You know, there was financial uncertainty.
20 Traffic had plummeted. So if you're asking me
21 whether it was better to park that -- the traffic
22 had fallen, you know, off a cliff.

1 If you ask me whether it was better to
2 park that airplane and not have the additional
3 presence in the marketplace of a codeshare with ANA,
4 I would answer you no.

5 If you asked me whether it was better for
6 the pilots to park that plane and have a corporate
7 presence with ANA, I would say yes because it
8 strengthens United's presence in that market.

9 If you asked me whether it was better for
10 the pilots to fly that plane and lose a lot of
11 money, in the short run yes, in the long run, no.

12 And as I said, I'm looking at it from, you
13 know, my strategic expertise and my airline
14 operation expertise. I'm not looking at it from the
15 pilot perspective.

16 Though, I think, despite a lot of times
17 when we think we're cross purposes, I think at the
18 end of the day, the purposes of the pilots in the
19 airline are in synch.

20 Both want a sustainable, profitable
21 venture.

22 Q On your timeline, Exhibit 11,

1 Mr. Garfinkle.

2 A Uh-huh.

3 Q You had flags for some of the events that
4 were negative from the standpoint of the Continental
5 pilots, but cutbacks of operations on page --

6 A 6.

7 Q I was looking at 4, but it's also on 6.

8 But I didn't -- on 4 -- on 4, I didn't see
9 any similar entries for cut backs by United.

10 A Well, all you have to do is look at
11 starting in 2000 -- I'm sorry.

12 All you have to do is look at 2003, and
13 the three red flags -- actually, 2002, the three red
14 flags United applies for ATSB Loan No. 1, ATSB
15 rejects it. United files for bankruptcy followed on
16 page 4 with United ATSB Loan No. 2 rejected.

17 And I wouldn't exactly call that positive
18 for United.

19 While you're on -- if I can, Mr. Katz,
20 while you're on page 4.

21 Q I'll turn back to it.

22 A Actually, there was a correction I just

1 want to get into the record.

2 Q Go ahead.

3 A I have the Continental joining SkyTeam at
4 the end of 2005. That flag belongs at the end of
5 2004.

6 I just noticed that.

7 Q Yeah. I had trouble reading those flags.

8 A Yeah.

9 Q Those little ones.

10 ARBITRATOR EISCHEN: A little small.

11 BY MR. KATZ:

12 Q The text is small, and it's the same color
13 as the flag.

14 Which -- point me to which flag it is.

15 A The last flag on 2005, at the end of
16 September.

17 Q Oh. Continental joins SkyTeam, thank you.
18 I was trying to read the light blue ones.

19 And that goes to the end of?

20 A 2000 -- the same month in 2004.

21 Q Okay. I'll move it.

22 Any others you want to insert?

1 A No others that I found that are wrong that
2 I can read, that I'm having the same problem as you
3 are.

4 Q Are you aware that SAS purchased a
5 controlling interest in Continental in 1990?

6 A Oh, yes, I am.

7 Q Would that be something you would want to
8 put a flag in there?

9 A In 1990?

10 Q Yeah.

11 A Yes. Actually, I thought about including
12 it.

13 I really did because, no sooner than, you
14 know, SAS had bought the interest, that Continental
15 had filed for bankruptcy.

16 I didn't think it was that relevant, but
17 they clearly bought an interest in 1990.

18 If you want me to you, I could put lots of
19 things in here.

20 In the 1982 to 1999 period, I was just
21 trying to do what I regarded as highlights. I'm
22 happy to -- if you think there's other highlights,

1 I'm happy for you to ask me to insert them.

2 Q All right. Exhibit 15, on page 1, you're
3 showing Alaska, and it's Seattle and Portland hubs
4 with the Delta/Northwest combination?

5 A That's correct.

6 Q Didn't Alaska, at that time and presently,
7 have a codeshare that was significant with American
8 Airlines as well?

9 A No.

10 Let me explain because the way you have
11 asked the question the answer is no.

12 The Delta/Alaska Airlines codeshare
13 relationship was much more robust, much more
14 extensive, much deeper than the American/Alaska
15 relationship.

16 And that was because -- that is, and it
17 actually is until probably today, I'm not sure that
18 the scope relief in the bankruptcy, American
19 bankruptcy has taken effect yet, but that was
20 because of the scope restrictions in the American
21 Airlines pilots' agreement that prevented a parallel
22 codeshare to what Delta had with Alaska.

1 So it was much more restrictive.

2 In fact, in the American bankruptcy,
3 American's chairman and CEO, Tom Horton, made a big
4 fact of the point that one of the scope reliefs he
5 was requesting from the pilots in the 1113
6 proceeding in the negotiations with them was the
7 ability to have a codeshare relationship with Alaska
8 that was equivalent to what Delta had.

9 And so if you look at -- if I answer your
10 question then, the answer is no.

11 If I look at it today, the answer is still
12 no because what Delta has done at Seattle is to
13 begin to leverage the Alaska hub for flights to
14 Asia, something that American hasn't done.

15 So the relationships of American and
16 Alaska and Delta and Alaska were and, to my mind,
17 are still very different.

18 Q Are you aware that three months ago, the
19 American/Alaska codeshare was enhanced
20 significantly?

21 A I believe I --

22 MR. POLLAK: Was enhanced?

1 I'm sorry.

2 MR. KATZ: Enhanced significantly.

3 THE WITNESS: I believe I testified that
4 was one of the things that Mr. Horton was asking for
5 was scope relief, and I wasn't sure whether it had
6 taken effect yet. So ...

7 BY MR. KATZ:

8 Q But the next page --

9 A But that still doesn't change my view
10 that, today, what Delta is doing with Alaska at
11 Seattle and Liberty, the international relationship
12 by flying to a couple of points in Asia, and
13 American is not, makes the Delta relationship a much
14 more robust relationship than the American/Alaska
15 relationship.

16 Q The combined Delta, Northwest, and
17 Alaska --

18 A I'm sorry. Where are you?

19 Q I'm still on the same page, page 1 of
20 Exhibit 15.

21 A Okay.

22 Q They were not a single carrier by most

1 standards, were they?

2 A What do you mean by most standards?

3 Q Well, by the standard of being a merged
4 company.

5 Alaska didn't merge with Delta/Northwest,
6 did it?

7 A I believe I explained in my testimony, I
8 called it a virtual hub.

9 Q A virtual hub?

10 A Right.

11 Q Because it was a codeshare.

12 A That's correct.

13 Q All right. On the next page --

14 A And it was -- it also had frequent flyer
15 reciprocity, which is obviously very important.

16 Q Page 2 of Exhibit 15, you have this chart
17 where you show the carriers that are in first,
18 second, or third place by revenues on the right
19 side.

20 A Uh-huh.

21 Q And United is third after the combined
22 Delta/Northwest, Southwest, US Airways, and

1 American.

2 Is that correct?

3 A I'm sorry. Say that again.

4 Third, what do you mean third?

5 Q Well, I didn't mean to say third there.

6 I mean, fifth.

7 A Much better, yes.

8 Q But this says that Southwest and USAir
9 each have more domestic market presence by revenue
10 than United did in 2010?

11 A In the one, two, and three slots, yes.

12 Q And the next page, page 3 of Exhibit 15,
13 deals with United and US Airways if they were to
14 merge; right?

15 A Yes, sir.

16 Q And I see -- I don't think you mentioned
17 this, but there's a substantial overlap that appears
18 to be in a red circle on the -- right here in
19 Washington DC, DCA and Dulles; correct?

20 A There is clearly an overlap.

21 That's right.

22 Q And that was what killed the deal from the

1 standpoint of the antitrust division of the
2 Department of Justice in 2001; isn't it?

3 A No.

4 Actually, it was -- since I was involved
5 in that deal --

6 Q What was your involvement?

7 A As I explained in my testimony, I was
8 representing United in that deal and giving
9 consulting advice.

10 Q You were consulting with United Airlines?

11 A Correct.

12 What killed that deal wasn't just the
13 overlap, and the overlap was an important thing.
14 But it was the way they had determined to solve the
15 overlap problem by selling an airline to Bob
16 Johnson.

17 Q Mid Atlantic Airlines?

18 A No. I think it was called Potomac Air.

19 I may be wrong.

20 Q He should say you are.

21 A I'm wrong?

22 Okay. Whatever -- I think it was --

1 Q There were various names for it, but it
2 never happened --

3 A It never happened.

4 Q -- whatever it was called.

5 A Right.

6 MR. POLLAK: Bob Johnson Airline, I think
7 is what it was supposed to be.

8 THE WITNESS: And people -- the Justice
9 Department people didn't regarded that -- they
10 regarded that as synthetic.

11 But there was clearly an overlap issue
12 that killed the deal in 2000. But it was a
13 different Justice Department too.

14 BY MR. KATZ:

15 Q So is it your testimony that the
16 combination of United and US Airways wouldn't have
17 needed to address the competitive overlap in
18 Washington DC?

19 A They would have had to divest some slots
20 in DC, for sure.

21 Q And they would have to divest either the
22 DCA slot or -- the DCA hub or the Dulles hub,

1 wouldn't they?

2 A No.

3 They wouldn't have to divest the hub.

4 They would have to divest the slots, not
5 the hub.

6 And quite frankly, in 2008, DCA wasn't a
7 hub. US Airways wasn't calling it a hub. They only
8 began to call it a hub after they did the slot swap
9 with Delta where they gave Delta a lot of La Guardia
10 assets that they actually brought from Continental
11 earlier on, and in return, they got DCA slots.

12 And, you know, that transaction, by the
13 way, would have never been approved by the Justice
14 Department that disapproved the US Airways/United
15 merger in 2000.

16 But, you know, different administration,
17 different times, 2000 was, you know, the height of
18 the dotcom.

19 It was before 9-11, before SARs, before
20 Iraqi war, before the financial crisis. It was a
21 different industry in that period of time.

