

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK

IN RE: . Case No. 05-17923 (PCB)  
DELTA AIR LINES, INC., et al, . New York, New York  
Debtors. . Tuesday, November 29, 2005  
2:24 p.m.  
.....

TRANSCRIPT OF HEARING  
BEFORE THE HONORABLE PRUDENCE C. BEATTY  
UNITED STATES BANKRUPTCY JUDGE

APPEARANCES: (On the record)

For the Debtors: John Gallagher, Esq.  
PAUL, HASTINGS, JANOFISKY  
& WALKER, LLP  
875 15th Street N.W.  
Washington, D.C. 20005  
(202) 551-1700  
  
Robert S. Span, Esq.  
PAUL, HASTINGS, JANOFISKY  
& WALKER, LLP  
515 South Flower Street  
25th Floor  
Los Angeles, California 90071  
(213) 683-6000

(Appearances continued)

Audio Operator: Electronically Recorded  
by Court Personnel

Transcription Company: Rand Transcript Service, Inc.  
311 Cheyenne Road  
Lafayette, New Jersey 07848  
(973) 383-6977

Proceedings recorded by electronic sound recording, transcript  
produced by transcription service.

1 APPEARANCES: (On the Record - Continued)

2 For the Debtors: Marshal Scott Huebner, Esq.  
3 DAVIS, POLK & WARDWELL  
4 450 Lexington Avenue  
New York, New York 10038  
(212) 450-4000

5 For the Air Line  
6 Pilots Association: Bruce H. Simon, Esq.  
7 COHEN, WEISS & SIMON, LLP  
8 330 West 42nd Street  
9 New York, New York 10036  
10 (212) 563-4100  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

INDEX

DIRECT    CROSS    REDIRECT    RECROSS

WITNESSES FOR THE  
DEBTOR:

DANIEL M. KASPER  
By Mr. Span

6

1 (Proceedings commence at 2:24 p.m.)

2 THE COURT: You may be seated.

3 MR. GALLAGHER: Thank you, Your Honor.

4 THE COURT: Mr. Gallagher, I apologize for being rude  
5 to you yesterday and telling you to shut up.

6 MR. GALLAGHER: Your Honor, I return the apology. I  
7 did find, however, that the dialogue was helpful to us in  
8 understanding what we need to change in our presentation, to  
9 try to be more informed as to Your Honor's concern, and we will  
10 do that.

11 THE COURT: Okay. Thank you.

12 MR. GALLAGHER: Thank you, Your Honor.

13 THE COURT: Who's the next witness?

14 MR. GALLAGHER: The next witness for the company, Your  
15 Honor, is Daniel Kasper. And my partner Robert Span will be  
16 interrogating Mr. Kasper.

17 THE COURT: Okay.

18 (Counsel confer.)

19 MR. SPAN: Good afternoon, Your Honor. Robert Span,  
20 Paul, Hastings, Janofsky & Walker, for -- special labor counsel  
21 for the debtor. We have placed --

22 THE COURT: Okay. Span, S-p-a-n?

23 MR. SPAN: S-p-a-n, yes, Your Honor.

24 THE COURT: Okay.

25 MR. SPAN: We have placed on the bench a convenience



1 what I think --

2 MR. SPAN: In the airline industry.

3 THE COURT: Okay.

4 MR. SPAN: And the economics and the business of the  
5 airline industry.

6 **DANIEL M. KASPER, DEBTORS' WITNESS**

7 **DIRECT EXAMINATION**

8 **BY MR. SPAN:**

9 Q Good afternoon, Mr. Kasper.

10 A Good afternoon, Mr. Span.

11 Q Would you please state your full name for the record?

12 A Daniel M. Kasper, K-a-s-p-e-r.

13 Q Now, Mr. Kasper, we've heard testimony over the last few  
14 sessions that Delta, which was profitable in the late 1990s,  
15 has experienced record losses in 2004, and even now, bleeding  
16 borrowed cash at a rate of \$5 million per day. What happened?

17 A Well, Mr. Span, I think in a nutshell what happened is that  
18 in the late 1990s, legacy carriers like Delta were able to  
19 charge fares that were high enough to offset their wages and  
20 other costs that were well in excess of the wages and other  
21 costs of low-cost carriers. But since 2001, they have been  
22 unable to do that; that is to say, they have been unable to  
23 charge in the marketplace fares that are high enough to offset  
24 their higher cost and, as a result, they have suffered massive  
25 losses since 2001.

1 Q And has --

2 THE COURT: Okay. Was that prior to or only after the  
3 World Trade Center incident?

4 THE WITNESS: The industry was -- actually had started  
5 to decline somewhat in the early 2001 period. It was certainly  
6 exacerbated by the 9/11 matter. Although, as Your Honor may be  
7 aware, even following 9/11, low-cost carriers continued  
8 generally to operate profitably, while the legacy carriers,  
9 Delta included, were unable to do so.

10 BY MR. SPAN:

11 Q Could you explain the term "legacy carriers"?

12 A Yes. What I mean by "legacy carriers," it's standard, I  
13 suppose, jargon that's used in the airline industry now to  
14 describe the large, pre-deregulation network carriers: Delta,  
15 United, American, Northwest, Continental. So that's generally  
16 what's referred to as "legacy carriers."

17 THE COURT: Which one of Continental's iterations?  
18 It's been through bankruptcy twice.

19 THE WITNESS: It has indeed, and it is considered a  
20 legacy carrier because it -- a legacy network carrier because  
21 it operates a hub-and-spoke network, and it -- it actually  
22 predates deregulation; even though, as Your Honor points out,  
23 in order to survive this long, they've had to go through  
24 Chapter 11 twice.

25 BY MR. SPAN:

1 Q And what has been the effect on the airline industry of  
2 this change?

3 A If -- actually, I think I need a set of exhibits.

4 Q Oh, do you not have a book?

5 A Thank you.

6 (Witness reviews exhibits.)

7 If you look at the -- Page 1 of Exhibit -- I believe you  
8 said 89?

9 Q Yes. That will be Slide 1 on Exhibit 89, just -- they're  
10 hiding in the binder (sic).

11 A The effect on the airline industry of this sea change --  
12 and I really have to emphasize that there's been a sea change,  
13 a transformation in the industry, from the period of two  
14 thousand -- from 2000, and that preceding period.  
15 Subsequently, it's a different world for airlines.

16 And if you look at the -- it's the first exhibit, Page 1,  
17 or the first page of Exhibit 89, I think you can get a sense of  
18 that by looking at Delta's operating margins going back to  
19 1995. As you can see from this exhibit, Delta's operating  
20 margins were positive; in fact, strongly positive. If you  
21 averaged it, they wouldn't be -- the average would be in excess  
22 of nine percent operating margin for the years 1995 through  
23 2000.

24 Since 2001, it has been constantly negative operating  
25 margin, again averaging more than negative nine percent. So it

1 has been a complete reversal of fortune.

2 THE COURT: Okay. Why did that happen in 2001?

3 THE WITNESS: Well, there were a number of factors,  
4 Your Honor. And I think in terms of why the margins were so  
5 steeply negative in 2001, I think it is fair to say that the  
6 events of 9/11, which resulted in a temporary shutdown in the  
7 aviation system, then a depression in traffic or demand, had a  
8 significant negative effect on the performance in 2001. And  
9 indeed, there was some residual effect of that carried through  
10 subsequently, as traffic finally rebounded to attain levels  
11 that it had previously reached in the year 2000.

12 But there were several other factors that I think are  
13 more fundamental factors that explain why legacy airlines have  
14 been unable to earn profits in difficult times, when low-cost  
15 carriers have been able to do so, other carriers with lower  
16 costs.

17 BY MR. SPAN:

18 Q And what are those reasons?

19 A I think there are three primary reasons:

20 The first reason that low-cost carriers -- the first reason  
21 that legacy carriers have been unable to return to  
22 profitability is because low-cost carriers are much more  
23 pervasive in the marketplace, so they're -- the competition  
24 from low-cost carriers is more extensive than it was before,  
25 and this has made it difficult; indeed, impossible, for legacy

1 carriers to generate profits because they have been unable to  
2 raise fares to levels to cover their costs.

3 A second reason is the -- and this is one Her Honor touched  
4 on in testimony or in discussion the week before last. There's  
5 been a substantial increase in the use of the internet for  
6 shopping for fares and booking tickets; and, as a result, it  
7 has become very easy and inexpensive for travelers, both  
8 leisure travelers and business travelers, to find and book the  
9 lowest available fare. And this has had the result of the  
10 effect of pushing prices down even farther, and keeping them  
11 there. So those would be two factors.

12 And a third is -- and this may well be related directly to  
13 9/11. There is -- following 9/11, there seemed to be a  
14 significant shift in business travel patterns. And by that I  
15 mean very specifically that business travelers, who tend to fly  
16 at the highest fare levels, began to cut back substantially on  
17 that, and so they were no longer flying at premium fare levels.

18 Now this had some important consequences because the reason  
19 legacy carriers were previously able to charge higher fares is  
20 they could charge -- pay higher wages is because they could  
21 charge higher prices to business travelers. And that meant  
22 that their average fare was well above that of low-cost  
23 carriers. But as business travelers shifted away from those  
24 premium fares, it became difficult, and now impossible to  
25 sustain a profitable operation with the kind of cost structure

1 that Delta and other legacy carriers had.

2 Q You mentioned these three reasons and you talked about a  
3 sea change. We've also heard about 9/11. Do you think that  
4 now that there's been -- several years have passed since 9/11,  
5 that everything is going to return to the pre-9/11 days?

6 A No, I don't think so.

7 THE COURT: Well, wait. I don't know what you mean by  
8 "return to the pre-9/11 days." Okay. Do you mean the number  
9 of travelers, the number of trips, the economics?

10 MR. SPAN: The economics, Your Honor.

11 THE COURT: Well, but the economics in some respects  
12 turn on whether or not there are more or fewer travelers.

13 MR. SPAN: Well, let me ask this. Let me just  
14 rephrase the question.

15 BY MR. SPAN:

16 Q Do you think that the ability of carriers like Delta to  
17 charge premium fares over and above the low-cost carrier fares,  
18 do you think those days will ever return?

19 A I think that's unlikely. Her Honor is correct that there  
20 are number of facts that go into that, and I -- late last year,  
21 traffic actually did return to pre-9/11 levels, so traffic in  
22 aggregate is back to where it was, now four years ago, and that  
23 sort of resuming pattern of traffic growing roughly at the same  
24 rate as the economy does.

25 But I think, in terms of the likelihood that the industry

1 would revert to a pattern of legacy carriers being able to  
2 charge premium fares the way they did pre-9/11, and to generate  
3 average fares that are high enough to sustain significantly  
4 higher costs than the low-cost carrier can provide service at  
5 is remote.

6 THE COURT: Okay. Mr. Span, can I ask you a question?  
7 Does your firm allow anyone to travel first class or business  
8 class?

9 MR. SPAN: Your Honor, it's generally a situation  
10 where the -- it depends on the client, what the client will pay  
11 for, but -- and I have seen -- I don't know of any clients  
12 anymore who will pay for a business-class ticket, unless it's a  
13 very long trip. So I think the answer is, generally, it's a --  
14 you're looking for coach tickets when you can.

15 THE COURT: Okay. And how long has that been the  
16 case?

17 MR. SPAN: It's been a number of years. I think that  
18 even predates 9/11, but I can't be sure.

19 THE COURT: Okay. Mr. Huebner, how is your firm on  
20 this subject?

21 MR. HUEBNER: Your Honor, Davis Polk's general policy  
22 is that everyone must fly coach, with the rare exception of  
23 individual clients giving waivers, and for some very long  
24 overseas flights, as well; very similar, and it's not a new  
25 policy, either.

1           And, you know, I think it's also fair, you know, law  
2 firms are maybe a little bit unusual because they're not always  
3 businesses that pay for their own costs. I think probably the  
4 normal (sic) is where businesses sort of are paying for their  
5 own fares that are yet more conservative.

6           THE COURT: No, but I mean you're the only people I  
7 have in here that I know at one point were allowed to travel  
8 business class or first class.

9           MR. HUEBNER: Yeah.

10          THE COURT: And my understanding is that the law firms  
11 have basically eliminated it, except for some of their creaky  
12 old fellows, who can't manage coach.

13          MR. HUEBNER: Yeah. As a general rule we fly coach,  
14 Your Honor.

15          THE WITNESS: And, Your Honor, I might add that is  
16 very consistent with what the surveys of business travelers  
17 show: That corporate travel policies have shifted, and there  
18 is much less flexibility about using the higher fares.

19          And indeed, even more troublesome for legacy carriers  
20 is that corporate travel managers, who rarely in the old days  
21 would ever book corporate travelers on low-cost carriers, now  
22 do so rather routinely. So that other kind of a constraint  
23 that perhaps helped legacy carriers charge higher prices has  
24 also weakened considerably.

25 BY MR. SPAN:

1 Q I wonder if you might -- to respond very specifically to  
2 the Court's question, I'll go out of order then and ask you to  
3 look at Slide No. 11.

4 A (Witness reviews exhibits.)

5 Q What does this graph depict?

6 A Well, Slide 11 shows the percentage of Delta's domestic  
7 passengers that use premium tickets from 1998 through 2005.

8 Q What's a "premium ticket"?

9 A A "premium ticket," very simply, is either a first-class  
10 ticket, a business-class ticket, or an unrestricted coach  
11 ticket. Those are all standard industry categories. The  
12 unrestricted coach is typically the highest-price coach fare,  
13 and it permits unlimited changes of schedule and no  
14 cancellation penalties, et cetera. And these were the fares  
15 that were traditionally used by business travelers.

16 And as you can see on this chart, from about twenty percent  
17 of Delta's traffic, passenger traffic in 1998, that's dropped  
18 to under seven percent in 2005. And if I included the revenues  
19 on there, the percentage of revenues would be even greater,  
20 obviously, than twenty percent, so the decline would be  
21 significant.

22 THE COURT: Again, let me ask Mr. Huebner another  
23 question.

24 Do you travel a fair bit?

25 MR. HUEBNER: I try not to, Your Honor, but when I

1 have to, I certainly do.

2 THE COURT: Well, if you travel on a restricted coach  
3 ticket, that means you have to get back on the return flight  
4 when you're supposed to.

5 MR. HUEBNER: That's true.

6 THE COURT: Is that a problem for you or for your  
7 colleagues when you travel?

8 MR. HUEBNER: It is, Your Honor; and, for that reason,  
9 it's not infrequent that we are constrained to get a full-fare  
10 ticket because it's actually much cheaper for the client, given  
11 that meetings or court hearings often run over long, rather  
12 than paying the penalties and buying a new ticket, sometimes I  
13 say, you know, for this one, you have to book me an  
14 unrestricted ticket because the probability that I'm actually  
15 going to go when I think and come home when I think is very  
16 low, a fact that our travel department normally --

17 THE COURT: Okay. But I'm saying that if you go on a  
18 restricted coach ticket, you may be able to go, but you might  
19 not -- if you don't come back.

20 MR. HUEBNER: Yeah. And once in a while, as it  
21 happens -- my family has been in the travel business for forty  
22 years, so I'm sensitive about this. Sometimes it's actually  
23 cheaper to buy round-trip restricted tickets, it's actually  
24 cheaper than one unrestricted.

25 THE COURT: I was under the impression that some of

1 the airlines --

2 (Laughter.)

3 THE COURT: -- that some of the airlines actually  
4 would preclude you from using --

5 MR. HUEBNER: Yes.

6 THE COURT: -- a split ticket like that.

7 MR. HUEBNER: I use my maiden name when I'm doing  
8 that, Your Honor.

9 (Laughter.)

10 THE COURT: Oh, that must be cute.

11 MR. SPAN: We're definitely going to have to put Mr.  
12 Huebner on the no-fly list.

13 (Laughter.)

14 MR. SPAN: If I may give an example of my flight here  
15 for this week, I bought a restricted ticket on Song, probably  
16 cross-country, and I did have to make a change at the last  
17 minute to a different flight, and I was able to do that by  
18 paying a twenty-five-dollar penalty or extra cost. So still,  
19 the --

20 THE COURT: Well, I know that. But that doesn't  
21 necessarily mean that if you stay an extra three days, they're  
22 going to do that for you.

23 MR. SPAN: That's correct. But there are ways to add  
24 on a little bit more to make that change.

25 THE COURT: The other thing that -- and not -- this is

1 not true for domestic tickets, particularly, but it's sure for  
2 international tickets, is that most domestic tickets have a  
3 time limit over which they can be used, and it's usually sixty  
4 or ninety days, which means that you buy an unrestricted ticket  
5 to go to Europe if your child is going to stay there for nine  
6 months; either buy a one-way ticket, or you buy an unrestricted  
7 ticket because of the time limit.

8 MR. SPAN: Perhaps we can go --

9 THE COURT: I never quite understood why they needed  
10 to fix it that way, but that's the way they do it.

11 BY MR. SPAN:

12 Q Mr. Kasper, what -- would you turn to Exhibit or Slide No.  
13 2, which I think is another -- it falls under the same theme of  
14 the revenue and premium tickets. Explain what that shows.

15 A Yes, I'd be happy to. I mentioned in the previous slide  
16 that one way to look at this is, passengers and other, is to  
17 look at percentage of revenue generated from premium tickets.

18 What this chart shows is comparing the first half of  
19 calendar year 1999 on the left with the first half of calendar  
20 year 2005, the current year, on the right. And the percentages  
21 for the white bar, the light-colored bar, are the percentage of  
22 passengers, domestic passengers that purchased premium fares on  
23 all legacy airlines: Delta, United, American, et cetera. And  
24 as you can see, in the first quarter of 1999 -- the first two  
25 quarters of '99, twenty-one-plus percent of all passengers

1 purchased premium tickets. By the first quarter of 2000 -- or  
2 the first half, excuse me, of 2005, only about seven percent.  
3 So it was a reduction of two-thirds.

4 If you look at the revenue, the picture is even more  
5 depressing from a legacy carrier's point of view. Almost  
6 thirty-nine percent of the revenues generated by those legacy  
7 carriers in the first quarter -- in the first two quarters of  
8 '99 were generated from premium passengers. That's down to ten  
9 percent in the first half of 2005. So we've seen dramatic drop  
10 --

11 THE COURT: But I don't understand that. If there's  
12 only a 3.1 percent difference, then why wouldn't a lot more  
13 people be buying the business-class/first-class fares? I think  
14 it's because, you know, they seem to be desperately overpriced.  
15 So I don't understand why the income number has come down --  
16 has come down so much, relative to the number of -- I mean,  
17 whether it's just that when you use -- what you've used for  
18 your white square is the percentage of domestic passengers  
19 purchasing that, but --

20 MR. SPAN: Your Honor, the white squares are the  
21 number of passengers and the -- or percentages of passengers,  
22 and the green squares are the percentages of the revenue, so  
23 there are two different measures. And what it shows is that a  
24 drop in -- a two-thirds drop in the number of passengers  
25 purchasing these high-priced tickets yields even more than a

1 two-thirds drop in revenues --

2 THE COURT: I know. I still don't understand why,  
3 with the numbers as close as they are in 2005; first quarter,  
4 second quarter, that you -- it wouldn't result in a lowering of  
5 those fares.

6 THE WITNESS: Your Honor, maybe perhaps I can help I  
7 think what this chart reflects is two phenomena:

8 One is the drop in the percentage of passengers flying  
9 on premium fares.

10 And, secondly, as Your Honor has picked up, it also  
11 indicates that the premium fare levels themselves have come  
12 down in a relative sense, compared to where they were in two  
13 thousand and -- or in 1999. And that is, indeed, one of the  
14 results of increased competition, is that it's pushed all fares  
15 down, even premium fares.

16 BY MR. SPAN:

17 Q So in other words, if the airlines wants to sell the seat  
18 and it can't sell it at a higher premium fare, it's going to  
19 bring the premium fare down so it can fill the seat.

20 A Correct.

21 Q Now you mentioned at the outset that one of the main  
22 reasons for this change in the revenue picture in the airline  
23 industry is the growth and spread of low-cost carriers.

24 A Correct.

25 Q Does your next slide illustrate the impact?

1 A Yes. What I did with this slide -- it's Slide No. 3 in the  
2 Exhibit 89 -- is to take a look at markets that have been  
3 traditionally and remain quite important to Delta, which is the  
4 Florida markets. And here, this is really looking at the  
5 nonstop -- primarily at the nonstop markets to Florida from the  
6 Northeastern United States. And there are two different  
7 elements on this chart. The --

8 THE COURT: "CBG" is what?

9 THE WITNESS: That's Cincinnati, Your Honor.

10 THE COURT: Thank you. What's "SLC-O&D"?

11 THE WITNESS: Salt Lake City.

12 BY MR. SPAN:

13 Q What is "O&D"?

14 A I'm sorry, I'll explain. "O&D" is an industry shorthand  
15 for "origin and destination passengers."

16 THE COURT: Okay.

17 A Now there are two separate elements on this chart:

18 The bars show what we're calling "Delta's Florida Yield  
19 Premium." But let me translate that. What that says is that  
20 Delta's average price per mile on the routes covered in this  
21 example were that -- whatever percentage greater than low-cost  
22 carrier fares on those same routes.

23 So, for example, picking 1995 just for illustration  
24 purposes, it says in that year Delta had the extraordinary good  
25 fortune of having its average fares almost thirty-two percent

1 higher than low-cost carriers on the same route.

2 The second element of this chart --

3 THE COURT: Wait, wait, wait, wait. So what you're  
4 showing me is -- no, I'm afraid I don't quite understand this.

5 THE WITNESS: Let me back up, Your Honor. Maybe I  
6 should explain this chart more thoroughly.

7 "Yield" is, again, an industry term that is revenue  
8 per mile. So, in effect, it measures the fare on a per-mile  
9 basis. It's a standard way in which the airlines and analysts  
10 compare airline performance. And so what this -- the bars, the  
11 vertical bars on this chart are comparing Delta's yield to the  
12 yield received by low-cost carriers serving the same routes.

13 And so in 1995, what this chart tells you is that  
14 Delta's yield or, roughly translated, its average fare, was  
15 about thirty-two percent higher than the average fare that low-  
16 cost carriers were able to charge or did charge for flying  
17 passengers on the same route.

18 THE COURT: Is that the year that that plane went into  
19 the --

20 THE WITNESS: The next year. It was 1996.

21 MR. SPAN: So --

22 THE COURT: We do know what we're talking about, even  
23 though people otherwise don't always know what we're talking  
24 about. We're talking about the plane that went flip-flop into  
25 a muddy lake because it had bad mechanics.

1 COUNSEL: ValueJet. It was carrying oxygen tanks.  
2 ValueJet. ValueJet.

3 BY MR. SPAN:

4 Q So, Mr. Kasper, I know this is a little bit of a -- let me  
5 just ask you this question. Do the bars, the red and blue  
6 bars, show the average fare that Delta can charge on a route in  
7 comparison to the low-cost carrier for the same route?

8 A I think that's a fair interpretation.

9 THE COURT: Okay. But I don't understand. Which one  
10 is the low-cost carrier?

11 THE WITNESS: The low-cost carrier would be,  
12 essentially, at zero. There's no separate bar. In other  
13 words, the low-cost carrier yield for this purpose is  
14 considered at the --

15 THE COURT: At zero.

16 THE WITNESS: -- horizontal axis.

17 THE COURT: Okay.

18 BY MR. SPAN:

19 Q And did that ability to charge more than the low-cost  
20 carrier shrink from thirty-two percent in 1995 to two percent  
21 in 2005?

22 A That is correct.

23 THE COURT: Okay. But we then have this, you know,  
24 yellow star which says "DL Florida, LCC Overlap."

25 THE WITNESS: Right. And let me explain that, also.

1 "DL" is obviously the shorthand designator code for "Delta Air  
2 Lines." And what the "LCC Overlap" refers to is that this is  
3 the percentage of Florida O&D passengers that have access to  
4 low-cost carrier service; in other words, the markets that  
5 we're looking at here, the percentage of those markets that are  
6 served by low-cost carriers.

7 And so what this line shows you is that the share of  
8 low-cost -- the percentage of traffic in the Florida markets  
9 served by low-cost carriers increased from five percent in 1993  
10 to over seventy percent in 2005.

11 BY MR. SPAN:

12 Q So does this chart basically show that, as the low-cost  
13 carrier market penetration increased, Delta's average fare  
14 premium decreased?

15 A That is exactly what it shows.

16 THE COURT: Well, I mean, it doesn't show me why that  
17 is. It could be simply a random relationship.

18 MR. SPAN: Well, we have some additional charts, I  
19 think, which will explain this phenomenon further, Your Honor.

20 THE COURT: No, but I'm saying -- yeah. I mean, yes,  
21 you went down; yes, they went up. But it doesn't necessarily  
22 mean that their going up and your going down were related.

23 THE WITNESS: I should -- that's a fair question, a  
24 fair observation. And I would only say in response that this  
25 is quite typical of the pattern that has evolved as low-cost

1 carrier competition has expanded, not just in Florida markets,  
2 but more broadly.

3 BY MR. SPAN:

4 Q Well, let me ask you the specific question that the Court  
5 is perhaps hinting at, which is: Why is -- first of all, is  
6 there a cause-and-effect relationship, and why is there such a  
7 relationship?

8 A I think it's -- I certainly believe there is a strong  
9 cause-and-effect relationship here, and I think the reason is  
10 that we know that most travelers are price-sensitive, and we  
11 know that is particularly true for leisure travelers, and  
12 Florida is obviously a very heavily leisure-oriented market.

13 And so what the experience of the airline industry has been  
14 for a long, long time is that passengers will gravitate to  
15 carriers that offer the lowest fares. Put another way, if my  
16 competitor offers low fares and I don't, I'm going to lose  
17 traffic to my competitor, so --

18 THE COURT: That depends on whether or not the total  
19 amount of seats is sufficient without your plane to accommodate  
20 all who want to fly because, if more people want to fly, they  
21 may pay more for the tickets because they want to get there.

22 THE WITNESS: In the short term, Your Honor is exactly  
23 right, but --

24 THE COURT: I mean, let's try Thanksgiving.

25 THE WITNESS: Well, Thanksgiving, of course, it's good

1 for the airlines, the average fares tend to go up for that  
2 period of time.

3 THE COURT: Oh, yeah, noticed that.

4 THE WITNESS: But I think, beyond that -- and we'll  
5 come to this in another slide, if I can just preview it.  
6 Unfortunately for the legacy carriers, they've been  
7 unprofitable, they've been shrinking, rather than growing. But  
8 the low-cost carriers have been profitable, and they have  
9 placed massive new orders for aircraft that will permit them  
10 rather quickly to continue adding capacity and making money on  
11 it, in response to the kind of demand that they see in the  
12 marketplace.

13 THE COURT: How long does it take to make an airplane?

14 THE WITNESS: Well, it probably takes, you know, eight  
15 or nine months to assemble the type of aircraft that low-cost  
16 carriers are purchasing. But many -- as we will see, many of  
17 these carriers have orders, I think between Southwest and  
18 AirTran alone, they probably have something on the order of 600  
19 aircraft on firm order or option. So they are in the queue,  
20 they are taking these airplanes.

21 THE COURT: Well, how many -- then how many planes are  
22 being made in this country a year?

23 THE WITNESS: That is a question I would have to  
24 check. Most of the demand in the U.S. market has actually been  
25 from low-cost carriers.

1 THE COURT: No. But I mean, let's say the low-cost  
2 carrier wants fifty more planes. How long is it going to take  
3 them to get them, three years, two years, ten years?

4 THE WITNESS: Well, Your Honor, I think it -- and I  
5 can get the delivery schedules; I may have them in the backup.  
6 But if you look today at, for example, Jet Blue, it started  
7 last month to take deliveries of the new one-hundred-seat  
8 aircraft that I'm sure Your Honor has heard about or will hear  
9 about in the course of this proceeding.

10 THE COURT: No, we've been working on seventy-nine  
11 seats. I don't quite know why, but ...

12 THE WITNESS: And in addition, they have standing  
13 orders and are taking deliveries for their Airbus aircraft, the  
14 type that made that landing on the west coast that you referred  
15 to earlier. So they actually have airlines -- aircraft on  
16 order coming in. I don't know their --

17 THE COURT: Okay. Where are they getting their  
18 aircraft from, Boeing?

19 THE WITNESS: They are AirTran -- excuse me. AirTran  
20 is buying them from Boeing. Jet Blue is buying them from  
21 Airbus and I want to say Bombardier or Embraer.

22 THE COURT: That's about right, I think.

23 THE WITNESS: And other low-cost carriers, the popular  
24 airplanes lately has been the Airbus so it's either a Boeing  
25 737 --

1 THE COURT: Well, that's the one they had a problem  
2 with the landing gear on?

3 THE WITNESS: That is correct.

4 THE COURT: I guess it's going to take them an extra  
5 six months to fix it.

6 THE WITNESS: They've already put out, as I  
7 understand, Your Honor, the FAA issued a notice that requires  
8 all operators of that aircraft in the United States to inspect  
9 certain aspects of that wheel operation within I believe ninety  
10 days.

11 THE COURT: No, but I would think there must be some  
12 way one could re-engineer that so that it was less problematic.

13 THE WITNESS: I haven't -- think the answer is  
14 probably yes, but it's not uncommon for aircraft to develop,  
15 over time, certain patterns or tendencies will develop and  
16 that's why we have a very close system of scrutiny in this  
17 country by the Federal Aviation Administration. Those  
18 variances get reported, the airlines report them, pilots report  
19 any irregularities, that gets to the FAA and if it's a serious  
20 matter, they issue -- the investigate quickly and issue orders  
21 requiring it.

22 THE COURT: Yeah, I realize that that could be just  
23 that particular plane. It also could be something about that  
24 particular device when it's been used for more than 200 times  
25 or something.

1 THE WITNESS: That's correct and the fact that the FAA  
2 has issued the order would tend to support that conclusion.

3 BY MR. SPAN:

4 Q We've been cautioned a little bit about the growth and  
5 spread of low-cost carrier competition. Please turn to Page 4.

6 A Yes, I have that.

7 Q And does Page 4 illustrate that growth?

8 A It does.

9 Q And there was a -- the bar that you have at the end has a  
10 kind of extra blue section on that all the way up to eighty-two  
11 percent. Can you explain that to us?

12 A Yes. Well, let me step back and explain the whole chart  
13 just to -- basically, what this chart shows is the percentage  
14 of domestic passengers flying in each of these years that had  
15 access to low-cost carrier service. In other words, if a low-  
16 cost carrier was in the market and had at least a five-percent  
17 share of the traffic in the market, then that was considered a  
18 market which low-cost carriers had access. What this --

19 Q In regard to standard --

20 A Standard way of measuring.

21 What this chart shows is that from 1990 through the first  
22 half of 2005 the share of traffic with access to low-cost  
23 carriers more than tripled. The light-blue bar that you refer  
24 to at the end is a bar that said if you treat the newly-  
25 emerged-from-bankruptcy U.S. Airways, which has merged now with

1 America West as a low-cost carrier, then it would be eighty-two  
2 percent.

3 THE COURT: Wait, wait. I want to ask you a question.

4 Have they actually merged in a corporate manner?

5 THE WITNESS: That is correct.

6 THE COURT: Okay. And what are they calling  
7 themselves?

8 THE WITNESS: They are calling themselves U.S. Airways  
9 with a stock market designator of "LCC."

10 BY MR. SPAN:

11 Q And is that a pretty good indication that they intend to  
12 operate a low-cost operation?

13 A They have made that quite clear that that is their intent.

14 THE COURT: Okay. There's some of these low-cost  
15 carriers like East Wind. Where did they fly?

16 THE WITNESS: Your Honor, East Wind -- and my memory  
17 may fail me here -- I believe East Wind served out of Newark  
18 and what we've done here -- because the cast of characters  
19 changes. Some of these characters -- Kiwi. I guess Kiwi was  
20 definitely a Newark-based carrier. They have come and gone,  
21 but they were in -- in some of the years on this chart they  
22 were operating and so they are listed.

23 THE COURT: What about Morris Air? That's another  
24 one.

25 THE WITNESS: Morris Air is a very interesting

1 airline. Morris Air was a low-cost carrier that was operating  
2 out of Salt Lake City that was acquired by Southwest Airlines,  
3 I think in 1993, and has become part of Southwest Airlines.  
4 What is maybe even more interesting about Morris Air is that  
5 one of its senior executives was a fellow named David Nealman  
6 (phonetic) who, after sitting out his non-compete agreement for  
7 about five years, came to New York and established Jet Blue  
8 Airways, of which he is the chairman and chief executive today.

9 THE COURT: Well, five years is a good amount of time  
10 to figure out what you want to do.

11 THE WITNESS: And while he -- in his five-year hiatus  
12 from non-competing in the U.S., he went to Canada and assisted  
13 with the creation of a low-cost carrier in Canada called West  
14 Jet.

15 BY MR. SPAN:

16 Q And then in that five years he came up with a pretty good  
17 business model for Jet Blue?

18 A So it would seem.

19 Q Now this chart you just looked at on Page 4 illustrates the  
20 overall picture --

21 THE COURT: Basically what it says, as I see it, is  
22 that seventy-five percent of the people who fly in this country  
23 have access to a low-cost carrier.

24 THE WITNESS: That is correct. And it's eighty-two  
25 percent if you include the U.S. Airways entity.

1 BY MR. SPAN:

2 Q Now specifically with respect to Delta, does the next chart  
3 on Page 5 illustrate --

4 THE COURT: Okay. Can I ask you another question?  
5 I'm sorry.

6 I would have considered USAir something of a low-cost  
7 carrier before. I would never have considered United to be a  
8 low-cost carrier, so what is it that United got by merging with  
9 USAir? They got more planes?