22 The Justice Department, by 2008, had a

1 very different view of the airline industry.

2 Q Well, are you trying to make a prediction
3 to this Arbitration Board about what divestitures
4 the Department of Justice would have required in
5 2008, after a United/US Airways transaction?

6 A A prediction?

7 I was involved in discussions that talked
8 about the fact that there would have to be some
9 divestiture.

10 Of course, there would have to be
11 divestiture.

12 I mean, there was divestiture of the
13 Newark slots, you know, by Continental in the
14 Newark -- in the Newark, in the Continental/United
15 transaction, when, if you did a strict antitrust
16 analysis, my view, was they didn't have to divest
17 slots, but they decided to divest slots to grease
18 the wheels of justice in order to make the
19 transaction happen sooner.

20 And the same thing would happen at DCA.

21 Q I'm going to show you an exhibit that's
22 already been marked and accepted into evidence as

1 Continental Pilots Exhibit B-41B.

2 And while counsel is distributing it, I'll
3 tell you what this document is.

4 A Thank you.

5 Q It's a press release from the chairman of
6 the United Master Executive Council regarding
7 speculation of possible merger between United and US
8 Airways, dated April 29, 2008.

9 Were you aware that the United pilots were
10 vehemently opposed to a merger of United and US
11 Airways?

12 A Oh, I won't use the term vehemently.

13 I know that they were opposed to it.

14 I know that the labor issues were a
15 significant factor in breaking off negotiations
16 between the two carriers.

17 Q Well, Captain Wallach says, in the second
18 paragraph, that United pilots shared the market's
19 view that a merger with US Airways would be
20 extremely negative from United's perspective.

21 Do you agree with Captain Wallach that the
22 market view of that is negative for United?

1 A Compared to what?

2 Compared to standalone, when Delta and
3 Northwest have merged?

4 Compared to a merger with Continental?

5 Compared to what?

6 As I testified before, Mr. Katz, at this
7 time, and in fact, this time, April 29, 2008, as it
8 was from 2003 up through 2010, the view of United's
9 management was that there had to be structural
10 change in the industry, meaning consolidation
11 capacity reduction.

12 And that United was -- had to be one of
13 the players, one of the participants in that
14 industry change.

15 So while mergers are really never favored
16 by pilots or any of the employee groups, for the
17 destruction that they necessarily cause, and the
18 reason we're sitting here today, from an industry
19 perspective and from a shareholder perspective,
20 mergers in a fragmented industry that lead to a
21 consolidated industry are extremely positive.

22 Now, if you ask me whether a United merger

1 with US Airways would have been better than a United
2 merger with Continental, I would say absolutely not.

3 But if you ask me whether a United merger
4 with US Airways would have been better than a
5 standalone United in the face of a combined
6 Delta/Northwest, I would say that, you know, a
7 merger with Airways would have been far preferable
8 to being standalone.

9 Q Your last answer compared the value from a
10 business perspective, I take it, of the United/US
11 Airways merger to a United/Continental merger.

12 Let me ask you about something that's
13 important for purposes of the Arbitration Board's
14 work, and that is, at the bottom of the page,
15 Captain Wallach says, in his press release: "United
16 should take a page from Continental and turn its
17 attention inward. United is the only carrier in the
18 industry with no aircraft on order or options. That
19 is not a long-term plan for survival."

20 Do you agree with Captain Wallach?

21 A I absolutely, totally agree with Captain
22 Wallach on that last sentence, not the first part of

1 it.

2 So let me explain.

3 Not having the ability to have access to
4 aircraft in the long-term is not a good plan for
5 survival, but that was never United's management's
6 plan.

7 As I made -- as I said in my testimony,
8 United wanted to wait to see who the merger partner
9 was going to be, US Airways or Continental. And
10 then, based on a rationalized fleet plan, decide
11 what the proper fleet mix was for that combined
12 airline, rather than, in my view, put the cart
13 before the horse, order airplanes that you might
14 find not necessary for the combined airlines.

15 As I said, I don't believe that there
16 would have been any problem in gaining access,
17 either from a financial basis or from a practical
18 delivery slot position basis of getting airplanes.

19 So I agree with the sentiment that if you
20 didn't have the ability to have access to airplanes,
21 not having aircraft ordered or options, is not a
22 great plan for survival.

1 But if you have the ability to get the
2 airplanes and you want to wait for the merger
3 partner to be selected, that's the right plan, in my
4 view. Okay.

5 As for -- I can talk about the first part
6 because I don't think any of this is a fair
7 representation of United. But it seems to me your
8 focus was only on the second part, so I'm happy to
9 give my answer to that.

10 Q I'm asking you about the standalone
11 prospects of United Airlines.

12 And you're talking about the merger with
13 either USAir or Continental or someone else.

14 But let me show you another document,
15 which is a SEC Form 10-K filing. It's an excerpt
16 from the 2008 annual filing of the 10-K, which
17 relates to the testimony in your last answer.

18 And I'll call that Continental Pilots
19 Exhibit X-2.

20 Take a minute.

21 (Whereupon, Continental Pilots Exhibit No.
22 X-2 was marked for identification and received into

1 evidence.)

2 BY MR. KATZ:

3 Q Again, we have the cover so you can
4 identify what it's from.

5 And then we have marked a couple of spots
6 from the lengthy 10-K.

7 A I'm sorry, where did you want me to read.
8 The Capital Commitments or the -- I guess they're
9 both the same.

10 Q They're both the same, really.

11 A Yeah. The infamous 42 A-319s and A-320s.

12 Q Yeah. Why do you say they're infamous?

13 A Because throughout the United bankruptcy,
14 the chairman of the Creditors' Committee was the
15 representative from Airbus.

16 And his sole mission of sitting as chair
17 of the Creditors' Committee was to get this order
18 confirmed, which, of course, he never got confirmed,
19 and ultimately went to pursue other interests at
20 Airbus.

21 Q So his mission was to get the deal to go
22 through, and he failed.

1 A His mission was to get the deal to go
2 through, and he didn't succeed.

3 Q All right. For the Arbitration Board's --
4 ARBITRATOR EISCHEN: Your legal training
5 is showing.

6 BY MR. KATZ:

7 Q Let's tell the Arbitration Board what
8 exactly was involved.

9 We have marked here that there was a
10 non-binding commitment of \$2.4 billion related to 42
11 A-319 and A-320 aircraft; correct?

12 A Correct.

13 Q And had United paid \$91 million in advance
14 payments?

15 A A pre-delivery deposit, most likely, yes.

16 Q And in fact, United wrote down the \$91
17 million to zero in 2008 because they weren't going
18 to acquire these airplanes.

19 Isn't that correct?

20 A That's correct.

21 But, you know, what's interesting is
22 they're are still on the Airbus order book as of a

1 couple of days ago.

2 Q Is that right?

3 A Yes.

4 Q But United is not going to buy them.

5 A No.

6 Actually, United took it off, I believe --
7 and I could be wrong -- I believe it has been on
8 United's 10-Ks as future orders, every 10-K up until
9 the most recent 10-K, when it finally came off the
10 United 10-K.

11 But that's really not relevant that they
12 wrote down the \$91 million to zero.

13 Q All right. And the reality is that United
14 lost the \$91 million that it paid in advance for
15 these purchases, and didn't go through with the
16 acquisition of the 42 airplanes or any number of
17 them; correct?

18 A The reality is they didn't take -- they
19 didn't go through with the acquisition of the 42
20 airplanes.

21 And in my cynical world, they wrote down
22 the \$91 million to zero. But you know, in

1 subsequent orders, A-350s and other orders from
2 Airbus, who knows how the \$91 million is really
3 accounted for, whether the Airbus gave it back to
4 them in -- either in reduced purchase price or
5 credits that are a typical in airline transactions.

6 So, you know, I don't know whether the 91
7 million really was true out-of-pocket loss or was
8 made up in some fashion.

9 My cynical belief is that United wouldn't
10 do that, but I have no knowledge.

11 Q I was going to ask you, do you have any
12 evidence to support that speculation?

13 A No.

14 Just what's happened in this business time
15 and time again with these kinds of transactions.

16 Q And you have no direct knowledge?

17 A No. I said I do not.

18 MR. KATZ: We have been at this for over
19 an hour.

20 I think it might make sense to take a
21 break for a few minutes.

22 ARBITRATOR EISCHEN: As the witness, do

1 you prefer --

2 THE WITNESS: I'm happy to continue going.

3 ARBITRATOR EISCHEN: I knew you were going
4 to say that.

5 I was ready to fight or fly.

6 THE WITNESS: Whatever suits everybody
7 else. I'm perfectly willing to sit here.

8 ARBITRATOR EISCHEN: Well, sit there for a
9 second.

10 Dan, how much longer do you think you
11 have?

12 MR. KATZ: I'm not sure.

13 I have to look at stuff over the break.

14 ARBITRATOR EISCHEN: Off the record.

15 (A recess was taken from 4:19 until 4:35.)

16 ARBITRATOR EISCHEN: We're back on the
17 record.

18 MR. KATZ: Thank you.

19 BY MR. KATZ:

20 Q Mr. Garfinkle, we had some discussion off
21 the record.

22 I think that you may be prepared to

1 provide information to the Panel in response to a
2 question from the Chairman.

3 A Yes, I am. Thank you.

4 THE WITNESS: During the break, Mr. Katz
5 and I collaborated to get you the Open Skies dates
6 that you wanted, Mr. Chairman.

7 So with respect to the U.S./U.K. Open
8 Skies agreement, that was signed on April 30, 2007,
9 effective March 30, 2008.