10 THE WITNESS: You mean -- I'm sorry. Did you mean --

11 THE COURT: What did the two of them get by coming  
12 together?

13 MR. SPAN: USAir and America West.

14 THE COURT: I mean America West, yeah.

15 THE WITNESS: Well, I think what they got -- when U.S.  
16 Airways was in Chapter 11, it actually targeted -- it used  
17 America West and Jet Blue as sort of its bench marks for  
18 competitive wages, work rules, and costs, and they were largely  
19 able to end up there, so they had cost structure that was quite  
20 similar to them. And what the merger gave them in addition to  
21 giving -- providing a significant cash infusion to the merged  
22 carrier, which was critically important, it also gave them a  
23 much bigger national scope of service.

24 THE COURT: Okay.

25 BY MR. SPAN:

1 Q And so one of the important aspects of USAir's  
2 transformation was the lowering of its labor costs --

3 A That is correct.

4 Q -- in conjunction with the bankruptcy process?

5 A Yes.

6 Q Now please turn to Page 5. Is this the -- does this chart  
7 show the impact of low-cost competition on Delta specifically?

8 A Yes. This chart -- the previous chart was focused on the  
9 legacy carriers -- well, on the market as a whole. What  
10 Exhibit 89, Page 5 did was to focus on Delta specifically and  
11 here we took a look at Delta's largest fifty markets with LCC  
12 competition to see what had happened in those markets. And I  
13 don't think I need to belabor it. In 1990, seven of the top  
14 fifty markets, or fourteen percent, had competition from low-  
15 cost carriers. The first half of this year that number was up  
16 to forty-six percent -- forty-six, excuse me, ninety-two  
17 percent. And in fact, after the second quarter, last month an  
18 additional market was added when Jet Blue entered the  
19 Boston/New York market, so that number is now forty-seven out  
20 of the top fifty.

21 Q Is the Boston/New York market a significant market for  
22 Delta?

23 A Yes, it is one of Delta's top ten markets, certainly.

24 THE COURT: Okay. Can I ask you a question?

25 THE WITNESS: Certainly.

1 THE COURT: Delta's not the one that's in the Marine  
2 terminal, right?

3 THE WITNESS: They are in the Marine Air terminal,  
4 yes. The shuttle.

5 THE COURT: Yeah, the shuttle. Where is Jet Blue  
6 going to be?

7 THE WITNESS: Jet Blue is currently operating from New  
8 York to Boston from JFK.

9 THE COURT: No, I know, but they're supposed to be  
10 moving over to -- I thought they were moving over to LGA.

11 THE WITNESS: I believe that they have -- I know they  
12 have obtained slots and they are providing some service from  
13 LGA, but it is not service to Boston at this point.

14 THE COURT: Okay. So right now Delta has only one  
15 competitor at LaGuardia for --

16 THE WITNESS: They have -- actually, no. They have  
17 competition from U.S. Airways shuttle, as well as from American  
18 Airlines.

19 THE COURT: Well, no, I'm talking about the shuttles.  
20 There's a different mentality when you take the shuttle than  
21 when you don't.

22 THE WITNESS: As a fairly regular shuttle flyer, I  
23 would agree with you, but as a fairly regular shuttle flyer, I  
24 would also say that American does provide a service that you  
25 can take. It's not quite as frequent as the shuttle, but it's

1 fairly frequent.

2 THE COURT: Well, but I mean, if you're flying from  
3 Boston to, say, Raleigh-Durham, you would not take the shuttle  
4 because you would prefer to have a ticket that pulls you  
5 through.

6 THE WITNESS: Correct.

7 THE COURT: The shuttle is just that. You go between  
8 those two cities, that's what you take.

9 THE WITNESS: The shuttle is, you're quite right,  
10 aimed almost exclusively at O&D traffic, not connecting  
11 traffic.

12 BY MR. SPAN:

13 Q Now in the objection filed by ALPA on this motion, ALPA  
14 said that -- one of the points it made is that Delta also had  
15 LCC competition in the late nineties but still managed to make  
16 a lot of money; and that the LCC competition hasn't increased  
17 that much since then. Do you agree with that?

18 A I agree with the fact that they made a lot of money in the  
19 late 1990s, but I disagree with the contention that LCC has not  
20 increased significantly for Delta since that time. I think if  
21 you look at this Exhibit 5, pick a year, 1998, there are --

22 THE COURT: Well, try picking a year 1993 to 1994.

23 THE WITNESS: Correct.

24 THE COURT: You go from sixteen to twenty-eight.

25 THE WITNESS: Which is an increase of about seventy-

1 five percent in one year of the top fifty markets getting  
2 served.

3 THE COURT: So it's then '94/'95 you go up to thirty-  
4 six and sort of play around that level until you now are up to  
5 forty-six.

6 THE WITNESS: And if we were able to add the Jet Blue  
7 service we could get to forty-seven, so I think that's  
8 significant in a --

9 BY MR. SPAN:

10 Q Since 1998 there has been roughly a third, again, increase  
11 in the number of Delta's top fifty markets that are exposed to  
12 LCC competition?

13 A Correct.

14 Q And what --

15 THE COURT: And you only have four of your top fifty  
16 markets where you're not exposed to that competition.

17 MR. SPAN: And now, Your Honor, there are only three.

18 THE COURT: And what four are those, do you know?

19 THE WITNESS: Well, one of them was New York to  
20 Boston. That has now been filled. I have them in my backup  
21 notes, but don't have with me the other three. I'm sure if we  
22 have a break I could get them if --

23 MR. SPAN: You probably would rather not put that on  
24 the record incase the LCCs are listening, Your Honor. They'll  
25 probably jump there next. But, no, we can certainly get that.

1 THE COURT: How about Bangor, Maine to Salt Lake City?

2 MR. SPAN: I doubt that that's one of Delta's top  
3 fifty markets, but --

4 THE COURT: No, I'm just saying that that's probably  
5 not an LCC competition route.

6 MR. SPAN: Probably not.

7 BY MR. SPAN:

8 Q Do the -- let me ask you this question, Mr. Kasper. Do the  
9 LCCs tend to pick the routes that are the most heavily  
10 travelled and the most profitable?

11 A The pattern has been exactly that. The low-cost carriers  
12 tend to concentrate quite heavily on what we call high-density  
13 routes, which just means there's a lot of traffic on those  
14 routes. In a kind of interesting variation on that theme, now,  
15 with Jet Blue, however, adding these new 100-seat regional jet  
16 aircraft that appear, on paper at least, to have very  
17 attractive operating costs, that will permit Jet Blue to  
18 operate into markets that might not previously have been  
19 sufficiently large to support low-cost carrier service.

20 THE COURT: Wait, wait, wait, wait. I'm not sure I  
21 understand this.

22 The 100-seat planes are lower than the ones that Jet  
23 Blue is typically flying?

24 THE WITNESS: Smaller, yes, Your Honor. They're  
25 flying Airbuses that are configured, I believe, at 160, 162

1 seats.

2 BY MR. SPAN:

3 Q Now Page 5 shows one part of the impact or the increased  
4 exposure for Delta to low-cost competition. What does Page 6  
5 show?

6 A Well, Page 6, I decided to look not just at the number of  
7 markets, but also to see what happened to the low-cost  
8 carriers' market share in the top fifty markets.

9 Q And again, we're taking that period from late nineties to  
10 the present?

11 A Correct. And for this analysis, we just picked 1998. And  
12 in 1998 in Delta's top fifty markets low-cost carriers carried  
13 about ten percent of the traffic. By the first quarter of  
14 2001, that share had little more than tripled up to in excess  
15 of thirty-percent of the traffic now in Delta's top fifty  
16 markets carried by low-cost carriers.

17 Now let me make one other point here, because this -- we're  
18 talking only about the share of the traffic that low-cost  
19 carriers actually carry, but that really understates very  
20 substantially the competitive impact of their presence in these  
21 markets because if I'm flying in a market that has a low-cost  
22 carrier alternative, I don't have to fly a low-cost carrier to  
23 get the low fare because it's going to be matched by the legacy  
24 carriers. And indeed, I found it interesting in a front-page  
25 article in the Wall Street Journal today about Southwest entry

1 into Denver, which is the first time Southwest -- well, I  
2 believe it's the second time Southwest has entered Denver, but  
3 they quoted a passenger from Chicago, I believe, saying this is  
4 great, now I can fly on low fares but I don't have to fly on  
5 Southwest because Southwest has a certain kind of service that  
6 some people don't like as well as the kind of boarding pass and  
7 --

8 Q So was that passenger saying he was going to be able to fly  
9 on United from Chicago to Denver?

10 A United or Frontier.

11 Q Frontier, but get the benefit of the Southwest low fares  
12 because those other carriers were going to have to match  
13 Southwest?

14 A Correct, which is why, when looking at the competitive  
15 impact of low-cost carriers, I think it's more useful to look  
16 at the markets or the percentage of passengers exposed to low-  
17 cost carrier competition because anybody that flies in a market  
18 served by low-cost carriers is going to get the benefit of  
19 their competitive presence.

20 THE COURT: Well, I mean, see, I'm not really sure  
21 that I understand exactly how they match because sometimes it  
22 seems to me there is a ten-dollar or a twenty-dollar difference  
23 between the carriers on a particular ticket and that, you know,  
24 \$10 really doesn't make any difference. You'll fly \$10 --  
25 you'll pay ten or \$20 more to get the time that you want.

1 THE WITNESS: That is correct, Your Honor. And  
2 matching doesn't necessarily mean to do an identical match.  
3 What the legacy -- well, what carriers do generally is to say  
4 what fare do I need to charge to not lose too much traffic to a  
5 low-cost carrier. Many markets that means you charge the same  
6 fare. Sometimes those differences in the five- and ten-dollar  
7 range reflect what's called a "passenger facility charge."

8 It's a charge imposed by airports so when I fly  
9 through O'Hare, for example, if I have to make a connection,  
10 the good citizens of Chicago, through their airport, will  
11 charge me \$5 every time I set foot in that airport. So if I  
12 fly a round trip through there, I have to pay ten extra  
13 dollars, whereas if I flew through Memphis, which has no  
14 passenger facility charge, the fare would be \$10 lower or the  
15 total cost to me would --

16 THE COURT: Well, usually it's not \$10, usually twenty  
17 or thirty.

18 THE WITNESS: Well, the carriers have a price --

19 THE COURT: Well, I'll tell you what I don't really  
20 understand is when I fly to Raleigh-Durham and I'm looking for  
21 the lowest priced fare, I suddenly will come across somebody  
22 that wants \$1,800 because that's what they charge for the  
23 Sunday morning leg. And I don't understand how, you know --  
24 and these are not the low-cost carriers. I don't understand  
25 how it suddenly pops up that way. I don't understand how they

1 could be pricing it that way. I mean, I don't quite  
2 understand. I mean, maybe it's the very last seat they have  
3 and they automatically price up, but there's obviously capacity  
4 in the market because you can fly on other airlines.

5 THE WITNESS: Your Honor, I'm not an expert on yield  
6 management, which is the way airlines sort of price their  
7 different seats. I suspect what probably happened in that case  
8 is it would be turned up on a computer search engine such as  
9 Orbitz or Sidestep or one of the other engines, and they will  
10 find any possible matches and no airline would probably think  
11 it could sell a ticket from New York to Raleigh-Durham for  
12 \$1,800, but just the way the computer programs are set up, you  
13 know, it can generate a fare that way and maybe they get lucky  
14 once in awhile and somebody actually pays it. I rather doubt  
15 it.

16 THE COURT: That's what I was thinking, but I just --

17 BY MR. SPAN:

18 Q Now you were talking a moment ago about the fact that there  
19 has been a change in the low-cost competition exposure to  
20 Delta, even since 1998, '99. What specifically can you tell us  
21 about AirTran in that regard?

22 A Well, in addition just to the broader picture here, AirTran  
23 is a primary competitor of Delta. AirTran is a low-cost  
24 carrier that, like Delta, has a hub in Atlanta. And Delta is  
25 in the unenviable position right now of being the only legacy

1 carrier that has a low-cost carrier hub on top of it at its  
2 primary hub. Atlanta is Delta's largest hub and, indeed,  
3 perhaps the largest hub in the world. Unfortunately for --

4 THE COURT: Okay. What would make it the largest hub  
5 in the world?

6 THE WITNESS: In terms of -- there are a couple  
7 different ways to measure that. Atlanta is the largest airport  
8 in the world in terms of the number of total passengers that  
9 use that airport and most of the --

10 THE COURT: I would do anything to avoid that airport.

11 THE WITNESS: Well, let's hope that doesn't get  
12 reported too widely.

13 THE COURT: Well, I mean, you can't get anywhere in an  
14 airport. They took my car away because I didn't walk from the  
15 gate fast enough. I mean, you couldn't even walk there that  
16 fast.

17 MR. HUEBNER: Your Honor, we would suggest that you  
18 not fly AirTran ever again.

19 THE COURT: It wasn't AirTran. I don't even think it  
20 was Delta. But they have the largest number of passengers?

21 THE WITNESS: Yes. It's the largest airport in the  
22 world and much of the service, but certainly not all of it, is  
23 provided by Delta Air Lines. You could also look at the number  
24 of flights. I believe that Delta operates more flights at its  
25 Atlanta hub than any other airline operates in any other hub,

1 although I'd have to check that. It operates a very large  
2 number of flights, in any event.

3 BY MR. SPAN:

4 Q So directing your attention to Page 7, what does that map  
5 show?

6 A Well, Page 7 and 8 are sort of a before-and-after, if you  
7 will, of AirTran service, primarily from Atlanta. The first  
8 map on Page 7 shows the black lines emanating from Atlanta to  
9 the various points that were served in the first quarter of  
10 1999 by AirTran from Atlanta. And so Your Honor can see that,  
11 in fact, it is possible or was possible to go from New York to  
12 Raleigh-Durham via AirTran through Atlanta.

13 THE COURT: Which one would not bother to try to do.

14 THE WITNESS: You would be surprised, Your Honor, at  
15 the routings that people will take.

16 THE COURT: I have to tell you, it has to be an awful  
17 big savings before I'm going to take a one-stop on a flight  
18 from -- a less-than-five-hundred-mile flight.

19 THE WITNESS: Those of us who live in larger cities  
20 and --

21 THE COURT: I mean, it's less than 500 miles to fly  
22 from Raleigh-Durham to New York. It's like 493 miles or  
23 something.

24 THE WITNESS: And like most consumers, you have a  
25 strong preference for nonstop service and that is, in fact,

1 pretty common.

2 THE COURT: I have a strong preference for nonstop  
3 service on short flights. I mean, you know, your preference  
4 gets -- if the price gets lower, significantly lower on a one-  
5 stop flight to go a long distance, then you start to have a  
6 preference for that.

7 THE WITNESS: The older I get, the less that  
8 preference is.

9 MR. SPAN: Your Honor, to tell you a personal story,  
10 in 1995 I was in a proceeding, another airline proceeding,  
11 where an expert of mine testified -- not Mr. Kasper, another  
12 expert -- testified that Southwest was going to start flying  
13 transcontinental service because they just put in a large order  
14 for new jets and people on the other side said there's no way  
15 people will ever fly from one coast to the other on Southwest  
16 with only getting peanuts. And there are many people who do  
17 that now, even stopping and going through Baltimore or Phoenix  
18 to L.A. or whatever route, so it's happening.

19 THE COURT: I'm not saying it's not happening. I'm  
20 just saying on a five-hundred-mile flight I have to really want  
21 to get there to want to take a stopover.

22 BY MR. SPAN:

23 Q So you've talked about the before, Mr. Kasper. What about  
24 the after?

25 A Well, if you look at Page 8, that's the --

1 THE COURT: How many people want to fly to Atlanta and  
2 just stay there?

3 THE WITNESS: I don't, at the tip of my tongue, have  
4 the number of origin and destination passengers that go to  
5 Atlanta, but my --

6 THE COURT: Okay. Well, what's the population of  
7 Atlanta?

8 THE WITNESS: It's probably several million people in  
9 the metropolitan area of Atlanta by now.

10 MR. SPAN: Maybe it would be useful to --

11 THE COURT: Okay. But what we're getting to is that  
12 these people are changing planes in Atlanta.

13 MR. SPAN: Correct. Exactly.

14 THE WITNESS: Correct.

15 MR. SPAN: And I was just going to ask Mr. Kasper to  
16 kind of describe what a hub operation is, because that's  
17 exactly what it is.

18 THE WITNESS: Well, a hub operation is really a  
19 connecting complex that an airline like AirTran or Delta will  
20 fly, for example, in the morning there will be -- all up and  
21 down the east coast Delta will have a series of flights that  
22 depart from Boston, New York, Newark, Philadelphia, et cetera,  
23 fly to Atlanta, and they will carry passengers. Approximately  
24 half the passengers on the airplane are going to Atlanta and  
25 approximately half the passengers on the airplane are making

1 connections to places like Gulf Port, Pensacola, Biloxi,  
2 Dallas, wherever.

3           They then arrive at Atlanta and do this massive  
4 exchange of planes and people then shift from one plane to  
5 another to go to their ultimate destinations. In addition, of  
6 course, there are local Atlanta passengers who will get on the  
7 plane from Atlanta to Shreveport.

8           And you might ask why is it that passengers would do  
9 that when, like Your Honor, most passengers prefer nonstop  
10 service. And I think Her Honor provided the answer is that,  
11 first of all, most city pair markets, if you look at it, are  
12 too small to support nonstop service so the only way you can  
13 get there is to go to one of these hubs where you consolidate  
14 traffic from many points.

15 BY MR. SPAN:

16 Q   So if you want to go from New York to Shreveport, you're  
17 probably going to have to connect through a hub?

18 A   Shreveport you might get there out of Newark, but --

19           THE COURT: Yeah, okay. But let's say you wanted to  
20 go to Flint on AirTran from New York. You would have to fly to  
21 Atlanta and then back up to Flint.

22           THE WITNESS: That's correct, and therefore, I suspect  
23 that they probably don't sell a whole lot of New-York-to-Flint  
24 traffic, but remember, they also are a low-cost carrier and so  
25 if they have available seats, they may well set up -- reserve

1 some seats at very low prices because they know that helps them  
2 fill their airplane, and overall they can be profitable by  
3 adding a few more passengers. So they probably carry some  
4 traffic, but not a whole lot, because there would be better,  
5 quicker ways to get there from New York.

6 In any event, just to finish this, so I think you can  
7 see from looking at this map, Mr. Span, that the density of the  
8 lines is that AirTran has indeed expanded significantly in  
9 Atlanta over the six-year period from the first quarter of  
10 1999.

11 THE COURT: Wait. We didn't get to Page 8 yet.

12 THE WITNESS: I'm sorry, Your Honor. I was sort of  
13 going back and forth between the two.

14 THE COURT: Well, I wasn't so here. Okay?

15 BY MR. SPAN:

16 Q Page 8 shows the current, or at least as of the third  
17 quarter --

18 THE COURT: So now you don't have to fly through  
19 Atlanta to go from Buffalo to Ft. Myers?

20 THE WITNESS: That's correct. Buffalo to Ft. Myers,  
21 they've added -- or was that Rochester, Buffalo, maybe both.  
22 They've added nonstop service.

23 THE COURT: And they've eliminated Greensboro.

24 THE WITNESS: Indeed they have.

25 BY MR. SPAN:

1 Q They've also added some longer trips out to the west coast,  
2 haven't they?

3 A Correct, and that is pretty significant for Delta when you  
4 look at routes like Atlanta to Los Angeles and Atlanta to San  
5 Francisco. Those have been long-haul routes that have  
6 traditionally been among the most profitable routes for legacy  
7 carriers, including Delta, and now --

8 THE COURT: How come you can only go from Atlanta to  
9 Memphis and from Memphis to Las Vegas instead of to San  
10 Francisco or L.A.?

11 THE WITNESS: I think that that Memphis line is  
12 probably a continuation of the Atlanta -- the Memphis-to-Las  
13 Vegas line. I would be a little bit surprised, since Memphis  
14 is a Northwest hub, if Delta provided nonstop service to Las  
15 Vegas.

16 THE COURT: Well, this is the AirTran --

17 THE WITNESS: I'm sorry. AirTran, same story. I'd be  
18 a little surprised if AirTran ran.

19 BY MR. SPAN:

20 Q So you think that line may actually be a nonstop from  
21 Atlanta to Las Vegas?

22 A I think it is a nonstop from Atlanta that just happened to  
23 cross the Memphis star.

24 THE COURT: Okay. But what kind of plane do you need  
25 to fly from Miami to Minneapolis-St. Paul without having to

1 make a stop?

2 THE WITNESS: Well, it's interesting, Your Honor. In  
3 the case of, say, the west-coast points, Los Angeles and San  
4 Francisco from Atlanta, which are probably the longest spokes  
5 on that system, AirTran, until fairly recently, did not have  
6 aircraft in its fleet that could fly that far. Their main  
7 airliner is called a "B-717," which is a old McDonnell-Douglas -  
8 - a new version of a McDonnell-Douglas DC-9 aircraft and it did  
9 not have the range, does not have the range to fly that far.  
10 They -- in response to that AirTran first leased some aircraft,  
11 subcontracted with a carrier that had 737s that could fly that  
12 distance and it subsequently placed an order for aircraft,  
13 737s, which it now has and uses to fly those routes.

14 So you have to have a 737, in their case, with a long  
15 enough range to fly those routes.

16 THE COURT: Okay. But let's say you fly from  
17 Minneapolis to Florida, which it appears to be possible to do -  
18 - maybe not. Maybe it's Milwaukee.

19 THE WITNESS: I would defer to --

20 THE COURT: Okay, but then -- so then you re-gasoline  
21 and redo all of those things where you end up, rather than  
22 flying back to Atlanta and doing it.

23 THE WITNESS: Well, if they have to stop, they would  
24 almost certainly stop in Atlanta.

25 THE COURT: No, I'm saying you could fly all the way

1 down there, let's say, and you get down there, but you wouldn't  
2 have enough expensive gas to get back to Minneapolis. Then you  
3 wouldn't fly to Atlanta to fuel up, would you?

4 THE WITNESS: No, they'd fuel up in Florida.

5 THE COURT: Okay.

6 BY MR. SPAN:

7 Q Now Pages 7 and 8 show the growth of AirTran. Does Page 9  
8 demonstrate what happens in a typical market once AirTran comes  
9 in?

10 A Yes, that's precisely what the point of this exhibit --

11 Q Again, this is a little busy, this chart, but -- and you've  
12 got --

13 THE COURT: A little busy, he says.

14 BY MR. SPAN:

15 Q You've got a couple things going on. Is the line --

16 A Let me explain that. There are three things on this chart.  
17 The red -- basically red bar is a measure of Delta's share of  
18 passengers on the Buffalo-to-Atlanta route and the axis for  
19 that is the left-hand axis. So for example, in 1996 Delta  
20 carried approximately seventy-five percent of the traffic on  
21 that route. The line running throughout with the dollar  
22 figures on it is the average fare in the market for that year.

23 THE COURT: One-way fare or --

24 THE WITNESS: Correct.

25 THE COURT: Okay.

1 THE WITNESS: One-way fare and that was --

2 THE COURT: That's the latest little marketing trick  
3 the airlines have for pricing things low is now they're pricing  
4 only one way.

5 THE WITNESS: Your Honor, you know the reason that  
6 happened is airlines -- the legacy airlines strongly prefer  
7 round-trip tickets because, for one thing, you get -- you've  
8 locked in the revenue both directions. But the low-cost  
9 carriers have come in and one of the ways they've gone after  
10 the marketplace differently is to offer one-way fares. And so  
11 they actually -- and the round-trip tends to be double the one-  
12 way fare and as a result they have --

13 THE COURT: Why do they want to offer one-way fares?

14 THE WITNESS: Because it turns out that there are a  
15 fair number of passengers who only want to fly one way and this  
16 is a way --

17 THE COURT: Well, how do they get back?

18 THE WITNESS: They may not. They may want to stay or  
19 they may want to stay a long time. They only have enough money  
20 right now to buy a one-way ticket.

21 THE COURT: Ah, okay.

22 THE WITNESS: And they stay and fly back. So they  
23 force the legacy carriers to offer the same kind of pricing and  
24 I think if --

25 THE COURT: No. To express their pricing in the same

1 kind of way, in order that people can actually make a  
2 comparison.

3 THE WITNESS: This is the -- when I was at the Civil  
4 Aeronautics Board many years ago, this was a longstanding  
5 debate and some of us felt that most passengers could multiply  
6 by two and it really didn't --

7 THE COURT: I believe that they can't. I mean, my  
8 belief is that if you advertise your prices twice what somebody  
9 else's prices -- they will think it's twice somebody else's  
10 price and will not see that it's for two lengths instead of  
11 one.

12 THE WITNESS: Well, maybe that's another explanation  
13 for why everybody is shifting to one-way fares.

14 The third line on here I need to explain, so the --  
15 BY MR. SPAN:

16 Q The green and yellow, whatever colors those are, those  
17 bars.

18 A The green and yellow bar, and I think that's supposed to  
19 roughly correspond to AirTran colors, measures AirTran's market  
20 share in the Atlanta/Buffalo market. And so what this chart  
21 shows is that when AirTran entered the market in 1998, the  
22 average fare dropped by almost \$50, from \$162 to \$114; and by  
23 2004, for the full year, AirTran's market share had moved up to  
24 about sixty percent. Delta was now down to forty percent, and  
25 the average fare was at \$107, which is \$67 below where it was

1 in 1996, when only Delta served the market on a nonstop basis.

2 Q So the average fare came down and --

3 THE COURT: Monopolists make more money. I mean,  
4 there's no question that when the government was regulating  
5 fares, that the fares were higher.

6 THE WITNESS: Correct.

7 BY MR. SPAN:

8 Q And is it also basically a truism that competition will  
9 bring down fares?

10 A Yes.

11 THE COURT: Now, why would anybody want to fly from  
12 Atlanta to Buffalo?

13 THE WITNESS: Maybe they have a football game or  
14 something.

15 THE COURT: I guess.

16 THE WITNESS: I understand there's a professional  
17 football team there.

18 BY MR. SPAN:

19 Q But is this a typical market, or is this -- are these  
20 results, that are shown on Page 9, typical of what happens when  
21 a low-cost carrier enters the market?

22 A These are quite common. I mean, I think, overall, if you  
23 found where low-cost carriers enter a market, it's not at all  
24 uncommon for fares to drop by thirty, thirty-five percent.

25 THE COURT: Okay. But why would the usage have gone

1 up in the beginning of 2002 and then dropped off in 2003 and  
2 2004?

3 THE WITNESS: That probably reflects scheduling on the  
4 part of either Delta or AirTran. Somebody -- Delta may have  
5 added a flight or AirTran may have pulled one down.

6 BY MR. SPAN:

7 Q Will sometimes a carrier attempt to add more service in  
8 order to keep its business from a low-cost carrier and  
9 sometimes that works and sometimes it doesn't?

10 A Yes. That certainly has happened and probably will happen  
11 in the future. You know, I think in 2002, Delta was losing a  
12 lot of money and probably not as inclined to go into markets  
13 where it was already losing money and add more capacity because  
14 that's a recipe for losing more money still.

15 Q Now, we've been talking about low-cost carrier competition.  
16 And before we get to the next slide, just to kind of wrap up  
17 that point, do you think that this growth and spread that  
18 you've described of the low-cost carrier competition will  
19 continue in the future?

20 A It looks to me like, for the foreseeable future, the low-  
21 cost carriers will continue to expand their competitive  
22 presence in the U.S. market.

23 Q And why is that?

24 A Well, there's several reasons for that:

25 One I mentioned earlier, that if you look at the order

1 books for aircraft and -- you will find that low-cost carriers  
2 have substantial backorders in place already. I have a table,  
3 I believe, in my first declaration, which shows the orders and  
4 the options. And the striking thing about that table is how  
5 large the orders and options are for low-cost carriers,  
6 particularly Southwest and Jet Blue.

7 So it's in the pipeline. Both those carriers are  
8 profitable. Both have very strong balance sheets. It's highly  
9 likely that they will be able to take those aircraft, as they  
10 become eligible to take them. And since legacy carriers are in  
11 a shrinking mode, they're not adding new aircraft or putting  
12 aircraft on the ground, just the simple mathematics of adding  
13 capacity by low-cost carriers, shrinking it by legacy carriers,  
14 suggests that the low-cost carriers' market share will continue  
15 to grow.

16 THE COURT: Okay. I don't understand something.  
17 Delta has like about 450 planes. It has 44,000 employees that  
18 are not pilots, so that's just about 1,000 employees per plane,  
19 and it has 6,000 pilots, which is about fifteen pilots per  
20 plane.

21 Now how many workers does somebody like Jet Blue have  
22 or AirTran have?

23 THE WITNESS: I think, in terms of employees per  
24 aircraft, Delta is probably in the range of Jet Blue right now.  
25 They're probably somewhat above AirTran.

1 MR. SPAN: Your Honor, we actually -- because you had  
2 mentioned that question before, I asked Mr. Kasper to look at  
3 those statistics; and, if you look at Page 26, we have that  
4 information.

5 THE COURT: I mean, it's just a staggering number to  
6 me, compared to each plane. They sure do get a lot of luxury  
7 service on those planes.

8 THE WITNESS: Your Honor, I think the division was  
9 it's more like a hundred employees than a thousand and if you  
10 look at --

11 THE COURT: Wait. If we have 44,000, it's a hundred.  
12 Okay.

13 THE WITNESS: So we did this using the data sources  
14 cited and, as you can see -- I'm sorry, Page 26?

15 THE COURT: Yeah, I got it.

16 THE WITNESS: Delta is sort of in the middle of the  
17 pack. AirTran is very low.

18 THE COURT: You had a big break between Southwest and  
19 USAir.

20 THE WITNESS: Yes.

21 THE COURT: And United is way up.

22 MR. SPAN: There are obviously a lot of people behind  
23 the scenes that --

24 THE WITNESS: Correct.

25 MR. SPAN: -- that work in there, not just the pilots

1 and mechanics and flight attendants, but you also have  
2 reservations people and --

3 THE COURT: I didn't say you didn't. I just wanted to  
4 know whether, you know, this was typical or it wasn't typical,  
5 I mean, because I have no way of knowing whether you're  
6 supposed to have that many people per plane or whether, you  
7 know, you just --

8 THE WITNESS: It's a very reasonable question because  
9 it is not, to me, anyway, intuitively obvious why the number  
10 should be that high. But I think when you stop to think about  
11 it, an airline operates probably twenty hours a day, so the  
12 same airplane may have three or four pilot crews on it in a  
13 given day.

14 THE COURT: Well, I can better understand the pilots  
15 because they can only work eighteen hours a month or something.  
16 I don't know whether that's right, but they only work a fairly  
17 small number of hours a month. You have to have two of them  
18 for each plane, and so you do need what seems like more than  
19 you would need because of the fact that they can't work as many  
20 hours.

21 THE WITNESS: Well, in fact, in some cases, for the  
22 long overseas flights, you need three pilots a plane, so the  
23 long flights you need relief -- a relief pilot.

24 THE COURT: All I'm saying is that it's easier to  
25 understand why you need more pilots per plane than --

1 THE WITNESS: I think another way to think about it,  
2 that's right, because those planes are being used, but they're  
3 also being operated, so that -- you have flight attendants that  
4 have to be there, ground handlers, tickets --

5 THE COURT: No, okay.

6 THE WITNESS: -- agents and --

7 THE COURT: No, I'm with you, now that I know that  
8 we're not at the top of the list. We're not at the bottom of  
9 the list, but, you know, we've got Jet Blue ahead of us. Maybe  
10 they will turn into one of the old-fashioned carriers.

11 I mean, this is what I don't understand, is: Why can  
12 Jet Blue fly cheaper?

13 THE WITNESS: Your Honor, I think in this particular  
14 chart --

15 THE COURT: You can't tell me?

16 THE WITNESS: Well, I can tell you, actually, but  
17 starting with this chart, I think one of the reasons Jet Blue's  
18 number may be where it is instead of lower, where one might  
19 expect it to be, down in the Southwest range, is, I suspect,  
20 although I haven't been able to confirm this, that Jet Blue's  
21 employee count is run up somewhat, certainly its pilot count,  
22 because they're training a lot of pilots to fly their new  
23 hundred-seat regional aircraft and those pilots are on the  
24 payroll. And they may have other employees coming on the  
25 payroll and flight attendants being trained, but they're not

1 actually being used yet.

2 THE COURT: Okay.

3 MR. SIMON: Your Honor, just in the spirit of keeping  
4 the record without glaring errors, the pilots --

5 THE COURT: Oh, please.

6 MR. SIMON: -- just work eighty, eighty-five hours a  
7 month, not eighteen. And the aircraft --

8 THE COURT: I didn't say eighteen. I said eighteen  
9 days. I thought I said eighteen days.

10 MR. SIMON: You may have, but the record will speak  
11 for itself.

12 THE COURT: I think -- I could be wrong as to the  
13 number of days.

14 MR. SIMON: I just didn't want it to be off on the  
15 wrong track.

16 THE COURT: There's a certain number of hours per  
17 day --

18 MR. SIMON: Correct.

19 THE COURT: -- in addition to a certain number of days  
20 per month?

21 MR. SIMON: That is correct. I just -- either you  
22 misspoke or I misheard.

23 BY MR. SPAN:

24 Q All right. We were talking --

25 THE COURT: It's basically two weeks of vacation a

1 month for two weeks of flying. That's the basic -- I know.  
2 You're going to tell me it's not vacation.

3 MR. SIMON: Well --

4 THE COURT: And I'm going to tell you -- I'm going to  
5 tell you that it depends on whether you --

6 MR. SIMON: You will hear from the pilots, Your Honor,  
7 as to whether that's vacation or not.

8 THE COURT: Well, I can tell you that those that live,  
9 in the spring, and have wives, are out mowing the lawn.

10 MR. SIMON: So are the rest of us, Your Honor.

11 (Laughter.)

12 THE COURT: No, but what I'm saying is that's  
13 basically -- it doesn't work out that way for everybody's  
14 schedule, but that's the basic concept.