10 The U.S./Japan Open Skies agreement was
11 signed October 25, 2010, effective October 1, 2011.

12 ARBITRATOR EISCHEN: Thank you very much,
13 Mr. Garfinkle.

14 THE WITNESS: Both of us teamed up on
15 that.

16 ARBITRATOR EISCHEN: Yeah, thank you.

17 MR. POLLAK: It's a group effort.

18 BY MR. KATZ:

19 Q Mr. Garfinkle, would you turn to your
20 Exhibit 25, please?

21 Oh, I'm sorry, 23.

22 A Right.

1 Q And as I understand it, Exhibit 23 shows
2 that Continental raised approximately \$1.4 billion
3 in non-aircraft capital; correct?

4 A Yeah, 1.348, right.

5 Q And some of it was raised by selling
6 common stock; correct?

7 A Correct, or there were really four
8 tranches here.

9 One was the sale of an asset, which is the
10 COPA stock. I guess, one is the sale or advance
11 purchase of frequent flyer -- one was a -- one
12 category was a frequent flyer category, which
13 included an advance purchase of miles and a
14 resigning or re-up bonus provided by Chase.

15 And a third category was a sale of
16 convertible notes. And a fourth category was the
17 sale of common stock.

18 Q I take it you're not criticizing
19 Continental for making these moves, are you?

20 A Absolutely not.

21 Q They were sound business moves at the
22 time?

1 A Absolutely. As I said in this -- in 2008,
2 May 2008, December 2009 period, every airline was
3 worried about its survival.

4 Traffic had fallen off the cliff, as I
5 think the Continental and United 10Qs pointed out in
6 the Continental investor guidance forms that they
7 put out.

8 Fuel, you know, at least at the beginning
9 of this period, was \$140 a barrel. And from May
10 2008, to at least beginning of 2009, who the hell
11 knew where we were going to be as an economy.

12 It was a very scary time for everybody and
13 for the airlines, too.

14 Q Do you know whether Continental was, in
15 fact, paying hundreds of millions of dollars into
16 its defined benefit pension plans during the same
17 period of time?

18 A I don't know that.

19 I mean, I remember seeing press releases
20 saying they had done that. If you ask me how much,
21 I don't know. But I sure hope they were, yes.

22 Q Do you know whether United was paying any

1 money into its defined pension benefit plans?

2 A I don't believe they had.

3 Q They had all been terminated.

4 A Yes, they had been terminated.

5 Q Do you know whether United raised even one
6 dollar in equity, such as the sale of common stock,
7 during this period of time?

8 A No.

9 Q No, you don't know?

10 A No, I don't know.

11 I don't recall them raising money by sale
12 of common stock, but it's possible.

13 Q You're aware that they paid 17 percent at
14 this time on 175 million in debt that was issued?

15 A Am I aware that coupon rate was 17
16 percent?

17 Q Are you aware that 17 percent was the
18 interest rate?

19 A Was the interest rate, right. Yes.

20 Q And do you think that indicates that
21 United was in a squeeze in terms of cash itself?

22 A What period of time was this?

1 Q June 30, 2009.

2 Why don't I help you out?

3 I have got an exhibit we can distribute at
4 this time. And let's call it Continental Pilots
5 X-3.

6 The X, by the way, is for
7 cross-examination.

8 ARBITRATOR EISCHEN: Yes.

9 (Whereupon, Continental Pilots Exhibit No.
10 X-3 was marked for identification and received into
11 evidence.)

12 BY MR. KATZ:

13 Q This is a June 30, 2009 news article.

14 And it says that United is paying 17
15 percent interest on \$175 million in debt issued,
16 leading analysts to bet the Company is just a few
17 steps from the grave.

18 A That's what it says.

19 Apparently, it didn't happen, did it? So
20 they must have been wrong.

21 Q I don't know how close they were.

22 A You know, airlines have more lives than

1 cats, Mr. Katz.

2 Q Are you referring to me, or somebody else?

3 A I'm sure they have more lives than you do,
4 that's for sure.

5 As I said, it's funny that, you know, I
6 can quite pick the right month for TWA, but not the
7 right decade.

8 BY MR. KATZ:

9 Q It does say that they were -- United was
10 planning to settle the debt at 12 and three-quarter
11 percent, but was forced to sweeten things due to a
12 lack of investor interest and management
13 desperation, said Roger King of CreditSights.

14 Do you know this Roger King of
15 CreditSights?

16 A I have seen him quoted. I don't know him
17 personally.

18 But, you know, this doesn't -- you know,
19 the interest rate is obviously quite high. Nobody
20 can debate that.

21 And in June 30, in the middle of the
22 financial crisis, it really doesn't shock me it's

1 only 175 million.

2 It's not 300 of 400 million. It's not the
3 300 million that was, I think, just raised in the
4 last week. So it's a small amount of money, but
5 still the interest rate is very high.

6 I'm not arguing that point with you,
7 Mr. Katz.

8 Q Let me ask a separate point.

9 At the bottom of the page and going over
10 to the second page, the news article says: "UAL may
11 have near-term liquidity issues and could begin to
12 get squeezed by credit-card companies that fret they
13 would have to refund customers."

14 And the same King says: "UAL is now in
15 talks with American Express."

16 Isn't it true, since you have been in
17 these restructuring situations, that dealing with
18 the credit card companies is something that has a
19 big impact on airlines' cash situations in these
20 kind of circumstances?

21 A Oh, there's no question that they can
22 squeeze you if they want to.

1 And, you know, look at the exhibit, which
2 you first started this line of questioning, you
3 know, Exhibit 23, page 1, where Continental was --
4 went and was able to go to the well really three
5 times with Chase and the credit card company to
6 raise in excess of --

7 Q 463.

8 A About 463.

9 Q I can add very quickly. Sometimes I'm
10 right.

11 A Okay. And so, yeah, there's no question
12 that Chase, in particular, could be a difficult
13 relationship for airlines.

14 Q But in this case, the information you have
15 shown on Exhibit 23 suggests that Chase was being
16 helpful by the terms of these various transactions
17 it did with Continental of generating over \$400
18 million in cash at a time when all the airlines were
19 seeking cash.

20 Is that true?

21 A That's true.

22 And Chase also had a -- Jamie Diamond of

1 Chase, had a very good relationship with Tilton and
2 with United.

3 And this article doesn't talk about any
4 possible Chase raise by United at this period. It
5 only talks about American Express, which is, you
6 know, by far the most difficult of the credit card
7 companies to work with.

8 Q Right. But if United had trouble with
9 American Express and couldn't take American Express
10 credit cards from their customers, United would be
11 in a lot of trouble, wouldn't they?

12 A Just like every other airline, that's
13 correct, but it didn't happen.

14 Q Let me show you another exhibit from about
15 the same time, which is from Crain's Chicago
16 business.

17 ARBITRATOR EISCHEN: Did you put a number
18 on the New York Post article, Dan?

19 MR. KATZ: Yes. That's going to be 3, and
20 this one is going to be 4.

21 ARBITRATOR EISCHEN: Thank you.

22 THE WITNESS: Do you -- just as a matter

1 of procedure, do you want me to mark these as 3 and
2 4, or is that okay?

3 BY MR. KATZ:

4 Q That would be great if you would mark them
5 as we go along.

6 And if there's questions on redirect,
7 you'll know what Roger is asking about.

8 A Maybe.

9 So just so I'm clear, I have the one you
10 just showed me was 3, that's the New York Post
11 article.

12 Q Correct.

13 A I have two exhibits that are unmarked.

14 And we already have the one. And we only
15 have one slot that is unoccupied. So I have a 10-K
16 and I have the Master's letter.

17 Q Okay. The 10-K is No. 2.

18 A Okay.

19 Q And the letter from Captain Wallach, his
20 press release, is already an exhibit from our case
21 in chief.

22 A Fine. Thank you.

1 Q So it doesn't need a number.

2 It has got a number already.

3 A I'm with you.

4 Q And this Exhibit 4 is a Crain's Chicago
5 Business article from about the same time, July 11,
6 2009.

7 And I would ask you to go down to the
8 middle of the first page where it talks about --

9 A Where I talk about it.

10 Q Yeah. I was about to get to your quote.

11 But the paragraph before that it says that
12 Mr. Tilton envisioned when he took charge of
13 struggling United in 2002 that he would be able to
14 purge excess cost in Chapter 11, and then initiate a
15 badly needed airline industry consolidation with a
16 sale or merger that would send him into retirement
17 with a handsome payday.

18 A I'm sure that's what Mr. Tilton told them.

19 Q But you said, That was Glenn's plan -- to
20 consolidate, says Mo Garfinkle, who advised
21 Mr. Tilton of United. "The game plan now is to
22 survive."

1 Do you remember saying that?

2 A Oh, absolutely.

3 July 2009, we're still in the financial
4 crisis. And what I have said about consolidation is
5 absolutely true, that was the plan, still was the
6 plan.

7 The game plan now is to survive, true for
8 United, true or Continental, true for American, true
9 for Delta, true for everybody in that period,
10 absolutely.

11 Q It says at the top of the page that:
12 "United's cash is evaporating as the recession
13 chokes off air travel. With more than 1.5 billion
14 in debt coming due by next year, Mr. Tilton can only
15 hope the economy recovers before the cash runs out."

16 Is that what the situation was at United
17 in July 2009?

18 A I think that's -- I won't call it
19 sensationalism journalism, but at a lot of airlines,
20 including Continental, which was raising money at
21 the time, including United, including American, you
22 know, everybody was getting cash because the travel

1 market had gone down.

2 Fuel had gone up. The financial crisis
3 was choking off the credit markets.

4 And having said all that, the fact that
5 there was \$1.5 billion in debt due coming next year,
6 my answer to that, from having been through so many
7 airline bankruptcies and bankruptcy restructurings,
8 is so what?

9 They just roll it over, and nobody -- no
10 credit lender is going to put them out of business.
11 They're too big to be put out of business at this
12 point.