15 MR. SIMON: Your Honor, I merely wanted to correct  
16 what I thought I heard as a mistake.

17 THE COURT: No.

18 MR. SIMON: But you will hear a lot about pilot  
19 schedules, pilot work lives, and what it's like to be a pilot  
20 when it's our turn to put on our case.

21 THE COURT: That's good.

22 Okay. Now we have what, 27?

23 MR. SPAN: Well, we're actually now going back. We  
24 took 27 kind of out of order, so let's go back to 10 and let me  
25 move to that next point.

1 BY MR. SPAN:

2 Q Mr. Kasper, you mentioned at the outset that there were  
3 three reasons why airlines like Delta and Delta specifically  
4 are not able to charge as high a fare as they used to be able  
5 to, and the first reason you mention was low-cost carrier  
6 competition, and then you mentioned the -- the increased use of  
7 the internet?

8 A Correct.

9 Q And is that what Page 10 reflects?

10 A It does. What this chart shows is the percentage of all  
11 airline passenger revenues that were booked online and by  
12 online, that includes the kind of websites that we talked  
13 about, the third-party Web sites: Orbitz, Sidesteps, Expedia,  
14 Travelocity, et cetera, and also booked directly onto the  
15 airline's websites.

16 And so, as you can see from this chart, the number -- the  
17 percentage booked online has increased rather dramatically,  
18 from five percent in 1999 --

19 THE COURT: Okay. But what's actually surprising to  
20 me is that there are so many that aren't booked online.

21 THE WITNESS: Those of us who have grown addicted to  
22 online booking would probably share that view, Your Honor. I  
23 have discovered, though, that there are still many people who  
24 are reluctant to put their credit card information over the  
25 internet, so what they do is use these online search tools to

1 find the low fare and then they will pick up the phone and call  
2 the airline and make the reservation, so these numbers actually  
3 understate the impact of the online booking, because this only  
4 focuses on bookings, not on --

5 THE COURT: Well, you see, now my problem is that what  
6 happens to me is I get a call from my daughter in Spain, who  
7 has found some airline that I have never, ever heard of and  
8 says, will you give me your credit card number, Mother. And  
9 you go, cross my fingers, hope it works.

10 THE WITNESS: Well, apparently it did, so I hope you  
11 had a good Thanksgiving.

12 THE COURT: I think people's idea that their credit  
13 card number is going to get stolen is vastly overrated.

14 MR. SPAN: I had my credit card number stolen in a  
15 restaurant, you know, by handing the credit card --

16 THE COURT: Yeah.

17 MR. SPAN: -- to someone, so it's just as likely to  
18 happen there, or maybe perhaps more.

19 THE COURT: I think it's actually more likely to  
20 happen because you don't have to do anything technical.

21 Could I ask you to take like fifteen minutes, so I can  
22 finish going through these exhibits and, you know, look at what  
23 they are? It's quite a lot to go through all at once, for the  
24 first time.

25 (Recess taken at 3:45 p.m.)

1 (Proceedings resume at 4:20 p.m.)

2 THE COURT: You may be seated.

3 I looked at the rest of these colored copied pictures  
4 and I still don't understand what "code sharing" is. I mean,  
5 you make money out of it, but I don't understand what the  
6 person who's buying the ticket thinks they're buying, that  
7 they're buying one of your tickets or they're buying one of Air  
8 France's tickets.

9 BY MR. SPAN:

10 Q Mr. Kasper --

11 A Certainly.

12 Q If we can move to that, we'll come back to where we were --

13 A Sure.

14 Q But let's move to the --

15 THE COURT: Well, I don't think it matters which one  
16 of these things you take up. I mean, they all seem to be  
17 pretty much, you know, let's figure out what one thing is or  
18 another. I mean, that's the one that still, you know, puzzles  
19 me as to why it makes any money for anybody and what it is --  
20 whose ticket it is the customer thinks they're flying on.  
21 Okay?

22 MR. SPAN: Okay. We will cover those questions.

23 THE COURT: Okay.

24 BY MR. SPAN:

25 Q But if we may go back to where we were right now, Mr.

1 Kasper, we had covered the point about the business travel  
2 decline. And so we've talked about the growth and low-cost  
3 carrier competition, the growth in internet use and access and  
4 the -- but let me just bring you back to the internet for a  
5 moment.

6 The fact that so many people have access to the internet  
7 and use the internet, what is the relationship of that to  
8 airline pricing?

9 THE COURT: Well, he already went over that. He says  
10 that it tends to flatten prices because there's more  
11 information in the market. Yes?

12 THE WITNESS: Yes. Very good.

13 MR. SPAN: All right. Then we'll move on.

14 BY MR. SPAN:

15 Q So the combination of these three factors that you've  
16 mentioned: The internet growth, the loss of the business  
17 traveler, and the growth of low-cost carrier competition --

18 THE COURT: We didn't lose the business traveler. We  
19 just are unable to charge him more.

20 MR. SPAN: Exactly. The loss of the premium ticket.

21 BY MR. SPAN:

22 Q What has been the overall cumulative effect of these and  
23 other changes in the industry on the price that Delta can  
24 charge?

25 A Well, it's driven down the average fares and the average

1 yields of Delta and the other legacy airlines, so they're -- to  
2 put it another way, they're making less per mile carrying  
3 passengers today than they were in 1998.

4 Q And have you illustrated that on Page 12?

5 A Yes, I have.

6 Q And does Page 12 show that the yield, the average ticket  
7 price per mile has dropped from 14.78 cents in 1998 for Delta  
8 to approximately 10.68 cents in --

9 THE COURT: Okay. And that's adjusted for inflation?

10 THE WITNESS: That is correct.

11 BY MR. SPAN:

12 Q And so that represents a significant drop?

13 A Right. The fares in 1998 were approximately forty percent  
14 higher than -- the yield in 1998 was approximately forty  
15 percent higher than it was in the first half of this year.

16 Q And why is yield important to the airline?

17 A Well, yield is a reflection of the average ticket price  
18 that an airline gets, how much it gets for carrying a passenger  
19 a mile. So what this tells you is that the revenues of the  
20 airlines, that they derive from carrying passengers, are going  
21 down in real terms.

22 Q And you mentioned earlier that in 1998 -- 1999, Delta was  
23 able to charge a higher price per ticket, so that it could  
24 afford a -- it could cover its costs and create a profit. Is  
25 that right?

1 A That's correct.

2 Q And has that statement been true for the last several  
3 years?

4 A Not since 2000. They have lost money for every year since  
5 2000.

6 Q Now is that a sustainable -- the pattern that we see on  
7 Page 1, of losses since 2001, is that a sustainable pattern for  
8 any business?

9 A No. In my opinion, it is not sustainable for Delta Air  
10 Lines or any other business, but certainly not Delta.

11 THE COURT: I mean, in order to sustain a business and  
12 lose money like this, you have to have a very large  
13 shareholders' equity that you can eat into. I mean, there are  
14 companies like that, privately held companies like that, that  
15 might go for four or five years and do that.

16 THE WITNESS: That's correct, Your Honor. It raises  
17 the question of why investors would want to stay with the  
18 company, unless they thought there was the prospect.

19 THE COURT: What I'm saying is, let's assume it's a  
20 privately held company.

21 THE WITNESS: Okay.

22 THE COURT: Dad created the business. I have to carry  
23 it on for Dad. You would be surprised how many people come in  
24 here and have lost their shirt and have taken that view and you  
25 would have said, it's just -- you know, it's something they

1 can't help themselves with.

2 BY MR. SPAN:

3 Q In a publicly held company, do you find many investors who  
4 want to invest in that kind of company?

5 A I think that would be unlikely.

6 Q Now we've been talking about the revenue side and the  
7 impacts on Delta's revenue over the last six years. I'd like  
8 to turn to the cost side of the equation and ask you to look at  
9 Page 13.

10 A Yes.

11 Q What does Page 13 represent?

12 A Well, what we did on Page 13 was to take Delta's operating  
13 expenses and show them in relation to, for every dollar of  
14 revenue, where did Delta spend its operating expenses. And  
15 that's what this chart represents.

16 Q And so for every dollar of revenue, for example -- and what  
17 time period is this?

18 A This is for the first half of this year.

19 Q Okay. So for every dollar of revenue, thirty-eight cents  
20 was spent on labor costs?

21 A Correct.

22 Q And twenty-six cents on fuel?

23 A Correct.

24 Q And then we go up the various other categories?

25 A That's correct. Labor and fuel are obviously the two

1 largest categories, by far.

2 Q Now --

3 THE COURT: Can you tell me what "contracted services"  
4 is?

5 THE WITNESS: Certainly, Your Honor. The -- over the  
6 last four or five years, airlines have begun to contract out  
7 certain services. For example, aircraft cleaning is often done  
8 on a subcontracted basis, not by employees of the airline, but  
9 they will retain a firm to do that for them. And so this would  
10 include services like that, that have been outsourced.

11 THE COURT: I've never seen an outsourcing of cleaning  
12 that didn't result in the employees who were doing the cleaning  
13 making less money.

14 BY MR. SPAN:

15 Q And is that why the jobs are outsourced?

16 A Well, my understanding is there are two reasons why they're  
17 outsourced. Obviously, saving money is a very important issue,  
18 particularly when an airline is losing money or a company is  
19 losing money.

20 Secondly, at least some airlines that have done this  
21 believe that they're getting a more efficient and effective  
22 cleaning when they've gone to outsourced employees. That's  
23 what they say. I don't have any way of confirming that, but  
24 many managements believe that to be true.

25 Q Now the total here of these expenses looks like it adds up

1 to \$1.06. Is that correct?

2 A It does.

3 Q So are you saying that the -- their costs were more than --  
4 Delta's costs were more than their revenues?

5 A Yeah. These are the mainline costs and, in fact, it says  
6 for every dollar of revenue, they pay out \$1.06 in expenses for  
7 their mainline operations.

8 Q And is that one of the reasons they're -- you talked about  
9 the five-million-dollar cash burn we've heard about, every day?

10 A Yes. There --

11 THE COURT: Wait, wait. I don't understand what \$5  
12 million translates into on a yearly basis or a monthly basis.

13 MR. SPAN: Well, we had -- I think --

14 THE COURT: I mean, or I don't understand how \$5  
15 million relates to the .06, as to the 1.06?

16 MR. SPAN: I think we had testimony from Mr. Bastian  
17 that there was current time, over the next three months, the  
18 projected cash burn; in other words, spending more than they  
19 were taking in, would be about \$5 million a day.

20 THE COURT: I understand it. I'm trying to find out  
21 what \$5 million a day makes up into over a month, over three  
22 months, over six months; you know, how it relates to the number  
23 1.06. Does it -- would it mean that we were cash burning at  
24 1.08, at 1.20 or at 1.04? I don't know.

25 MR. SPAN: I think we would have to do the math with

1 that and provide that to you.

2 THE WITNESS: Yeah. It is indirectly, but not  
3 directly, related to this because not all of these items are  
4 cash items.

5 THE COURT: Like depreciation and amortization?

6 THE WITNESS: Correct.

7 THE COURT: Which, if we took out, we would be at  
8 ninety-seven cents?

9 THE WITNESS: Yes. Your Honor, I should also point  
10 out -- I mentioned in passing, these are mainline operations,  
11 which is the -- in order to stick with the data that Mr.  
12 Bastian had put in the record yesterday, but of course, the  
13 company's obligations include its entire operations,  
14 consolidated operations and also these are operating expenses  
15 only. It excludes any interest charges.

16 THE COURT: Well, okay. But what I'm saying is if  
17 we're going to have the attorney talk to me about cash burn and  
18 have me look at this page, I either need to be able to relate  
19 to him or he needs to stop talking about cash burn. I mean, he  
20 knew one -- the other thing. I mean, I don't know why you are  
21 burning cash, honestly. I don't know what you're spending it  
22 on.

23 MR. SPAN: Well --

24 THE COURT: I don't know whether you're spending it  
25 because you're having to pay in advance, in which case it's not

1 fair to call it a cash burn, per se. It's advanced payment,  
2 which you've told me you had to do on fuel. I mean, I can't  
3 relate this, in any way, to your cash burn figure, and I have  
4 no idea what your cash burn figure really means because I'm not  
5 going to multiply it by the number of days in a year.

6 MR. SPAN: Well, we'll move on from that point, Your  
7 Honor.

8 THE COURT: Okay.

9 BY MR. SPAN:

10 Q Now the categories of costs that are shown on Page 13 --

11 THE COURT: The biggest one is labor, thirty-eight  
12 cents. Got that.

13 MR. SPAN: Okay.

14 BY MR. SPAN:

15 Q Are these categories the same categories that every airline  
16 would have?

17 A Yeah. I mean, you could do this same kind of a breakdown  
18 for any airline.

19 Q And --

20 THE COURT: You can do it, almost, for any business.  
21 You just would have a different thing for airline rent and  
22 airline maintenance. I mean, you just have some different  
23 items on the right-hand side. I mean, you would -- it's fairly  
24 standard to create this kind of a thing for businesses. I  
25 mean --

1 THE WITNESS: It is.

2 BY MR. SPAN:

3 Q And is it -- let's take this to the airline specific  
4 because the Court had asked the other day about what kinds of  
5 cost information -- how do you know the cost structures of  
6 other airlines? Is the --

7 THE COURT: I'm not interested in the cost structures  
8 of other airlines. I thought I made that entirely clear. The  
9 issue is: What is your cost structure and should I allow you  
10 to reject the airline pilots', you know, contract? I assume  
11 that no one else is exactly at six percent or exactly at, you  
12 know, four percent. I mean, obviously, Jet Blue's labor cost  
13 is similar to yours, as a percentage of the whole, because they  
14 have approximately -- I mean, you know, we went through that  
15 and it has very high labor cost.

16 BY MR. SPAN:

17 Q Well, is that true, Mr. Kasper?

18 A In the case of Jet Blue, no, that would not be true. Their  
19 labor cost would actually be significantly lower.

20 THE COURT: Yeah, but the number of the people they  
21 have is -- I thought that it was Jet Blue that has the number  
22 of people that we're talking about.

23 THE WITNESS: I think Your Honor is referring to the  
24 previous exhibit, the number of employees, or a previous  
25 exhibit --

1 THE COURT: Yeah.

2 THE WITNESS: The number of employees per aircraft?

3 THE COURT: Yup.

4 THE WITNESS: And as I indicated, I believe those  
5 numbers are probably overstated in the case of Jet Blue because  
6 of new employees brought on board in anticipation of the new  
7 aircraft that they're putting into service. But they also have  
8 a substantially lower wage scale, so even at the same ratio as  
9 Delta, their labor cost would be significantly lower.

10 THE COURT: Okay. How do we know they have a  
11 substantially lower wage scale?

12 THE WITNESS: That information, actually, Your Honor,  
13 is very widely available within the airline industry. The --

14 THE COURT: Well, I mean, how do we know what's widely  
15 available in the airline industry is in any way accurate?

16 THE WITNESS: Your Honor, there are a couple of ways.  
17 One is that unlike almost any other -- maybe any other industry  
18 that I'm aware of, airlines are required by federal law and  
19 regulation to file, on a quarterly basis, very detailed cost  
20 figures to the Department of Transportation, and so, it breaks  
21 out labor cost separately for pilots, flight attendants, ground  
22 personnel and in all of these other expenses in quite  
23 considerable detail. And this information is then consolidated  
24 by the Department of Transportation and made publicly  
25 available.

1 THE COURT: Okay. Because, you know, a lot of  
2 information is available by telephone, and you probably played  
3 that game when you were a child: Telephone. By the time you  
4 get around to the other side of the room, there's no  
5 relationship between what was originally said and what came  
6 out.

7 THE WITNESS: In this case, Your Honor, I think that's  
8 not a problem because the data are submitted under penalty of  
9 perjury and the data are widely reported, used by airlines.  
10 They reported very similar data, in somewhat less detail,  
11 reported to the Securities and Exchange Commission.

12 THE COURT: Okay, okay. You've answered my question.

13 BY MR. SPAN:

14 Q And are those comparative data that are published through  
15 Form 41 used widely through the industry?

16 A Yes, they are.

17 Q And how are they used?

18 THE COURT: You know what? As far as I can tell, as  
19 long as there's information available that you can get your  
20 hands on, everybody wants whatever information they can find  
21 about whatever it is they want to find it about. I mean, it's  
22 just that way.

23 So it would shock me to discover that it wasn't  
24 everybody didn't think that, you know, the vice president said,  
25 I hear the report came out yesterday., why isn't it on my desk,

1 you know?

2 MR. SPAN: Your Honor, if I may ask Mr. Kasper the  
3 very question that I think is troubling you --

4 THE COURT: Nothing is troubling me. It's perfectly  
5 obvious that everybody who could possibly get their hands on  
6 one, wants one.

7 BY MR. SPAN:

8 Q Slightly different question. Why is it important for Delta  
9 to know and to be concerned about the comparative costs of  
10 other airlines?