13 And so, yeah, the \$1.5 billion in credit
14 due next year, it really wasn't crisis management at
15 that point.

16 Q Well, it does say, on the next page, under
17 the heading Where Next, that Tilton announced plans
18 to buy up to 150 new aircraft in the coming years,
19 but it's not clear how United would finance such a
20 purchase.

21 That's not consistent with your testimony,
22 is it?

1 A Right. Why isn't it?

2 Q Well, you said that United would have no
3 problem financing the purchase of airplanes.

4 A This is the author of this article saying
5 that.

6 If I can -- as I said in my testimony, if
7 American, who was in significantly worse shape four
8 months before its bankruptcy, can get both Airbus
9 and Boeing to provide backstop financing for 460
10 airplanes, Mr. Tilton could get one of the two
11 manufacturers or an aircraft leasing company to
12 provide backstop financing.

13 In that sense, United and Mr. Tilton were
14 in no worse condition at that point than
15 Continental.

16 Because if you look at Exhibit 46, page 2,
17 I read some of it, but you read the last paragraph,
18 and it talks about -- at the December 31, 2007, we
19 had approximately \$5 billion in long-term debt and
20 capital obligations.

21 We do not currently have any undrawn lines
22 of credit or revolving credit facilities. And most

1 of our otherwise readily available financial --
2 financeable assets are encumbered.

3 There's not a major airline in this
4 country or in Europe or in Asia that can't get one
5 of the manufacturers or someone else to finance
6 aircraft when they want them.

7 Q On the last page of this same exhibit,
8 Mr. Garfinkle, it says that: "A growing consensus
9 among industry observers" -- this is the next to
10 last paragraph -- "holds that excess capacity --

11 A I'm sorry. I'm sorry.

12 Q The next to last paragraph on the last
13 page.

14 A Yeah. I have got to say something.
15 When you showed me the financing document,
16 which was Exhibit 4, 3, the 17 percent for --

17 Q I'll come back to that later.

18 But now I'm asking you about the next to
19 last paragraph of the third page. And I would like
20 to get the question out and get an answer.

21 The news article says: "A growing
22 consensus among industry observers holds that excess

1 capacity and weak travel recovery could force a
2 major airline into liquidation, with United,
3 American, and US Airways the most likely victims."

4 Do you agree with that statement?

5 A No, I don't.

6 And it didn't happen.

7 Q It goes on to say: "Insurance against
8 default on United's debt -- known as credit default
9 swaps -- trades at 60 cents on the dollar, while its
10 shares trade below \$5, indicating investors consider
11 bankruptcy likely."

12 Would you explain to the Arbitration
13 Panel, please, what the significance is of the
14 credit default swaps trading at 60 cents on the
15 dollar?

16 A I have no idea.

17 Q Well, I thought you --

18 A And I know what credit swaps are, and I
19 know what credit default swaps are. I know it gets
20 into a lot of trouble in a financial crisis.

21 But if you're asking me to talk about what
22 the technical mechanics of credit swaps, I couldn't

1 do it. That's not my area of expertise.

2 When I look at this, I got to tell you
3 that these are written by people who don't
4 understand the industry.

5 None of this happened. None of this was
6 likely to happen, in that paragraph or the next
7 paragraph. It's laughable to me.

8 Anyone who understands the industry and
9 understands the access to markets, capital markets
10 that the airlines have, U.S. airlines have -- and
11 I'm talking about the U.S. airlines. I'm talking
12 about United, American, Delta, even US Airways, and
13 I guess in this point, 2009, Continental, getting
14 access to capital, even in a choked-off environment,
15 as we had in 2009, really wasn't an issue.

16 They were going to survive.

17 You know, I got to tell you, I did the
18 first two business plans for Virgin America.

19 Q All right. I'm sorry, Mr. Garfinkle.
20 This is not -- what happened at Virgin America is
21 not responsive to a question I have asked.

22 If you would like, when Roger gets a

1 chance to ask you follow-up questions on redirect,
2 he can ask you all about Virgin America, and you can
3 explain that.

4 But now I would like to show you --

5 A Well, it is responsive to your last few
6 paragraphs, where it was trying to assert --

7 Q Well, I'm done with that.

8 I'm on to another exhibit.

9 A All right.

10 Q We'll call this one 5.

11 And I just -- I want to get done by the
12 end of the weekend, so...

13 (Whereupon, Continental Pilots Exhibit No.
14 X-5 was marked for identification and received into
15 evidence.)

16 BY MR. KATZ:

17 Q Let's look at Exhibit 5.

18 You read the Arbitration Board some
19 testimony from this Malaney case in your direct
20 examination.

21 And I would like to point out to you from
22 August 31, 2010, the testimony of Glenn Tilton.

1 At the bottom of page 239 of the
2 transcript, and the top of 240 that we have marked,
3 where the question was, whether in the discussions
4 with American, Continental, Delta, or Northwest, or
5 US Airways -- these were merger discussions with
6 United that were being followed up about.

7 "Did you have any discussions with them
8 about the capacity in the industry?" And Mr. Tilton
9 says no.

10 And the questioner says: "And, one of the
11 reasons you wanted to combine with your company was
12 to reduce the capacity in the industry."

13 And he says: "No, not at all. What I
14 wanted to do was create a stronger company, so my
15 company wouldn't have to go into bankruptcy again."

16 You don't question the accuracy of
17 Mr. Tilton's testimony in this regard, do you?

18 A I sure don't.

19 Q What evidence do you have that he was not
20 being complete and accurate?

21 A Well, he personally -- and I think that's
22 the way this question was asked. He personally may

1 not have had any discussions with any of the
2 airlines that were mentioned in the question about
3 the -- about capacity or reducing capacity in the
4 industry.

5 But, clearly, when you do -- in all the
6 discussions with US Airways and Continental that led
7 to fleet planning and network planning and network
8 rationalization, and fleet rationalization, either
9 you call it the end product or the byproduct of
10 those discussions, are there's going to be less
11 capacity, and there's going to be less aircraft.

12 Second, in that regard, you have the
13 rather public statements -- not the rather public
14 statements, the public statements of Mr. Tilton
15 saying that, you know, like the telecom industry,
16 this industry has to reduce capacity.

17 And anyone who understands the industry
18 would understand that one of the primary objectives
19 of consolidation was fewer players, capacity
20 rationalization in the industry.

21 Now, when he answers the question about
22 whether one of the reasons he wanted to combine the

1 company was to reduce capacity in the industry, I
2 don't think his answer is totally accurate.

3 I think that's clearly the reason, and I
4 think his public statements to the contrary are the
5 evidence of that.

6 Clearly, what he wanted to do, like every
7 other airline wanted to do, is create a stronger
8 company. There's why you do a merger. You don't do
9 a merger to create a weaker company.

10 And you want to create a merger, whether
11 it's Continental/United, Continental and somebody
12 else, US Airways and United so your company doesn't
13 go into bankruptcy again.

14 That's just another way of saying, I want
15 my merger to create a sustainable company in a
16 sustainable industry.

17 Q I would like to distribute, at this time,
18 an exhibit that we will mark as Exhibit X-6, which
19 is part of the prepared written testimony of
20 Mr. Tilton in the same federal direct court case in
21 San Francisco.

22 (Whereupon, Continental Pilots Exhibit No.

1 X-6 was marked for identification and received into
2 evidence.)

3 ARBITRATOR EISCHEN: This one is 6, Dan?

4 MR. KATZ: Yes.

5 BY MR. KATZ:

6 Q Are you familiar with this testimony by
7 Mr. Tilton?

8 A I wasn't.

9 I have now read it. I have skimmed it,
10 but it's perfectly consistent with the philosophy he
11 had from, as I said, day -- at least day two at
12 United, and perfectly consistent with the philosophy
13 he espoused publicly about the need for
14 consolidation, the need for industry structural
15 change.

16 And the fact that United remained a
17 standalone entity really wasn't an option in his
18 menu of options.

19 It was either Continental, which was the
20 preferred option, or it was US Airways. But
21 standalone was not an option that was in the menu.

22 Q He does say that as a standalone entity,

1 the Company's profitability market share would
2 continue downward as it had in the past ten years.

3 I'm paraphrasing here.

4 Do you agree with that?

5 A I agree that that's if United is
6 standalone. I agree that's absolutely true if
7 Continental stood alone, both of them.

8 As I explained in my testimony, that once
9 you had the Delta/Northwest merger, to stand alone
10 was -- made you exposed, vulnerable.

11 I believe Mr. Smisek, in his testimony in
12 that San Francisco case that you -- that just
13 alluded to, Mr. Katz.

14 Q This is the same case.

15 This is from the same case.

16 A Same page?

17 Q Same case.

18 A Same case, yes, the same case.

19 In that case, Mr. Smisek talked about
20 being marginalized. They were being crushed.

21 So, you know, with a merged
22 Delta/Northwest, neither airline in a standalone

1 environment was particularly happy with that
2 situation.

3 This is very consistent with the
4 philosophy that I explained in my direct testimony
5 as to Mr. Tilton's overriding position that industry
6 consolidation had to happen and, not only for the
7 benefit of United, but for the benefit of the
8 industry.

9 Without industry consolidation, it
10 wouldn't nearly be as effective or sustainable for
11 United, for Delta, for anybody at Continental, for
12 anybody else.

13 And I think Smisek shares the same view.

14 Q I'm asking about Mr. Tilton's testimony
15 now.

16 In paragraph 48 and 49, Mr. Tilton gives
17 sworn testimony that, in a standalone scenario of
18 the company's continuing financial instability,
19 would lead to further job loss, weakening of
20 employee morale, and continued deterioration of the
21 company.

22 Is that something that you agree with?

1 A If you don't mind, I want to read it
2 because I just skimmed it before.

3 Q Please, take your time.

4 A I absolutely agree with it.

5 And you can put in there as a result of
6 United's declining profitability and shrinking
7 market share. You could say the same thing about
8 Continental. You could say the same thing about US
9 Airways. You could say the same thing about
10 American. You could say the same thing about any
11 legacy carrier that hadn't emerged at that point.

12 It's absolutely true.

13 I mean, what he's saying is, you know, in
14 the industry that is going from fragmentation to
15 consolidation, if you stand alone, you run the risk
16 of being marginalized. And that's true for both of
17 them, Continental and United.

18 And from a personal perspective, I totally
19 agree with that.

20 Q The next exhibit is X-7.

21 (Whereupon, Continental Pilots Exhibit No.
22 X-7 was marked for identification and received into

1 evidence.)

2 BY MR. KATZ:

3 Q While my trusty assistant is passing this
4 out, I'll explain that it's a New York Times article
5 from April 7, 2010, stating that: "United is in
6 merger talks with US Airways."

7 You probably saw this article in the past.

8 A I was the one that called John, one of the
9 writers of the article, and suggested he write it.

10 Because this -- if you notice, the date of
11 April 2007, this is the date of the leak, that this
12 is the first article discussing the -- this is the
13 first article discussing United's merger talks with
14 US Airways.

15 And this article was intended to wake up,
16 send a signal to Mr. Smisek.

17 Q So you were the leak?

18 A I wouldn't call myself a leak.

19 I was the one that told John he should
20 write an article about it.

21 You can call it a leak. I don't care.

22 Now, the paragraph you have highlighted

1 was intended to wake up Mr. Smisek.

2 Q Oh, it was?

3 Let's read that into the record.

4 It says, in reporting you, saying:

5 "'United has been standing at the altar waiting for
6 the bride to show up and just got tired of waiting,'
7 said Mo Garfinkle..."

8 "Maybe flirting with another girl, it can
9 get Continental's attention again."

10 That was the way you wanted to alert Jeff
11 Smisek to the fact that it was time for Continental
12 to agree to a merger with United?

13 A The fact that there were merger
14 discussions between US Airways and United was the
15 reason that I believed Jeff Smisek needed to justify
16 not throwing Larry Keller under the bus, and for the
17 reason that he could give to his employee groups
18 about why he needed to do this, and if he didn't do
19 it, that Continental's long-term future was in
20 question.

21 So this was the way that we tried to
22 communicate that -- I tried to communicate that

1 message to Smisek.

2 Q The article continues after the part that
3 is highlighted, it says: "A combination of US
4 Airways and United is not a natural fit. The two
5 carriers would end up with a large number of hubs,
6 including United's operations in Chicago and Denver,
7 and Washington Dulles..."

8 Do you agree with that item in the
9 article?

10 A A natural fit?

11 I don't know what a natural fit is.

12 I mean, it's not as -- clearly, make no
13 mistake about it, it was not as good a fit as
14 Continental, which was a wonderful fit.

15 Whether it was a natural fit, I don't know
16 about the word natural. But it was a great fit.
17 Even Kellner talked about that as being a very good
18 fit in 2006, 2007.

19 And the rest of it, you know, I don't know
20 whether it's true or not. But a less than perfect
21 merger with US Airways was better for United than a
22 standalone future for United.

1 Q Do you agree with this news article in the
2 next paragraph where it says: "US Airways is widely
3 viewed as the weakest of the major airlines, with
4 few international routes"?

5 A I would phrase it differently.

6 You -- I don't know why they viewed -- I
7 mean, that's who is the viewing audience here?

8 Q Well, I thought it might be you.

9 A No, no. That wasn't me.

10 Clearly, I was not a person in favor in US
11 Airways headquarters during this period of time, I
12 suspect, but they did have few international routes.

13 They may have been regarded as, you know,
14 the weakest of the majors. But, you know, as events
15 turned out, they did a wonderful job with mediocre
16 assets and made profits while other carriers were
17 not.

18 And you know, the fact that a domestic hub
19 in Phoenix, they compete with Southwest --

20 (Interruption by the court reporter.)

21 THE WITNESS: Yeah. With mediocre assets,
22 they did a fine job with mediocre assets and made

1 profits, where other carriers were not making
2 profits with better assets.

3 As for the part about a domestic hub in
4 Phoenix competing directly with Southwest, I would
5 say two things.

6 And one is, lots of carriers compete with
7 Southwest in lots of airports in cities today. So
8 what?

9 And, second, you know, in today's
10 environment, competing against Southwest is not the
11 worst thing in the world. They're not a low-cost
12 carrier.

13 Excuse me, Dr. Campbell, but I don't
14 believe they -- they're a legacy LCC, as what I
15 would prefer to call them.

16 MR. POLLAK: We'll coin that term.

17 MR. KATZ: It's a new one.

18 THE WITNESS: It's an LLCC instead of
19 ULCC.

20 BY MR. KATZ:

21 Q Let me show you one other article that
22 quotes you about the same time, April 10, 2010,

1 again this is Crain's Chicago Business.

2 The headline is: "United Airlines CEO
3 Glenn Tilton's quest for merger with US Airways
4 tests faith in airline consolidation."

5 And the lead sentence is: "How strongly
6 does Glenn Tilton believe in airline consolidation?
7 So strongly that he's willing to risk his company on
8 a merger with the country's weakest major airline."

9 Does that capture your interest?

10 A I say balderdash.

11 I mean, you may call it the country's
12 weakest airline, but they -- you know, in 2009,
13 2010, 2011, during this period, they were making
14 profits.

15 They had poor assets. That's the hand
16 they were dealt. But they did a great job with poor
17 assets. Great management team.

18 And, you know, as I said, while it wasn't
19 a perfect fit, it wasn't the best fit. It was
20 better than standalone.

21 Q Did you tell Mr. Pletz or Mr. Merrion: "I
22 think United feels now is the time, and being

1 married to someone significant, which may not be
2 your first choice, is better than being alone at the
3 altar"?

4 A It's very consistent with what I have said
5 three or four times today and what I said then, and
6 yes.

7 It's, as I said, you know, I felt that
8 United was better off with Airways in a merger than
9 standing alone. It was not -- I don't want to use
10 the vernacular, which apparently I started in the
11 April 7 article, but I think that United and
12 Continental was a great match.

13 They both brought assets to the table.

14 From my perspective, a strategic and
15 competitive perspective, they fit nicely, fit better
16 than Airways.

17 But the choice wasn't Continental or
18 nothing. The choice was really Continental or US
19 Airways.

20 So if Continental wasn't going to come to
21 the table, which I thought was -- would have been a
22 really silly mistake for Continental, then a merger

1 with Airways, you know, was the next best option.

2 Q These writers say in -- two-thirds of the
3 way down, the first page, Overlap in markets such as
4 Washington DC means United and US Airways --

5 A I'm sorry. Can you point me where you're
6 reading?

7 Q I'm sorry. I'm starting in the middle of
8 a paragraph that starts out "US Airways would bring
9 United a lot of traffic."

10 A Okay.

11 Q The second sentence says: "Overlap in
12 markets such as Washington DC means United and US
13 Airways would have to shed more operations to win
14 antitrust clearance than would United and
15 Continental."

16 And we talked about that a few minutes
17 ago; right?

18 A Right. And I agree with that.

19 Q You agree with that.

20 A I do.

21 Q And in the next sentence, the next
22 paragraph down, starts out: "Ironically, antitrust

1 approval of a United-US Airways deal could clear the
2 regulatory path for other mergers and allow
3 Continental to hook up with Texas-based American
4 Airlines, a deal Mr. Smisek might prefer."

5 Is that a situation that Mr. Tilton would
6 want to have happen, merging with US Airways and
7 having Continental and American merge?

8 A Well, if you're asking me for -- the
9 premise of your question is that there's truth in
10 the statement that Continental could hook up with
11 American, a deal that Smisek might prefer, you know,
12 he might prefer it, but he would also prefer a
13 monopoly.

14 But it wasn't a deal that Justice -- if
15 there was one deal that Justice wasn't going to let
16 happen, couldn't let happen, it was
17 American/Continental.

18 They talked before, and they had reached a
19 point where they determined that it wouldn't work
20 from a regulatory point of view.

21 Jeff is a lawyer, a Texas lawyer. He
22 understood all this. So, you know, this is not in

1 any way related to reality.

2 He couldn't have a Continental/American
3 hook up.

4 Q Did you talk to the United States Attorney
5 General about that and get information that they
6 wouldn't approve that deal?

7 A No.

8 I did not talk to -- I didn't need to talk
9 to the Attorney General about that deal.

10 Q Exhibit 24 in your exhibit book,
11 Mr. Garfinkle, examines the nine quarters before the
12 United/Continental merger.

13 A I apologize.

14 This is exhibit?

15 ARBITRATOR EISCHEN: We're going to back
16 up and mark this one as 8.

17 MR. KATZ: 8, thank you.

18 ARBITRATOR EISCHEN: Thank you.

19 (Whereupon, Continental Pilots Exhibit No.
20 X-8 was marked for identification and received into
21 evidence.)

22

1 BY MR. KATZ:

2 Q Exhibit 24 in your volume, Mr. Garfinkle,
3 has a lot of blue bars going down from the X axis
4 showing that there were quarterly losses.

5 During this period you have described as
6 one of the most turbulent in airline history;
7 correct?

8 A Yes, sir.

9 Q I don't see any red bars on here.

10 A That's because, as I explained when you
11 asked me the -- I don't know what you call it, the
12 preliminary questions before we broke for lunch, the
13 purpose of this chart is not to compare this Exhibit
14 24.

15 It's not to compare United with
16 Continental during this period. But to -- from my
17 perspective, to get a reference to the frame of mind
18 that Continental was in when it went into merger
19 discussions in April 2010 with United, compared to
20 the frame of mind that it had when it broke off
21 merger discussions in April of 2008.

22 In April of 2008, while there was a lot of

1 uncertainty in the marketplace, as I have explained
2 before and I will explain in detail again,
3 Continental had just come off of a very good 2007.