11 A Well, the reason it's important is because the airline  
12 business has become, essentially, what is called a "commodity  
13 business;" that many, many airlines can sell you a seat from  
14 almost anyplace in Washington, D.C. or New York to anyplace in  
15 the world. And when it's become a commodity, basically, what  
16 that means is price is the main driver; and when price is the  
17 main driver, there's a long history, well established in the  
18 airline and other commodity businesses, that the companies that  
19 succeed are companies that have low competitive costs.  
20 Companies that are unable to produce a commodity product or  
21 service at a competitive cost are going to fail in the  
22 marketplace.

23 And there's ample evidence in the airline industry that  
24 that is the pattern here, as well, which is why airlines like  
25 Delta are so interested in what the cost of their competitors

1 are, because those are the costs that they have to be able to  
2 meet in order to compete profitably in the marketplace.

3 Q Can an airline that does not have competitive costs  
4 survive?

5 A I don't believe so, no, not for any significant period of  
6 time.

7 Q And can it, in your mind, if it does not have competitive  
8 labor costs, survive for any significant length of time?

9 A Labor costs are a very significant component of the cost,  
10 as the previous chart showed. Most of these other costs tend  
11 to be set in the marketplace. Fuel is pretty much the same for  
12 every airline, holding aside the hedges that a few have.

13 Landing fees, airport charges, most of these other  
14 costs are set -- they're pretty similar across airlines. So,  
15 you know, the one cost that is generally considered a somewhat  
16 controllable cost at the airline level is labor cost. And so  
17 if your labor costs are out of line with the competition and  
18 your other costs are in line, you've still got a serious  
19 problem.

20 THE COURT: I think, presumably if you could find a  
21 route that nobody else wanted to fly, it wouldn't matter.

22 THE WITNESS: In the old days, I think you referred to  
23 earlier, Your Honor, when the industry was regulated, there  
24 were indeed many routes that were either monopolies by  
25 regulation or at most two carriers could serve; and, as a

1 result, airlines were able to charge higher prices than they  
2 subsequently were able to do when those markets were opened to  
3 new entry, as they are today.

4 BY MR. SPAN:

5 Q Let's now move to the topic that the Court had raised, the  
6 code share. Perhaps you could walk us through the basic  
7 elements of how international code sharing works and who gets  
8 the money and so forth.

9 A All right. I'm happy to do that. Maybe to start by  
10 answering a question Her Honor raised a few minutes ago.

11 When Delta sells a ticket that's a code share ticket, say  
12 from Indianapolis to Leone/France, that's sold as a Delta  
13 ticket, even though the leg from Paris to Leone is flown by Air  
14 France. So if I'm a customer, I buy the Delta ticket, it shows  
15 a Delta flight number all the way. When I change planes in  
16 Paris I'm directed to a flight that has two flight numbers, a  
17 Delta flight number and an Air France flight number. So I'm a  
18 Delta-ticketed passenger all the way through.

19 Now that's important because it -- we know from a lot of  
20 experience and, indeed, studies that --

21 THE COURT: Except that that plane doesn't say "Delta"  
22 on it.

23 THE WITNESS: That is correct.

24 THE COURT: Okay.

25 THE WITNESS: The plane does not. We know that

1 passengers have a strong preference for what's called "online  
2 service," meaning staying on the line, the same airline. It's  
3 more convenient, you know who to deal with if your bags get  
4 lost, you know, the ticketing is simpler; there are a whole  
5 bunch of reasons the passengers prefer to do that. And it's  
6 particularly important on international travel where you're  
7 dealing with people -- if you don't have that, you may be  
8 dealing with people that don't speak English very well, and if  
9 you have any problems it gets complicated. So, number one,  
10 passengers prefer it.

11 Number two, Delta's competitors, such as United, Northwest,  
12 American, all have code share relationships internationally  
13 that permit them to sell online, quote, "code share service" to  
14 most of the destinations that Delta can serve with Air France.  
15 So, competitively --

16 THE COURT: Okay. Are they using Air France or are  
17 they using another airline?

18 THE WITNESS: No, they're using another airline.  
19 United --

20 THE COURT: Like Lufthansa or somebody?

21 THE WITNESS: United uses Lufthansa, American uses  
22 British Airways, Northwest uses KLM. And if you look at a map  
23 of the KLM route structure or the British Airways route  
24 structure out of London, you would see that they all cover  
25 almost all the same points in Europe and Africa, in many cases

1 in Africa.

2 So what a code share then is simply is each airline  
3 typically is permitted to sell transportation that includes one  
4 or more legs on another carrier, in this case a foreign  
5 carrier.

6 BY MR. SPAN:

7 Q Now how does the international code sharing benefit Delta?

8 A Well, maybe the way to do that is to look at --

9 THE COURT: And who gets the money?

10 THE WITNESS: I will explain that, Your Honor, or I'll  
11 endeavor to.

12 THE COURT: I mean, that's the part that was always  
13 interesting to me. Why do I want to put somebody else's name  
14 on my ticket if, you know, all they're paying me is for the  
15 price of the stamp?

16 THE WITNESS: Your Honor, you would probably not be  
17 surprised to learn that it is a matter of intense interest as  
18 well to the airlines. In fact, when I was serving at the Civil  
19 Aeronautics Board before the international markets were  
20 deregulated, one of the activities that the board had to do was  
21 to approve what are called "prorate agreements" between  
22 airlines as to how to split revenues. And I can assure you  
23 that they were intensely interested in how that process was  
24 done.

25 If you look at the chart on Page 15, you get an idea

1 of what code sharing can provide to Delta passengers.

2 THE COURT: Okay. Is this going east to west or west  
3 to east?

4 THE WITNESS: This particular service -- this  
5 illustration is going west to east, from the United States to  
6 Europe.

7 BY MR. SPAN:

8 Q Is this just the Air France code share?

9 A This particular chart is just the Air France code share.  
10 And so that cluster pattern with the black lines going out, the  
11 stars shows the code share destinations that Air France serves  
12 that Delta can sell code share service on.

13 So, for example, if you took an Atlanta flight to Paris,  
14 you could code share then on Air France to South Africa or to  
15 the Indian subcontinent.

16 THE COURT: But not to Kenya?

17 THE WITNESS: Your geography is better than mine, Your  
18 Honor.

19 THE COURT: Kenya is on the righthand side of Africa.

20 MR. SPAN: Having been there and having flown to  
21 Nairobi last year, I can attest that. I think it was just  
22 British Air, and I think KLM were the two that -- and I flew on  
23 a code share, I shouldn't admit this, on American to British  
24 Air.

25 THE COURT: Well, it's also possible Lufthansa flies

1 there. I don't know.

2 THE WITNESS: So if you look at it, this basically --  
3 what this means to Delta and its passengers is that they can  
4 book a ticket in effect online with Delta and go to all of  
5 these places with relatively convenient connections with one  
6 leg of that journey being provided on a plane flown by Air  
7 France.

8 Now you had asked, Your Honor, about how the money was  
9 split. And this -- the code shares work two ways. On the next  
10 chart, 16, I just used a sample journey for a trip, a passenger  
11 originating in the United States. Let's say the passenger was  
12 originating in Indianapolis, wanted to go to Leone. Delta  
13 doesn't serve Leone. It probably will find it difficult to  
14 serve Leone if ever because there's not enough traffic from  
15 Cincinnati to Leone to justify putting an airplane on that  
16 route.

17 THE COURT: And the chances are that intra-country  
18 flights are going to be not well thought of.

19 THE WITNESS: You mean by Air France between Paris and  
20 --

21 THE COURT: Well, yeah, or whatever other airlines  
22 they are. I mean, they don't want you flying, you know, their  
23 territory.

24 THE WITNESS: Unless you're a code share partner.

25 THE COURT: Okay.

1 THE WITNESS: In which case, they're more than happy  
2 to take you because it -- what happens in this particular  
3 instance is that Delta would collect all of the revenue for the  
4 flying from Indianapolis to Cincinnati and on to Paris.

5 THE COURT: Okay.

6 THE WITNESS: Air France would collect revenues for  
7 the Paris/Leone segment and Delta would get, in effect, a  
8 commission on the sale of that as well. So Delta would get the  
9 bulk of the revenue in this case.

10 THE COURT: Okay. But what if the passenger said,  
11 hey, wait a minute, if I fly to Paris and then I buy another  
12 ticket from Paris to Leone, it won't cost me as much.

13 THE WITNESS: Usually, that is not the case. Usually  
14 --

15 THE COURT: You mean, usually it's not the case that  
16 it would be cheaper?

17 THE WITNESS: That is correct. Usually it is cheaper,  
18 often significantly cheaper, to fly with what's called a  
19 "through ticket" online to Leone.

20 THE COURT: Okay.

21 BY MR. SPAN:

22 Q Now, if Delta didn't have a code share to Leone, could that  
23 passenger from Indianapolis fly some other airline, U.S.  
24 airline to Europe, and then go on to Leone?

25 A Without the code share --

1 THE COURT: Well, they could fly -- they could fly  
2 Delta to Paris and then they could pick up Air France or one of  
3 these other airlines to fly from Paris to Leone.

4 THE WITNESS: That's correct. In addition, of course,  
5 they would have the option of flying, say, Northwest/KLM over  
6 Detroit or American or --

7 THE COURT: They have the option of taking the train  
8 from Paris to Leone.

9 THE WITNESS: They would have a number of options.  
10 But there would be competitive options that would offer in  
11 effect online service if Delta didn't do that.

12 THE COURT: Actually, that Paris to Leone trip is  
13 probably only about three and a half to four hours on the  
14 speedy train, so, you know.

15 Okay. But what you're saying is that in essence is a  
16 way of locking the passenger in because it's just plain easier  
17 for it.

18 THE WITNESS: It is easier and it also tends to be  
19 cheaper for the passenger.

20 THE COURT: Okay.

21 THE WITNESS: If you took --

22 THE COURT: Now neither one of these examples seem to  
23 me to leave Air France with that much money.

24 THE WITNESS: If we turn the page, we'll see why Air  
25 France might be interested in doing this as well. Let's

1 suppose that --

2 BY MR. SPAN:

3 Q Is this a reverse direction?

4 A This is now a reverse direction trip. And for -- the  
5 assumption here is we have a passenger originating in Vienna  
6 that's interested in going to Raleigh/Durham, having heard of  
7 the --

8 THE COURT: Obviously, a reasonable thing to do.

9 A -- having heard what a beautiful place it is. And --

10 THE COURT: They have great basketball. I mean, what  
11 do you want?

12 THE WITNESS: You stole our coach. I won't comment on  
13 that. Vienna -- I went to a university where Roy Williams used  
14 to coach.

15 Vienna to Paris is an Air France passenger that would  
16 then get on an Air France flight from Paris to Atlanta and from  
17 Atlanta to Raleigh/Durham would be on Delta. So in this case,  
18 it would actually be the reverse of the previous situation.  
19 Air France would collect the revenues from Vienna to Atlanta.  
20 Delta would collect the revenues from Atlanta to Raleigh/Durham  
21 and pay a commission to Air France on that.

22 THE COURT: Okay. Can I ask you a question?

23 THE WITNESS: Certainly.

24 THE COURT: How is it that the airlines keep track of  
25 all of these little tiny things that affect how much money they

1 get in revenue? Is there, for example, I'm thinking of some  
2 other industries where there is settle-up procedures.

3 THE WITNESS: There is an elaborate settle-up  
4 procedure. But basically what happens is the airlines, Air  
5 France and Delta in this case, will have negotiated the  
6 provisions in a contract, in an agreement, and they will then -  
7 - there is in effect an internal clearing house that all of  
8 these tickets are obviously are tracked on a computer, so it's  
9 done more or less automatically, but then reviewed and I assume  
10 paid.

11 THE COURT: I have another case, one is a fairly large  
12 business, and it's still doing their accounting with green  
13 eyeshades.

14 MR. HUEBNER: Your Honor, just to remind the Court for  
15 one minute, one of our most important first day motions was  
16 precisely for this nexus. It's called the "intra-line system."  
17 There are local and international clearing houses.

18 THE COURT: It doesn't matter. I mean, I'm trying to  
19 understand what it is, who makes money from it, and where do  
20 they make the money because, obviously, if you're not making a  
21 buck on it, you aren't doing it.

22 MR. HUEBNER: Right. And the clearing houses charge a  
23 fee, as you would imagine, for helping clear both domestic and  
24 international transactions.

25 THE COURT: I mean, I take it that Air France is the

1 only international person that we have a code share agreement  
2 with?

3 MR. SPAN: No.

4 THE WITNESS: No, that is not correct.

5 THE COURT: Who else? Must be somebody in the Far  
6 East.

7 MR. HUEBNER: I believe Korean is in the Far East, is  
8 the code share in the Far East.

9 MR. SPAN: We can certainly get you that information,  
10 Your Honor.

11 THE COURT: I don't really need to know exactly. I  
12 just was trying to find out whether -- I mean, this is -- you  
13 don't get very far -- you don't get to the real Far East on Air  
14 France. And so what I wondered is: Is there another carrier  
15 that you code share with that picks up the real Far East?

16 THE WITNESS: That is correct. And that would be  
17 Korean, Korean Air.

18 THE COURT: Okay.

19 THE WITNESS: And I think Your Honor has put her  
20 finger on an important point or important reason for the  
21 existence of these -- they're called "global alliances" for a  
22 reason. And the objective of them is to provide global  
23 coverage, so that Delta can sell transportation from  
24 practically anywhere in the United States to anywhere in the  
25 world, either on its own services; or, if it can't or doesn't

1 serve those points, through a code share partner.

2 And the reason they want to do that is because if they  
3 don't they will lose traffic to American, United, Northwest,  
4 Continental, who can provide them access that the customers --  
5 the kind of online access they want.

6 BY MR. SPAN:

7 Q So code sharing is a competitive necessity?

8 A It really is for carriers that are network carriers like  
9 Delta.

10 MR. SPAN: Your Honor, I --

11 THE COURT: Unless they are carriers like Air France,  
12 which are putting a lot of their money and energies into  
13 international flying.

14 THE WITNESS: But even Air France, for example, needs  
15 access to -- they can serve some of the major gateways like New  
16 York and Los Angeles, but without access to the internal U.S.  
17 market that they get with Delta.

18 THE COURT: I'm not talking about the internal U.S.  
19 market. I'm talking about, let's see, Exhibit 15, and they're  
20 flying to, say, fifteen different places in Africa. Now are  
21 they code sharing that out, or are they flying those flights  
22 themselves?

23 THE WITNESS: Air France is flying those flights, and  
24 if Delta has passengers that want to travel from --

25 THE COURT: Okay. And what I'm saying to you is: Air

1 France has devoted more of its energies to international flying  
2 than Delta has.

3 THE WITNESS: Yes, that's true, although a part of  
4 that is really just kind of an accident of geography and  
5 history.

6 THE COURT: All right. And I'm not suggesting it is.  
7 It's just a statement.

8 MR. SPAN: It's correct. And, Your Honor, I was  
9 handed a note that listed some other code share partners of  
10 Delta --

11 THE COURT: We have Continental, we have --

12 MR. SPAN: -- such as, well, Alitalia, Czech Airlines  
13 and El Al.

14 BY MR. SPAN:

15 Q Now what -- on Exhibit 8 -- or Page 18, have you taken --

16 THE COURT: I don't understand the code share with El  
17 Al.

18 MR. SPAN: I can't explain it, Your Honor. I just --

19 THE COURT: I mean, you know, people that want to fly  
20 El Al want to fly El Al. They do not want to fly Delta because  
21 they believe that El Al is a much safer airline and much better  
22 protected.

23 MR. HUEBNER: Your Honor, I'll take this one. The  
24 trick is to be able to use Delta miles but get El Al aircraft.  
25 There are a lot of people -- I know people who are flying from

1 other places, again, if you're coming from a smaller U.S. city,  
2 you want to fly from Raleigh/Durham through New York to Tel  
3 Aviv, you can buy a Delta ticket exactly as Mr. Kasper  
4 explained.

5 THE WITNESS: And indeed, El Al would be very  
6 interested in having access to Delta's systems so that it could  
7 get passengers to and from interior U.S. points that it  
8 couldn't serve.

9 THE COURT: Okay. But as I understand it, most people  
10 who fly to Israel would prefer to fly on El Al, but --

11 BY MR. SPAN:

12 Q Now we talked about in general about the economics of how  
13 it works. Can you look at Page 18, which takes a -- which  
14 breaks down a particular route and describes the passenger  
15 breakdown?

16 A Right. I mean, the point of Exhibit 18 is that --

17 THE COURT: Well, what I don't understand is if I took  
18 those numbers they'd add up to 84.5 percent?

19 THE WITNESS: That's correct. And 84.5 percent, Your  
20 Honor, is the average -- was the average load factor on Delta's  
21 Cincinnati/Paris flight for the year 2004.