4 So it had a bit of confidence, a bit of
5 swagger. It had certainly far less confidence in
6 United in that period, in April 2008 going forward.

7 In 2010, that was all changed, in my
8 perspective.

9 Continental had not come through the
10 financial crisis in as good a shape as United.

11 It had not rebounded its RSAM, its PRASM,
12 its yield for a less robust, and so the swagger that
13 it felt in April 2008, disappeared in April 2010,
14 and was replaced, in my view, by anxiety and angst
15 about its own future.

16 That was the purpose of this chart.

17 Q Would it surprise you to know that the red
18 bars, if they were on here, would be -- total three
19 times the amount --

20 A No.

21 Q -- loss by United?

22 A No, at all.

1 Q Let me finish the question.

2 A I'm sorry.

3 Q I was having a little trouble getting it
4 out.

5 Let me finish it, and I'll let you know
6 when I'm done.

7 A I apologize.

8 Q Not a problem.

9 Would it surprise you to know that the red
10 bars representing United operating losses during the
11 same period would be nearly triple the losses that
12 Continental had during the same period?

13 A In 2008.

14 Q This is 2008, and 2009, and 2010.

15 A Well, but if you look at the next page,
16 page 1 of Exhibit 25, in 2009, you know, in the
17 second, and third, and fourth quarters the red bars
18 are much higher.

19 So those losses that you're talking about,
20 Mr. Katz, all -- not all, but primarily occurred in
21 2008, which doesn't surprise me at all because the
22 first quarter of 2008 was that the number of \$357

1 million loss.

2 And this was the period when, as I
3 explained in my exhibits, United undertook a
4 realignment of its operations with the economy. And
5 it did some of the heavy lifting and restructuring
6 that one would have ordinarily expected to occur in
7 a bankruptcy restructuring.

8 But because Mr. Tilton had decided to do
9 certain things and not do certain things in the
10 bankruptcy to facilitate a merger, some of those
11 things really weren't done and were left for the
12 merger partner to do.

13 The plan didn't exactly work out like he
14 thought. But once 2008 rolled around, and in April
15 2008, when merger talks abruptly terminated, I would
16 say United rolled up its sleeves and did some of the
17 restructuring that you would ordinarily expect in
18 the bankruptcy.

19 So I would have expected 2008 to be a year
20 of heavy pruning in order for the airline to grow
21 again, and I think that's exactly what happened.

22 Q That was the year that the 100 airplanes

1 were parked?

2 A The 30, and then the announcement of the
3 hundred airplanes, that's right.

4 That's in the -- the 30 airplanes were
5 announced in the end of April of 2008. And the 100
6 airplanes, which includes the 30, was announced in
7 June of 2008.

8 Q So I think that your answers have
9 suggested that you would be surprised if United's
10 operating losses during these same nine quarters
11 were triple those of Continental.

12 A No.

13 Q You wouldn't be surprised?

14 A 2008 was a year of realignment of
15 operations to the economy.

16 And I would have expected 2008 to be heavy
17 losses.

18 It's the pruning.

19 It's -- you left the shrub or the big
20 tree, you left the big tree for the next owner to
21 take care of. When there was no next owner, you had
22 to do it yourself. And they did it themselves in

1 2008.

2 And that was the year when, you know, you
3 undertook the cuts. You didn't see the benefits of
4 the cuts until 2009, which is you know, the way the
5 industry works.

6 There's a time lapse between when you
7 implement change and when you see -- when the change
8 hits the bottom line.

9 So if you take 2008 and you tell me that
10 United's losses were two, three, four times what
11 Continentals' were, I would say doesn't surprise me.

12 2009 is a different story.

13 And you can see that on Exhibit 25, page
14 1.

15 Q Let's look at Exhibit 25, page 1.

16 A Uh-huh.

17 Q And there you have displayed four quarters
18 ending March 31, 2010; correct?

19 A Right, just before the announcement of the
20 merger.

21 Q Those are the four quarters preceding the
22 announcement of the merger.

1 A Right.

2 Q And so is it your contention that four
3 quarters establishes a trend?

4 A If you're asking whether four quarters
5 make a season or a career, no, and this is the
6 airline business.

7 Q Does it make a dollar?

8 A It clearly is a trend.

9 I think it shows a trend upward for
10 United.

11 I think what it shows more than a trend is
12 that successful impact of the restructuring or
13 realignment that occurred in 2008 in the midst of
14 the financial crisis.

15 And as they came out of the crisis slowly
16 in 2009, you began to see real robust impact at
17 United.

18 And I think that's what it shows.

19 Q If you look at Exhibit 26, please.

20 This is really, I think, related to your
21 testimony about Exhibit 25. But if you look at the
22 passenger revenue per available seat mile, both

1 United and Continental are going down in 2009.

2 Isn't that correct?

3 A Clearly. I mean, traffic was still
4 falling off the roof, no question about it.

5 Q And so it --

6 A Falling off the cliff, not the roof.

7 Q It's important, also, when you're looking
8 at passenger revenue per available seat mile in the
9 next chart, revenue per available seat mile, that's
10 what's coming in the door.

11 Don't you also have to look at your costs
12 in order to see whether an airline is profitable?

13 A If you're looking at profitable, you just
14 can't look at revenue.

15 If that's what you're asking me, yes.

16 Q That was the last question.

17 And Dr. Campbell testified about a month
18 ago that in every period that we're looking at, in
19 every international region, Atlantic, Latin
20 American, and Pacific, Continental's operating
21 margins were superior to United's.

22 A Operating margins.

1 Q Yes.

2 A Except for domestic, where they lost
3 money.

4 Q I'm asking about the every international
5 region.

6 A You can't do that.

7 You know, you can't pick and say the
8 international is making money and the domestic is
9 not making money, when domestic is 50 percent of
10 your overall revenues or 60 percent.

11 I don't remember what it was.

12 But you can't separate it like that.

13 Q So while you looked at domestic only and
14 have given us information about United's domestic
15 systems as the basis for your testimony that United
16 was in good shape --

17 A Where am I doing domestic?

18 Q Throughout your exhibits.

19 A No. No.

20 That testimony wasn't to show that United
21 is in good shape.

22 If you look at the very beginning, those

1 are metric measurements to show the comparative
2 positions of the airlines.

3 I did domestic, and I did a whole section
4 on international, which was international
5 codesharing, international weekly frequencies, and
6 seats, and routes.

7 You know, there's 11 pages in the
8 beginning, 11 pages or something in the end on the
9 international section.

10 I took them different -- in different
11 parts, but I had them both there.

12 And it really absurd to talk about
13 operating margins in your international division,
14 while you ignore operating losses in the division,
15 domestic division, which is over 50 percent of your
16 business.

17 So, you know, it's kind of like saying I
18 have got a hand in the freezer and a hand in the
19 oven and I'm at an even temperature.

20 You have to take them both when you're
21 talking about profits.

22 And, you know, what Dr. Campbell's chart

1 showed to me was just how weak Continental was in a
2 domestic system. That they hadn't made money and --
3 in a domestic system, and they had a weak domestic
4 system despite their acquisitions in the '80s.

5 It was still a relatively weak, not
6 geographically disperse system.

7 As I said earlier, in my view, having a
8 strong diverse domestic system is the backbone of
9 your international operations.

10 Q I thought you testified this morning that
11 all of the network carriers were seeking to expand
12 their international flying to get away from the
13 LCCs?

14 A That was, I believe, Dr. Campbell's
15 testimony, and --

16 Q You agree with that?

17 A Can I finish?

18 Q Please.

19 A Thank you.

20 That I concurred that, during this period,
21 they were not trying to get out of the domestic
22 system. They were trying to have more balance

1 between domestic and international.

2 But you can't forsake a domestic system
3 for an international system. You have got to have a
4 domestic system in order to make the international
5 system successful.

6 And, you know, or else you end up like Pan
7 Am. You can't live off of the international traffic
8 because there's not enough point-to-point traffic.

9 Q Exhibit 36, please.

10 A I'm getting close to requiring -- instead
11 of a surrogate bathroom break, a real bathroom
12 break. So I don't know, I have probably got about
13 15 more minutes in my tank.

14 I don't know whether you want to break.

15 MR. KATZ: Why don't we take it now then?

16 THE WITNESS: Okay.

17 MR. KATZ: I'm not sure how long I have
18 got to go, but I'll check around and maybe the break
19 will help me expedite the remainder of the process.

20 ARBITRATOR EISCHEN: Let's take the break.

21 We're off the record.

22 (A recess was taken from 5:28 until 5:35.)

1 ARBITRATOR EISCHEN: On the record.

2 BY MR. KATZ:

3 Q I think we were talking about domestic
4 capacity and domestic systems, Mr. Garfinkle, before
5 the break.

6 And I'm sorry I don't have copies of this,
7 but this is one of Dr. Campbell's exhibits, Chart
8 No. 3 from his testimony in April.

9 Did you have a chance to look at his
10 exhibits before you testified?

11 A Very briefly.

12 Q The heading is: "Legacy carriers have
13 emphasized international growth and reduced domestic
14 capacity as low-cost carriers and regionals have
15 grown."

16 This is generally the subject we were
17 talking about.

18 And what his calculations show is that
19 from the start of 2000 through the time the merger
20 closed the end of September 2010, that United
21 dropped 44 percent in its domestic capacity as
22 measured in available seat miles.

1 Have you done any calculations that would
2 confirm or rebut that testimony?

3 A No. But it doesn't -- it doesn't sound
4 wrong to me.

5 They haven't -- the fact that the
6 statement that you're saying about the reduction of
7 44 percent capacity isn't tied exclusively to the
8 fact that low-cost carriers and regionals have
9 grown.