22 THE COURT: Okay.

23 BY MR. SPAN:

24 Q And what do the other points on the bar show?

25 A Well, let me take it from the bottom. The point I'm trying

1 to make with this chart is that it would probably not be  
2 economically viable for Delta to serve Cincinnati/Paris if it  
3 couldn't code share with Air France at Paris. And the reason  
4 for that, and I think you can see in this chart, only 32.6, 33  
5 percent of the 84.5 percent, actually are passengers flying to  
6 Paris. Forty percent --

7 THE COURT: Wait, wait. How do I know that they're --  
8 that that's 32.6 percent?

9 BY MR. SPAN:

10 Q Is that the O&D?

11 A This is what's called the origin and destination.

12 THE COURT: Okay. But they originated in --

13 THE WITNESS: They originate either in Cincinnati or  
14 someplace in the U.S., fed into Cincinnati.

15 THE COURT: Okay. And then you got another 39.3  
16 percent that are connections at Air France in Paris to  
17 somewhere else.

18 THE WITNESS: Correct.

19 THE COURT: And then you've got another -- a type of  
20 your code share in which there's 7.9 percent of the connections  
21 are to the Paris/Bombay flight, which is actually an Air France  
22 flight.

23 THE WITNESS: I believe that's a Delta flight, Your  
24 Honor, that goes from Paris on to Bombay.

25 THE COURT: Okay.

1 MR. SPAN: That's an actual -- that's not a code  
2 share. That's a Delta flight.

3 THE WITNESS: That's --

4 THE COURT: Okay. Because I can't -- I mean, there's  
5 two code shares you have in India, and I don't know which one  
6 is which --

7 THE WITNESS: Well, in addition to flying on its own  
8 mettle, Delta code shares with Air France to those  
9 destinations.

10 THE COURT: No, no, I understand that. I'm just  
11 saying I would not assume you would want to fly to exactly the  
12 same destinations. But this makes the most sense when somebody  
13 is flying to some other destination.

14 THE WITNESS: Well, carriers have an incentive that if  
15 they have sufficient traffic to fly that service, what's called  
16 their own airplanes, their own mettle, because it's more  
17 economically valuable to them to do that. So --

18 THE COURT: No, but what I'm saying is if there  
19 weren't places that the other airline were going that you  
20 weren't going, there would be no reason to code share.

21 THE WITNESS: That is correct.

22 BY MR. SPAN:

23 Q And so does Page 18 demonstrate that the -- that of the  
24 people that are on -- the average passengers on that plane to -  
25 - from Cincinnati to Paris --

1 THE COURT: Well, this is just -- I mean, did you do  
2 this -- I mean, do these breakups have any basis in reality or  
3 did you just do it?

4 THE WITNESS: No. These are actually derived from the  
5 DOT database that the carriers are required to file I mentioned  
6 to you before, Your Honor.

7 THE COURT: Yes, okay.

8 THE WITNESS: So this is traffic that's reported  
9 officially to the U.S. Government. And so what this says that  
10 if there were eighty-four passengers on the airplane on any  
11 given day --

12 THE COURT: Well, what this says is that people in  
13 Cincinnati prefer not to stay in Paris.

14 MR. SPAN: That's certainly one way to read it.

15 BY MR. SPAN:

16 Q And so, without the code share, if Delta were -- would  
17 Delta fly from Cincinnati to Paris?

18 A I think it would be extremely difficult for Delta to  
19 support a viable service without the code share. They might  
20 get some of those thirty-nine -- that thirty-nine percent of  
21 the traffic that's making connections to do an interline  
22 connection with Air France using Delta part of the way, but we  
23 know that there's a strong consumer preference for online  
24 service.

25 And just because Delta can't offer it doesn't mean that

1 Northwest, United, Continental, maybe U.S. Airways and  
2 Northwest can't offer it. They probably would offer it, making  
3 it a more attractive service. And I would expect competitors  
4 to pick up a substantial chunk of that thirty-nine percent.

5 Now, Delta's break-even load factor, I believe, for 2004  
6 was probably in the low-to-mid seventy percent range. So they  
7 don't have to lose very much of that traffic before that  
8 service becomes uneconomical.

9 THE COURT: Well, I believe that the numbers we've  
10 gone over would certainly suggest it was less than 84.5  
11 percent.

12 THE WITNESS: Oh, absolutely less than 84.5 percent.  
13 And I think it will -- probably in the mid to low seventies,  
14 which means they couldn't give up very much of that thirty-nine  
15 percent and still have enough traffic for that flight to be  
16 profitable.

17 THE COURT: I understand it's supposed to be up around  
18 ninety percent?

19 THE WITNESS: The break-even load factor?

20 THE COURT: That that's what we would like it to be.

21 THE WITNESS: It -- well, if possible.

22 MR. SPAN: I think we'd like the load factor to be up  
23 there. But the break-even load factor we want to be lower.

24 THE COURT: I don't disagree. I'm sorry. I was  
25 really talking about the load factor, not the break-even load

1 factor.

2 BY MR. SPAN:

3 Q Now is the point of Chart 18 that, without the code share,  
4 Delta would not flying -- probably not be flying that  
5 Cincinnati to Paris route?

6 A That is correct.

7 Q And by flying the Cincinnati/Paris route, does Delta  
8 provide flying opportunities for its mainline pilots?

9 A It does.

10 Q And have you calculated the amount of those opportunities?

11 A Yes, I have.

12 Q And is that Page 19?

13 A It is.

14 Q Could you explain your methodology?

15 A Yes. What this methodology did was simply take the  
16 Cincinnati to Paris roundtrip annual pilot block hours, and  
17 that's a flight I believe that has to have three pilots on it.  
18 And so with a daily service, if you take three pilots for a  
19 roundtrip flight of a daily flight, that's 365 days a year,  
20 that works out to approximately 18,643 --

21 THE COURT: Okay. But how much does it work out per  
22 pilot?

23 THE WITNESS: If you take that block hours and then  
24 divide it by the average number of block hours a pilot in the  
25 Delta system flew in the second quarter of 2005, that would

1 work out to about twenty-eight pilot positions required for  
2 that service.

3 THE COURT: No, no. You're not getting what I'm  
4 asking. Okay.

5 You say the total block hours are eighteen, okay? How  
6 much is the block hours per roundtrip?

7 THE WITNESS: The block -- I believe that the flight  
8 averages eight and a half hours each way. I think it's eight  
9 hours one way, nine hours the other.

10 THE COURT: So how many block hours is that?

11 THE WITNESS: Well, that would be seventeen block  
12 hours.

13 THE COURT: Okay. Because I don't want to take the  
14 chance that block hours is something else other than what I  
15 think it is, which is that you just --

16 THE WITNESS: Block hours --

17 MR. SPAN: Block hours are the actual flight --

18 THE WITNESS: A "block hour," again, it's a jargon. I  
19 should probably have explained it, Your Honor. It technically  
20 means from the time you push off at the blocks on the gate --

21 THE COURT: Right.

22 THE WITNESS: -- where you depart to the time you nose  
23 into the blocks on the gate when you arrive. So that -- and,  
24 obviously, the pilot is in command of the aircraft and flying  
25 it that --

1           THE COURT: Okay. And then what do we do about the  
2 time he has to stay there because he can't fly the plane back  
3 because wouldn't it put him over limit?

4           THE WITNESS: Yes. Well, certainly, a pilot would  
5 have a mandatory rest period before he could -- he or she could  
6 fly the plane back, yes.

7           THE COURT: Okay. I want to ask a pilot this  
8 question. When you land a plane, a big plane, I don't mean a  
9 little tiny two-person plane, do you put the back wheels down  
10 first or the front wheels down first?

11          MR. SIMON: Air Force or Navy pilot, ma'am?

12          THE COURT: Because when I look at that Jet Blue film,  
13 and I've thought about it, it looked to me like he landed with  
14 his back wheels first and brought the front wheels down after  
15 he brought the back wheels down.

16          MR. SIMON: Your Honor, this is unanimity among Navy,  
17 Marine and Air Force pilots that it's back wheels down first.

18          THE COURT: Okay.

19          MR. SIMON: The preferred technique.

20          THE COURT: Just one of those things you just like to  
21 -- I mean, it's like I thought about it afterwards and I  
22 thought, now what was it that I actually saw. And that made a  
23 big difference because if you can keep the back wheels up in  
24 the air and you go a little bit longer, you can slow the plane  
25 down further, so that when you have to put the front wheels

1 down because you've run out of momentum, the plane is slower.

2 Yes?

3 MR. SIMON: Let the record reflect a unanimity of  
4 nodding heads in an affirmative manner.

5 THE COURT: I don't know. Somebody stood up and was  
6 going to say something and I --

7 CAPTAIN MOAK: I just said, Your Honor is correct.

8 MR. SIMON: That's Mr. Moak, for the reporter.

9 THE COURT: Okay.

10 MR. SIMON: Captain Moak.

11 BY MR. SPAN:

12 Q So if we can go back to the international code sharing, so  
13 the international code sharing brings in revenue to Delta --

14 THE COURT: Okay. But I'm still -- okay. Now if I  
15 were to divide twenty-eight into 18,643, then I would get the  
16 number that each one of those pilots was flying per year?

17 THE WITNESS: Well, it would be basically that's --  
18 well, not necessarily a year. That's just -- this is just this  
19 particular route.

20 THE COURT: I understand that. I'm just using this as  
21 this route because I only have that number to divide into that  
22 number.

23 MR. SPAN: I think the math is seventeen hours times  
24 three pilots which is fifty-one, times 365 days. And that  
25 should come out to about 18,000.

1 THE WITNESS: Yeah.

2 THE COURT: Okay. But you didn't leave him any time  
3 at the airport to buy duty-free liquor or to buy a gift for  
4 their children.

5 THE WITNESS: Your Honor, I'm --

6 MR. SPAN: We were trying to be conservative. And if  
7 we added more time, we'd come up with more jobs.

8 THE COURT: Okay. Now you haven't heard my theory  
9 about how busy lawyers come home with a gift for their child on  
10 every occasion. Okay? They have their wives take care of the  
11 kids and take them somewhere, and they go to Toys-R-Us and they  
12 buy fifteen or twenty toys that are suitable and they hide them  
13 in the closet. And so when they come home, they just have to  
14 go into their closet and pick out a toy.

15 MR. SIMON: If we're not mowing the lawn, Your Honor.

16 MR. HUEBNER: Your Honor, in light of your obvious  
17 bias against male lawyers, I demand that you disqualify Mr.  
18 Simon.

19 THE COURT: Well, but I'm saying, you know, it's  
20 essential to the thing, you know? You can either do it all at  
21 once or you can -- I mean, you guys go down to Delaware. I  
22 mean, when do you have time to buy a present for the kids? I  
23 don't know. I don't know.

24 I had a kid that, you know, oh, mommy, I have a sore  
25 throat, I had to come home with a gift.

1 MR. SPAN: I wish I had thought of that, stocking up  
2 in advance when my child was young. I would have done that.  
3 But I bought him something each time.

4 THE COURT: I thought it up when I was writing an  
5 article for the ABA Journal and was thinking of all sorts of  
6 things that you could do to speed your time, like when you take  
7 your shirts to the laundry, you have half of them put on  
8 hangers and the other half folded so that you can wear the ones  
9 from the hangers to the office without the creases. And when  
10 you pack your bag, you just pick up the folded ones and put  
11 them in the bag. I mean, you know, if you're really -- you  
12 know, if you're really into one of these, you know, working  
13 twenty hours a day, you got to have these little tiny time-  
14 savers.

15 I'm sorry. You can proceed.

16 THE WITNESS: A wiser man, you may proceed.

17 BY MR. SPAN:

18 Q Well, so just to go back for a moment, the international  
19 code sharing benefits Delta by providing additional revenue,  
20 correct?

21 A That is correct.

22 Q And it provides additional flying opportunities for the  
23 Delta pilots?

24 A Correct.

25 Q Does international code sharing take away Delta pilot jobs

1 in your opinion?

2 A No. I don't believe it is. I think it --

3 THE COURT: I don't know that anybody was arguing that  
4 it did. Is there something that I'm missing in this in which  
5 one of the problems was that somebody didn't want to do code  
6 share?

7 UNIDENTIFIED: No.

8 THE COURT: Okay. I wasn't aware that the pilots were  
9 objecting to code share.

10 MR. SIMON: That is correct, Your Honor.

11 THE COURT: I mean, they're objecting to regional code  
12 share, but that's a different issue.

13 MR. SPAN: Well, international code sharing was part  
14 of the scope proposal that the company had made.

15 THE COURT: Well, but you're already doing it, aren't  
16 you?

17 MR. SPAN: Yes. But this was to extend it. But I --

18 THE COURT: To extend it -- to extend it where? How?

19 MR. SPAN: I think an agreement has been reached  
20 tentatively with the --

21 THE COURT: No. I'm just saying to you, you know --

22 MR. SPAN: -- to -- there were some restrictions, Your  
23 Honor, in the old contract.

24 THE COURT: Okay. I think that the pilots' interest  
25 in code sharing is to make sure as much of the flying that is

1 done is done by them.

2 MR. SPAN: And, as we believe totally is not disputed,  
3 is that the code sharing does provide additional flying  
4 opportunities for the pilots.

5 THE COURT: It doesn't provide additional flying  
6 opportunities. It maintains the flying opportunities that they  
7 already have because you already code share with Air France.  
8 So you're not proposing that you're going to code share  
9 anymore. I mean, unless you're proposing to code share with  
10 somebody you don't already code share, you're just maintaining  
11 hours and not creating hours. And you're actually taking away  
12 money because you're taking away their two dollars an hour on  
13 international flights, or something like that.

14 MR. SPAN: Well, we'll move on, Your Honor.

15 THE COURT: Okay.

16 MR. SPAN: And we'll move on to the subject perhaps on  
17 which there is more disagreement and that's on the regional  
18 jets.

19 BY MR. SPAN:

20 Q Mr. Kasper, at Page 20, you have a slide which talks about  
21 regional jets. Can you walk us through why --

22 THE COURT: Could I ask you to start first on Page 24?  
23 Okay. And this is why I want to start on Page 24. I take it  
24 that a Boeing 737 is not a regional jet.

25 THE WITNESS: That's correct, Your Honor.

1 THE COURT: Okay. So I get a Boeing 737 flying at 8  
2 a.m. from Atlanta to Austin. Then at 11 a.m., I have a Boeing  
3 737 flying from Austin to Atlanta.

4 Now that's presumably the same plane, but then I have  
5 a Boeing 737 flying out at 12 noon. Now, is that the plane  
6 that was flying out of Austin at 11 or is that a different  
7 plane?

8 THE WITNESS: I think it's likely that was a different  
9 airplane of the same type.

10 THE COURT: Okay. And that -- is that the same plane  
11 that's flying out at 6 p.m. going from Atlanta to Austin?

12 THE WITNESS: Your Honor, it could be --

13 THE COURT: But it might be. Okay. Fine.

14 THE WITNESS: Right.

15 THE COURT: Then we've got the McDonald MB-88 which is  
16 the original flying from Austin --

17 THE WITNESS: I'm sorry, Your Honor. No, that is also  
18 a large jet aircraft.

19 THE COURT: Okay. We have that one going from Atlanta  
20 to Austin, and then we have that same type of plane going back  
21 from -- at eleven o'clock from Atlanta to Austin.

22 Now there's then a flight, same plane, going from  
23 Austin to Atlanta at one o'clock and then that same type of  
24 plane leaving Atlanta to Austin at eight o'clock.

25 So it's very difficult to know which one of these

1 trips are pair ground trips and which ones -- you know, I mean,  
2 I have been on planes going to North Carolina where they were  
3 flying to Raleigh, they were flying to Greensboro, they were  
4 flying up to someplace else, and whatever.

5 I don't know how many different planes we've got here.

6 THE WITNESS: Your Honor, I'm not sure I could give  
7 you an exact answer, but I can --

8 THE COURT: No, I know, because this heading says:

9 "Regional Jets Also Permit Delta to Maintain Service  
10 During Off-peak Times of the Day when Traffic is Lighter."

11 Now except that Canadair Regional Jet is providing all  
12 of the service 2 p.m. and 5 p.m.

13 THE WITNESS: Correct.

14 THE COURT: So I don't know -- I don't know how many  
15 planes you're using.

16 THE WITNESS: Your Honor, I think the way to interpret  
17 this chart to understand it a little better is just to let you  
18 look -- let's look at Atlanta/Austin and you can see that if  
19 you look down, there are -- one, two, three, four, five, six --  
20 seven flights a day from Atlanta to Austin.

21 Four of those flights are provided by large jet  
22 aircraft. That's the aircraft -- those are the aircraft within  
23 the dark bold print. Three of the flights are provided by  
24 regional jets.

25 So what a regional jet does is to permit Delta in a

1 market like Austin which is a nice market, but not a terribly  
2 large market to provide a very --

3 THE COURT: Okay. And I'm saying to you they are  
4 matched in terms of number, but I have no idea whether they're  
5 matched in terms of flight, and I don't know whether that  
6 matters or whether it doesn't matter.

7 THE WITNESS: Well, it -- I don't think --

8 THE COURT: I mean, I'm assuming that there's a  
9 certain -- I mean, the flight from Austin to Atlanta presumably  
10 can get from Austin to Atlanta by 10, and then that same plane  
11 can go back out at eleven o'clock, and presumably get -- but I  
12 don't know how because I don't know how long it takes to fly  
13 from Austin to Atlanta.