10 As we entered the decade of the 2000s, or
11 the oughts, all of the legacy carriers bulked up in
12 order to combat LCC -- LCCs, low-cost carriers.

13 They added extra flights.

14 This was the era of market share, not
15 profits. So legacy carriers were not going to
16 let -- or they hoped they weren't going to let the
17 low-cost carriers take over the domestic routes.

18 So they added a lot of frequency in order
19 to bulk up and sandwich low-cost carrier flights
20 compete with low-cost carriers, CAL Lite, which was
21 before, but you had Ted, you had all kinds of
22 experiments.

1 And as we get further into the ought
2 period, we had a combination of, not only the
3 domestic carriers, the legacy carriers wanting to
4 transfer capacity away from LCCs, but you also had
5 the exogenous events, the financial crisis, which
6 forced a reduction in capacity.

7 And you had, as we go through this period
8 of the oughts, you have less and less vibrant LCC
9 competition coming. You basically, at the end of
10 this period, you have AirTran and Southwest. And
11 Southwest, as I said, by the end of this period
12 becoming almost a legacy LCC, so there's less reason
13 to be -- bulk up.

14 So they bulked down, if there's such a
15 phrase. So it was a combination of factors that led
16 the legacy airlines to decrease their capacity.

17 One of which was trying to get out of the
18 way of some of the LCCs or diversify their capacity.
19 But there were the other reasons as well.

20 When you look at the chart, you see that
21 the legacy carriers as a group went down 30 percent.
22 So none of this is very surprising to me.

1 Q Well, the chart shows that United went
2 down 44 percent in its domestic capacity.

3 The other legacy carriers, as a group, 30
4 percent. And Continental 15 percent; correct?

5 A Yeah. And that's a reflection of the more
6 comprehensive domestic route system that United had,
7 as you saw on those maps, those five hubs across the
8 United States, versus all the other carriers had
9 niche hubs, you know, whether it's Minneapolis or
10 Detroit for Northwest, or Atlanta and Salt Lake City
11 for Delta.

12 But, you know, the more comprehensive you
13 were, obviously, the more exposed you were to LCC
14 traffic. So I would expect their capacity to
15 decrease at a greater proportion than other legacy
16 airlines.

17 Q Instead of United's building up its
18 powerful domestic system during the decade of the
19 oughts, it essentially unloaded nearly half of its
20 domestic capacity, didn't it?

21 A Well, 44 percent.

22 But I think what's very interesting is if

1 you look at Exhibit 4, page 2, and you compare that
2 to -- give me a second to find it, Mr. Katz.

3 I'm looking for the scope and frequency in
4 2010, if someone could help me and tell me which
5 exhibit number it is.

6 UNIDENTIFIED SPEAKER: Try 38, 2.

7 THE WITNESS: Great. Thank you.

8 So if you look at page 2, I think, of 38,
9 and compare it to page 2 of Exhibit 4, you will see
10 in this period that United went from 420 domestic
11 routes to 401, a reduction of 19 routes and 5
12 percent.

13 Continental went from 271 routes to 246, a
14 reduction of 25 and 10 percent.

15 So during this period, Continental
16 actually got out of more markets, twice the number
17 of markets that United did.

18 So what United did was reduce the density
19 of its network, but not the scope.

20 BY MR. KATZ:

21 Q Well, you also have frequencies.

22 And United went from 14,537 frequencies,

1 down to 10,893 frequencies, which is about a 14
2 (sic) percent ...

3 A Yeah. That's what I said, they reduced
4 the density of their network.

5 Density is frequencies.

6 Q But Continental only went from 7,400 to
7 7,164.

8 A Sure. It --

9 Q For less of a drop.

10 A Sure. It had far less of a domestic
11 network.

12 It had two hubs, absolutely.

13 But with all the cutting that United did,
14 it got out of less routes than Continental did.

15 Q You mentioned in your testimony in the
16 recent answers, Continental --

17 A I'm sorry. I didn't hear you.

18 Q You mentioned in your recent answers,
19 Continental Lite, which you testified this morning
20 was a response to the LCCs, when Bob Ferguson was
21 the CEO of Continental in about 1993.

22 Do you recall that testimony?

1 A Yes.

2 Q And Continental quickly learned that that
3 was not a good strategy to try to have an airline
4 within an airline to compete with the LCCs; correct?

5 A Probably not quick enough, yes.

6 Q And in fact, it got out in '95 or '96,
7 after a few years of trying this experiment.

8 US Airways had a similar experiment with
9 MetroJet at BWI, didn't they?

10 A I guess teaching an adult is a very
11 difficult educational process.

12 You don't learn from other's mistake.

13 Q And that was in the late 1990s; right?

14 A I'll take your word for it.

15 Q And Delta had a similar operation of its
16 own, didn't it?

17 A Twice, two, actually, Song and something
18 else.

19 Q Song was back in the 1990, as well.

20 A Right. But there was another one they
21 also had, I believe.

22 Q And United did two of them.

1 But TED was in 2004, as I recall.

2 A Sounds about right to me.

3 Q So ten years after Continental Lite and
4 almost as many years after the disasters at US
5 Airways and Delta, United embarked on its own
6 program at an airline within an airline to compete
7 with the LCCs, and it similarly failed, didn't it?

8 A Oh, it was certainly not successful.

9 And you know, the common theme running
10 through at least three of those is McKinsey.

11 McKinsey and Company recommended that to
12 all three airlines, Delta, US Airways, and United.

13 Q Where you did the comparisons on Exhibit 4
14 and Exhibit 38, can you tell us whether you included
15 regional jets flown by United Express and
16 Continental Express?

17 A I believe I did, but I can go back and
18 check.

19 Q Would you check that, please?

20 A I certainly will.

21 Q And let us know.

22 A Let me make a note of that for you.

1 But then, again, if it's regional jets, it
2 really doesn't -- if Continental flew more on
3 regional jets, it really probably adversely affects
4 your clients.

5 And the same is true with my client if
6 United flew more regional jets.

7 Q Well, suppose your calculations included
8 United regional jets, but not Continental?

9 A They would not have done that.
10 They're either all in or all out.

11 Q I would appreciate a report back on that.

12 A I would be happy to do that for you.

13 Q All right. On Exhibit 36, you're talking
14 about domestic and international yields, which you
15 have broken out separately.

16 Is that correct?

17 A Yes.

18 Q And I think you testified erroneously that
19 these data would be in front of the negotiators for
20 United and Continental when they were negotiating
21 the merger agreement, which was completed on May 2,
22 2010, or some of the data were available.

1 A I didn't testify.

2 I said that the managements would have a
3 sense of the yields. And a lot of this data has a
4 trailing reporting effect. But clearly, internally
5 inside the airline, they would know what their
6 yields were.

7 So in April 2010, when they were
8 negotiating, they would have 2009. And they would
9 have the trend for the first quarter of 2010, when
10 they sat down to negotiate.

11 Q All right. The 2009 data show that the
12 domestic yields were virtually identical for
13 Continental and United?

14 A Correct.

15 Q And they show that the international
16 yields were greater for Continental than for United,
17 don't they?

18 A Correct. But the trend, if you look in
19 the first quarter, the trend was clearly --

20 Q We don't have the first quarter data here.

21 A That's correct, you don't.

22 Q Thank you.

1 Exhibit 37, please.

2 On the right-hand side of the page, you
3 have got the top 100 U.S. domestic O&D markets.

4 A Uh-huh, correct.

5 Q And you're showing the United at roughly
6 one half of Southwest's number; correct?

7 A Pretty close to one half, yes.

8 Q And the USAir/American, and the combined
9 Delta/Northwest were also ahead of United.

10 A And ahead of Continental, yes, for sure.

11 Q Exhibit 39, please.

12 This is the Houston/Latin America series
13 of exhibits.

14 A Yes.

15 Q Did you calculate -- let's look at the
16 first page.

17 Did you calculate how many nonstop markets
18 from Houston in -- there were that Continental had
19 no competition on?

20 A I don't know what you mean by no
21 competition, no competition from Houston?

22 Q No competition from Houston on a nonstop

1 basis.

2 A If you look at this map, it's probably all
3 of them or close to all of them.

4 Because no other -- it's Continental's
5 hub. So you get the same result if you looked at
6 Dallas for American. There's no competition.

7 Or you looked at maybe Atlanta or Delta.
8 It's their hub.

9 They're going to dominate at that hub.

10 But the point is that the traffic only a
11 small percentage, you know, not -- it's not 30 or 40
12 or 50 or 60, it's in the 20s at best.

13 A small percentage of the traffic is local
14 Houston traffic to these points. The rest is flow
15 traffic, which is all susceptible to competition.

16 Q All right. On page 10 of this exhibit,
17 you are suggesting that Southwest could come in and
18 compete with 73 percent of Continental's Houston
19 Latin America to Caribbean markets.

20 Is that correct?

21 A Well, what I'm suggesting is the markets
22 that Dr. Campbell and Southwest selected, the O&D in

1 those markets is susceptible to competition.

2 So I didn't select the markets.

3 Dr. Campbell and Southwest selected the
4 markets. I just -- the mathematical calculation is
5 mine.

6 Q But you just testified a minute ago,
7 didn't you, that not all of the onboard passengers
8 are going to be susceptible to being diverted to
9 Southwest because they -- that total onboard
10 passengers?

11 A I don't understand the question. I'm
12 sorry.

13 If you look -- I'll try and answer your
14 question. It may be what you're asking, it may not
15 be. But if you look at the -- let's just focus on
16 the routes in the blue, which are the Southwest
17 susceptible routes. Okay.

18 The routes, the total onboard traffic is a
19 combination of the two columns that follow the local
20 and the connecting.

21 And the local is the Houston to those
22 points that Southwest served, those routes

1 identified there or vice versa.

2 And the onboard is the traffic that's
3 going over that route that connects in Houston.

4 So those markets, those 21 markets out of
5 the 55 that Continental serves, are markets that are
6 susceptible to competition.

7 And the markets behind Houston are also
8 susceptible to competition from Southwest because
9 Continental will serve many of those markets, if not
10 all of those markets that are behind Houston in the
11 domestic United States.

12 Q You said Continental will serve them.

13 Did you mean to say Continental or is that
14 Southwest?

15 A I probably meant to say Southwest. Thank
16 you.

17 Q That's what I was asking about.

18 If you just, for the Panel's benefit, look
19 at the Houston to Mexico City, 480,000 passengers.

20 A Uh-huh.

21 Q Some of those onboard passengers are
22 coming from cities that Southwest doesn't serve,

1 connecting in Houston on Continental, and going on
2 to Mexico city; correct?

3 A Right.

4 And many of those passengers, connecting
5 passengers, if not the vast majority, are coming
6 from points beyond or behind, however you want to
7 describe it, Houston, that Continental, that
8 Houston, that Southwest does serve at Hobby.

9 Q But not all of the 73 percent of the
10 passengers are in that category, are they?

11 A May not be.

12 For some, it may be 100 percent in other
13 markets. In some, it may be less.

14 Q And how many gates is Southwest projected
15 to operate at Hobby in international markets?

16 A The question is not relevant.

17 These are the markets that Southwest and
18 Dr. Campbell identified Southwest would fly.

19 So all of the markets could be
20 accommodated within the gates. And I think that was
21 reflected in Dr. Campbell's study.

22 Q Isn't it a fact that there's only four

1 gates involved in this, four gates at Hobby that
2 Southwest is proposing to build?

3 A I don't know how many gates there are.

4 These are the markets that Southwest's
5 consultant said that Southwest would serve.

6 Q Isn't it true that those gates aren't
7 going to be ready to start Southwest operations
8 until --

9 A 2015.

10 Q -- 2015.

11 A Yeah.

12 Q And the full buildup not until 2020?

13 A Correct.

14 But these markets are all susceptible.

15 And, you know, that is clearly what
16 Southwest said. Whether they actually do a quicker
17 buildup from 2015 to 2017 I think will depend on the
18 markets, the aircraft availability, and a whole
19 bunch of other factors.

20 Q Well, we're talking about markets.

21 Would you turn back to Exhibit 37?

22 Can you tell us whether these O&D markets

1 are city pairs or airport pairs?

2 A These, I believe, are city pairs.

3 But I will check and let you know.

4 Q Exhibit 40, please.

5 A Getting close.

6 Q Is this data --

7 A Wait a minute, getting close.

8 Q Okay.

9 A Yes.

10 Q The data shown in the column marked
11 segment revenue in millions of dollars?

12 A Uh-huh, yes.

13 Q Is that confidential data?

14 A I don't believe so.

15 Q Isn't that the kind of data that the
16 Department of Transportation wants to be not out in
17 the open, international yield?

18 A I'll go check.

19 My analyst did it, so it could be wrong.

20 So ...

21 Q United applied for service to Narita,
22 didn't it?

1 A I'm sure it did.

2 Q It was rejected.

3 It couldn't get any of the four slots it
4 needed, did it?

5 A I'm sure it couldn't because it has had a
6 relationship with -- a very close relationship with
7 ANA, and they weren't going to -- the Department of
8 Transportation wasn't going to give it to -- to any
9 Japanese/U.S. combine.

10 But they would have -- if they acted true
11 to form, they would have applied just the -- you
12 know, mucked up the proceedings a little bit.

13 Q Is that what they filed a request for
14 reconsideration, too?

15 A I don't know what their thinking was,
16 but -- I just don't know what their thinking was.

17 Q Exhibit 45, you would depict Continental
18 Micronesia operations for 2010.

19 Do you have that?

20 A Page 2, or it doesn't make a difference.

21 Q It doesn't make a difference.

22 Look at page 1.

1 A Okay.

2 Q Isn't it true that these
3 Continental/Micronesia operations connect to the
4 rest of the system through Honolulu?

5 A As I explained in my testimony, there is
6 no hub-to-hub flying.

7 And I defy you to find any legacy airline
8 with hubs that doesn't connect their hubs with each
9 other.

10 In this case, if you call Guam a hub, it's
11 not connected on a hub-to-hub basis to any of the
12 other hubs.

13 It's a one-stop, not a nonstop.

14 Q It's connected to Continental's operations
15 in the United States through Honolulu, isn't it?

16 A There's no other U.S. carrier that
17 operates a network system, which means American,
18 United, Delta -- who am I leaving out? American,
19 United, Delta, and US Airways -- that does not
20 connect each of their hubs on a hub-to-hub basis on
21 a nonstop basis.

22 Connecting Guam to Newark or Houston on a

1 one-stop basis is no better. It's not connecting
2 the hubs. It's not really providing network
3 connectivity in the sense of when people talk about
4 network connectivity, hubs-to-hubs, providing a
5 one-stop is no different than, for instance, ANA
6 flying Guam, Narita, San Francisco, or any of the
7 United hubs.

8 It's, you know, at least it's a one-stop
9 basis that's equivalent. So it's not connected to
10 the network in a true network connectivity sense.

11 It's a one-stop.

12 And I don't -- quite frankly, I don't even
13 know whether the Guam, Honolulu flight is time to
14 connect to any of the Honolulu mainland flights.

15 Q But you didn't investigate that or
16 evaluate that at all, did you?

17 A No, I didn't because it's not connected to
18 the network like every other hub is connected to a
19 network.

20 Q Exhibit 41, please.

21 A I thought we were finished.

22 Q We're getting close.

1 I'm almost halfway done.

2 A And I was just getting started.

3 Q Page 1 of Exhibit 1.

4 A Yes, sir.

5 Q Is this a listing of the -- 41, yeah.

6 Is this a listing of the carriers
7 operating New York to Heathrow in September 2010?

8 A I believe it is.

9 Q Where is United?

10 A United had sold the New York Heathrow to
11 Delta.

12 Q So they bought it from Pan Am and then
13 sold it to Delta?

14 A Just like Continental bought Seattle-Tokyo
15 and sold it to American.

16 Q That means yes, I know.

17 A Yes.

18 I believe I testified earlier that they
19 sold the route to Delta.

20 MR. KATZ: That's all the questions I
21 have.

22 ARBITRATOR EISCHEN: That was 2006, 2007?

1 THE WITNESS: They sold the route, I
2 believe in 2006.

3 ARBITRATOR EISCHEN: Thank you, Mr. Katz.
4 Mr. Pollak.

5 THE WITNESS: Before we get -- I just want
6 to make sure, I had two things you want me to check
7 on.

8 I want to make sure, I -- it's the RJ
9 equipment in the frequencies and routes and stuff
10 like that for 2000 and 2010.

11 MR. KATZ: Right.

12 THE WITNESS: And Exhibit 37, the city
13 pairs and whether city pairs or airport pairs.

14 MR. KATZ: Right.

15 THE WITNESS: Thank you very much.

16 MR. KATZ: And whether the information is
17 confidential DOT...

18 THE WITNESS: Right.

19 MR. POLLAK: I only have three or four
20 hours worth of redirect.

21 ARBITRATOR EISCHEN: Should we take a
22 dinner break?

1 REDIRECT EXAMINATION

2 BY MR. POLLAK:

3 Q No. I just want to ask you whether you
4 still would like to correct your testimony on the
5 United debt financing issue that came up a couple of
6 hours ago, and at one point you said you wanted to
7 correct your testimony in -- from the discussion on
8 cross.

9 And you don't have to -- if you feel you
10 need to correct it --

11 A You have a better memory than me
12 because -- and I think it's just useful for the sake
13 of completeness.

14 And thank you, Roger.

15 Q Take your time.

16 This is going to be the end of your day,
17 so ...

18 A If this is -- let me just see, July.

19 Yeah, the -- if I read the July 2009
20 article, which is Exhibit Cross-examination 4, what
21 I discovered was that the 17 percent interest is on
22 a spare parts pool. It's not on, I would say prime

1 assets.

2 And spare parts generally have a much
3 higher interest rate because things happen to spare
4 parts.

5 They go missing. The values fluctuate a
6 lot.

7 And so what the CFO of United says in that
8 exhibit is that, you know, we're looking for a 12.75
9 percent interest rate, they got a 17 percent.

10 But generally, this 17 percent doesn't
11 surprise me.

12 But the fact that it's for spare parts as
13 opposed to an airplane or something like that would
14 tend to argue for a higher interest rate.

15 That was my only point.

16 MR. POLLAK: All right. I have no further
17 questions for our witness.

18 MR. KATZ: That doesn't prompt any
19 additional cross-examination.

20 MR. POLLAK: All right.

21 I want to tip my hat to Mo for his
22 patience.

1 MR. KATZ: How about the Panel?

2 MR. POLLAK: Yeah.

3 For the Panel, yes, we'll tip our hats to
4 the Panel for their patience.

5 MR. KATZ: They may have questions, too.

6 ARBITRATOR EISCHEN: Thank you very much,
7 Mr. Garfinkle.

8 THE WITNESS: No question?

9 ARBITRATOR EISCHEN: I polled my
10 colleagues, and they have no questions.

11 THE WITNESS: Thank you.

12 ARBITRATOR EISCHEN: Thank you.

13 (The witness stood down.)

14 ARBITRATOR EISCHEN: 9 o'clock tomorrow
15 morning, folks.

16 MR. KATZ: Sounds good.

17 MR. POLLAK: Yes.

18 ARBITRATOR EISCHEN: Okay. Have a good
19 evening. We're off the record.

20 (Whereupon, the proceedings in the above-captioned
21 matter recessed at 6:05 p.m. to resume at 9:00 a.m.
22 on May 12, 2013.)

1 CERTIFICATE OF REPORTER

2 I, Joseph A. Inabnet, do hereby certify
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