14 THE WITNESS: I think you're right.

15 MR. SPAN: Yeah. We can't tell from this chart, and  
16 it really doesn't matter, Your Honor --

17 THE COURT: Why doesn't it matter? It seems to me  
18 that it has a lot to do with your costing, whether or not  
19 you're bringing planes in from another place, whether these are  
20 turnarounds which have no passengers --

21 THE WITNESS: Your Honor, I think I can safely tell  
22 you that they will not fly these planes empty. What they will  
23 do is -- I suspect given Austin, it's probably a turnaround  
24 market. That is, the flight would not --

25 THE COURT: Well, that's what I'm saying. I can't

1 tell whether they're -- you know, I mean, we've got a Boeing  
2 737 leaving at eleven o'clock from Austin and then we have  
3 another one leaving at twelve o'clock from Atlanta. Now is  
4 that enough time to turn that plane around? Doesn't sound like  
5 it to me.

6 THE WITNESS: No. No, it isn't. But what Delta does  
7 is when it sets its schedule, it schedules the whole fleet, and  
8 so it's not at all uncommon to take an airplane that's  
9 returning from Austin to Atlanta and then to run that flight on  
10 to someplace else like Raleigh/Durham.

11 THE COURT: I'm not -- I understand that, but I'm just  
12 saying to you this particular -- you know, this particular  
13 schedule doesn't -- doesn't allow me to understand why there  
14 are efficiencies, because I'm left with the Canadair flights  
15 not being able to -- you know, are they all new flights in, are  
16 they round trips, whatever. I mean, I don't know how far it is  
17 from Austin to Atlanta.

18 MR. SPAN: Your Honor, perhaps the efficiencies or the  
19 benefits come not so much from whether you can turn the plane  
20 around or not, but the frequency of service in a particular  
21 market which leads to get greater passenger loads if you can  
22 offer a schedule where the passenger will have more options to  
23 get in and back to Austin --

24 THE COURT: Okay. And this is why we dropped 286  
25 flight options into and out of Austin?

1 THE WITNESS: Dallas or --

2 THE COURT: Dallas.

3 THE WITNESS: Your Honor, my understanding from what  
4 Delta has said publicly in its filings with the Securities and  
5 Exchange Commission, among others, is that the reason that they  
6 discontinued the hub at Dallas was because it was not making  
7 money. It was losing a substantial amount of money. They  
8 continue to provide very frequent service to --

9 THE COURT: That's not what they told me in court.  
10 They told me they handled one plane a day.

11 THE WITNESS: To Dallas?

12 THE COURT: That's what they told me. They told me  
13 they had reduced it to one plane a day from almost 300.

14 MR. SPAN: Well, I'm sure that -- and I can't comment  
15 on that, but I'm sure that if it was an economical route, they  
16 would fly it. If it's not --

17 THE COURT: Well, what I'm saying is -- I mean, I  
18 asked the question, and I'm pretty sure I was told one flight a  
19 day. Now, you know, I -- these attorneys fly down to Dallas  
20 like they think it's, you know, a Christmas present that they  
21 get when they get up in the morning, and if you have 285 ways  
22 of getting home, that's a lot of -- or getting down there,  
23 that's a lot of ways of getting there and getting back, and  
24 this is why I was --

25 MR. HUEBNER: Your Honor, just to jump in for a

1 second, since I was probably your interlocutor at the time.

2 What Delta did was -- and again, I think it was  
3 widely, publicly, and consistently reported -- we  
4 substantially, very substantially downsized Dallas/Fort Worth  
5 from being a hub to being a much --

6 THE COURT: I'm not suggesting that you didn't. But  
7 what I am saying is that my understanding was that the number  
8 of flights you went down to was around one.

9 MR. HUEBNER: Yeah. I don't believe that's correct,  
10 Your Honor, and if for some reason that was said by anyone and  
11 that person was me, I apologize, but it was --

12 THE COURT: Okay. Well, I would appreciate if I had  
13 some idea of what you went down to. I mean, the other number  
14 was such that, you know, it would mean -- what, every three  
15 times an hour, you could figure out a way to get out of there.

16 MR. HUEBNER: We'll check the transcripts, Your Honor,  
17 and correct any misimpression --

18 THE COURT: Okay.

19 MR. HUEBNER: There are twenty -- there are still  
20 twenty flights a day out of Dallas/Fort Worth for us.

21 THE COURT: Okay. That's fine. That's more than I  
22 want to see.

23 MR. SPAN: Did Your Honor have any other questions  
24 about Page 24 or may we go back to --

25 THE COURT: No, you can keep going. I mean, you were

1 -- you were --

2 MR. SPAN: Actually, we were on Page 20.

3 THE COURT: Yeah.

4 BY MR. SPAN:

5 Q And if you could -- Mr. Kasper, if you could just explain  
6 for us how regional jets enhanced flying opportunities for  
7 Delta's mainline pilots?

8 A Certainly. Well, regional operations used to be called  
9 "feeder operations," and I think there's a good reason for  
10 that, that their primary focus and activity and life is to feed  
11 connecting traffic to mainline carriers predominantly at their  
12 hub airports. RJs do this by serving markets that are too  
13 small to be served economically by large jet aircraft. The  
14 largest --

15 THE COURT: Well, wait, I didn't understand two. RJs  
16 can be used to serve markets too thin for traditional mainline  
17 aircraft or too long for turbo props.

18 THE WITNESS: I'm sorry. I think --

19 THE COURT: Now is that because they're too long for  
20 the runway or --

21 THE WITNESS: I'm sorry --

22 THE COURT: -- or is it because they can't fly that  
23 far?

24 THE WITNESS: It's the latter, Your Honor, for the  
25 turbo props. It would be too far, either too far to fly

1 physically or too far to subject passengers through a long  
2 flight in a turbo prop aircraft.

3 THE COURT: Okay.

4 THE WITNESS: And thin markets, there's a little  
5 jargon. I apologize.

6 THE COURT: Well, I mean, I assume a thin market means  
7 that, you know, everybody weighs less than a certain amount.

8 THE WITNESS: Unfortunately, it means that it's not  
9 enough -- it's a thin traffic market.

10 A So the RJs then are used either -- typically are used --  
11 they're almost always used to feed traffic to the hub, mainline  
12 service at the hub. They also serve -- and they do this by  
13 serving markets that large aircraft can't economically serve or  
14 that can't be served with the smaller, perhaps less costly --

15 THE COURT: Okay. I don't understand four. RJs can  
16 be used to fill out a major carrier schedule during lower  
17 demand times of the day. In other words, you make people that  
18 live in places that nobody wants to fly to fly at inconvenient  
19 hours.

20 THE WITNESS: No, Your Honor, that's not what this  
21 means. I'm sorry for any confusion. What this means -- let me  
22 --

23 THE COURT: Well, I mean, that's what it looks like to  
24 me is maybe you pick them up at a good hour in the morning, but  
25 then they couldn't get anywhere in the course of the day --

1 THE WITNESS: No, actually, on the contrary. RJs  
2 actually permit communities that don't generate much traffic,  
3 they have much more convenient service because you don't then  
4 have to wait until -- and try to get everybody onto a big  
5 airplane if you could do that.

6 THE COURT: No, I know, but that's not what this says.  
7 This says it can be used to fill out a major carrier schedule  
8 during lower demand times of the day, and I would say that  
9 lower demand times of the day begin by 10:30 and, you know, run  
10 from about 10:30 to 3.

11 THE WITNESS: And let me just use that as an example.  
12 What this means is that regional jets can be used to provide  
13 service in between, say, Washington, D.C. and Boston, for  
14 example. During that --

15 THE COURT: That's not a good choice. I mean, because  
16 it's so easy to get from Washington to Boston that we don't  
17 even need to be talking about Washington to Boston.

18 MR. SPAN: You want to be talking about Atlanta and  
19 Austin which is --

20 THE WITNESS: We'll use Atlanta/Austin, fine.

21 MR. SPAN: -- Page 24.

22 THE COURT: There's some places that I've never heard  
23 of. I mean, you know.

24 THE WITNESS: All right. What it means is that in  
25 some hours of the day, there is sufficient traffic to support a

1 large airplane. During the middle of the day, typically, there  
2 may not be enough traffic but there are still significant  
3 numbers of people that want to travel and you could carry them  
4 economically and make a profit if you had a smaller airplane.  
5 That's where RJs come in and then --

6 THE COURT: Wait, wait, wait. What you mean is that  
7 the people from the towns that you're not going to serve in  
8 your big planes are willing to fly at any time including times  
9 that aren't actually that convenient.

10 THE WITNESS: No. No, no. We're now back to Austin,  
11 and my -- what I'm saying is the flights at the busy times will  
12 typically be served by large airplanes. The intermediate  
13 times, the ten o'clock to two o'clock times when there are  
14 fewer people traveling, Delta can still provide service by  
15 using RJs

16 THE COURT: Okay. In other words, I shouldn't read  
17 these four things as having anything to do with each other.  
18 Each one is some other -- is some other topic.

19 THE WITNESS: Each is a separate point, Your Honor.

20 THE COURT: Okay. Good, because I think that might  
21 have been my problem.

22 THE WITNESS: I'm sorry for any confusion.

23 BY MR. SPAN:

24 Q But are each of these points ways in which the use of  
25 regional jets enhance Delta's mainline --

1 THE COURT: Well, we haven't gotten to the last one.

2 THE WITNESS: Right.

3 A The first three points clearly are. The fourth point is a  
4 conclusion, which is that without RJs, Delta's mainline fleet  
5 would be smaller, and the reason I say that is because without  
6 RJ service, there would be less feed traffic into the hubs, and  
7 that feed traffic support service by mainline aircraft flown by  
8 mainline pilots, mainline flight attendants worked by other  
9 Delta mainline employees.

10 Q Perhaps we ought to get some definitional ranges here. In  
11 terms of numbers of seats, what's the smallest aircraft that  
12 the mainline Delta would fly?

13 A Well, they've still got a few 737s. I believe those are  
14 200s, I believe, that are going out of service, I think, at --  
15 or sometimes next year, maybe at the end of this year, and when  
16 those are gone, I think the smallest airplane is probably about  
17 150 or sixty seats.

18 Q And the RJs --

19 THE COURT: Okay. And what's the biggest airlines?

20 THE WITNESS: Delta's biggest aircraft I believe is a  
21 Triple 7, a Boeing 777 aircraft. I'm not sure how they've got  
22 it configured, probably on the order of 300 seats.

23 THE COURT: Okay.

24 BY MR. SPAN:

25 Q Now --

1 THE COURT: What about the RJs?

2 THE WITNESS: The RJs, I believe that Delta and its  
3 Delta Connection carriers have RJs -- right now, the  
4 predominant size of the aircraft is fifty seats. They have  
5 some seventy-seaters, and I believe would like to -- as they've  
6 told the Court would like to be able to operate seventy-nine-  
7 seat aircraft, but that is currently not permitted under the  
8 scope clause.

9 THE COURT: Okay.

10 BY MR. SPAN:

11 Q Now the next page, Page 21, does that -- does that chart  
12 demonstrate that the difference in the types of groups, the  
13 number of passengers per group that are flown by the Delta  
14 mainline versus the Delta Connection --

15 A That's correct. This was just to illustrate with a point  
16 that I made previously that these jets tend to be used on  
17 markets that are too thin -- that is --

18 THE COURT: Okay. I don't understand what this is  
19 saying to me.

20 THE WITNESS: Your Honor, let me explain --

21 THE COURT: I mean, it says:

22 "Average local passengers per day each way on route."

23 Now does this mean on one plane, does this mean on two  
24 planes, does this mean on however many planes there are?

25 THE WITNESS: The last, Your Honor. It means that in

1 the average mainline market, there are 526 passengers a day,  
2 each way, on however many -- you know, on all flights. So this  
3 says there's 526 passengers a day on average flying on Delta's  
4 routes, mainline routes. In the second bar, there are 105  
5 average passengers a day on the regional --

6 THE COURT: And we're putting -- we're putting five of  
7 them outside the planes, you know, on little bags because they  
8 don't fit?

9 THE WITNESS: No, that's probably -- they're probably  
10 at least two flights in that market.

11 THE COURT: Yeah, but you've got two fifties --

12 THE WITNESS: I was thinking seventies. You'd have to  
13 have three with fifties, you're right, or some mix of fifties  
14 and seventies.

15 THE COURT: Okay.

16 THE WITNESS: They fly pretty high just like regular  
17 jets. It might be a little cold out there on the wing.

18 MR. SPAN: We're not at that load factor just yet.  
19 We're over a hundred percent.

20 BY MR. SPAN:

21 Q Now have there been instances where Delta mainline has  
22 flown routes and have discontinued them because there wasn't  
23 enough traffic and has replaced that flying with regional  
24 flying?

25 A Yes.

1 Q And is that depicted on Page 22?

2 A Well, these -- these are examples of markets where that  
3 happened, yes.

4 Q And could you very quickly explain what -- what Page 22  
5 shows?

6 A Well, Page 22 simply shows the average load factors in --  
7 the mainline load factors for the year preceding the year in  
8 which the mainline service was terminated and the replacement  
9 service by RJs was instituted, and as you can see, the load --

10 THE COURT: Okay. It doesn't -- where does it say  
11 that they were replaced by RJs?

12 THE WITNESS: It's in the note -- it tells you --

13 THE COURT: It says they were discontinued.

14 THE WITNESS: Mainline discontinued in  
15 Atlanta/Shreveport.

16 THE COURT: Okay. Well, discontinued. It doesn't say  
17 that they picked it up with anything else.

18 THE WITNESS: You're correct.

19 THE COURT: You're saying to me that all of these were  
20 picked up with regional?

21 THE WITNESS: That is correct.

22 A. So, at a forty-seven percent load factor on  
23 Atlanta/Shreveport, for example, on 150-seat airplane, that's  
24 seventy-five passengers, which is --

25 THE COURT: That's my idea of good flying.

1 THE WITNESS: I think most passengers would share that  
2 view. Unfortunately for Delta and other airlines, their break-  
3 even load factor is above 70 percent, so they can't make money  
4 that way.

5 BY MR. SPAN:

6 Q So would -- would Delta fly these -- these thin markets if  
7 it were not for the RJs?

8 A I think it's unlikely they would fly them because we've  
9 talked about Delta --

10 THE COURT: Pretty obvious that nobody that was trying  
11 to make money would, but then if they're not profitable, you're  
12 not going to fly them unless -- unless they happen to be  
13 particularly critical to some other mainlines like -- or else  
14 you'll fly them double. You'll go from A to B and pick people  
15 up and it will take them forever and then they still get to  
16 Atlanta.

17 BY MR. SPAN:

18 Q So now how else -- you mentioned earlier the point about  
19 feed.

20 A Right.

21 Q Could you -- is that explained a little bit on Page 23?

22 A Yes. The chart on Page 23 shows the percentage of Delta's  
23 regional airline passengers that connect to a Delta mainline  
24 flight at each of its hubs. So, for example, this says 90  
25 percent of the passengers that use Delta Connection flights

1 into Atlanta make a connection to a mainline flight, 64 percent  
2 in Cincinnati, 87 percent in Salt Lake.

3 THE COURT: Okay. Now what were we in this Texas one  
4 where we gave it up?

5 THE WITNESS: What was the question, Your Honor? I'm  
6 sorry.

7 THE COURT: Well, I mean, here. The fourth one you  
8 had was what, Dallas or -- what was the -- what would have been  
9 the comparable number there, or that didn't have anything to do  
10 with it?

11 THE WITNESS: There would have been -- there would  
12 have been a number at Dallas. I don't -- since it wasn't an  
13 active hub, I didn't do that. So we'd have to go back and  
14 look, but I would think it would be somewhere in the same range  
15 shown on these flights for these -- for these other hubs.

16 THE COURT: Okay. Why are there so many people going  
17 through Salt Lake City? Where are they going to?

18 THE WITNESS: It's a Delta hub, Your Honor, and so --

19 THE COURT: I know that, but I mean, it's the middle  
20 of nowhere. I mean --

21 THE WITNESS: Well, there are a lot of people  
22 apparently that like to ski, and there are a lot of  
23 destinations throughout the west that Delta can serve through  
24 Salt Lake City that don't have enough traffic to support much  
25 service from the east. So, you know, any --

1 THE COURT: No, that's what I wanted to know -- I  
2 mean, where are people going when they -- where are they ending  
3 up when they go to Salt Lake City?

4 MR. SPAN: I can tell Your Honor --

5 THE COURT: Yeah, okay. Tell me, please.

6 MR. SPAN: I've connected --

7 THE COURT: Wait, wait, I got one here that seems to  
8 know something or know somebody that knows something.

9 MALE VOICE: Montana -- Montana, Idaho, Washington  
10 State, other parts of Utah, Oregon, places like that.

11 THE COURT: Okay.

12 BY MR. SPAN:

13 Q And are those the kind of communities that are not likely  
14 to have non-stop service from a major hub --

15 A A Delta hub, that's correct.

16 Q -- a major city to those smaller communities?

17 A For a Delta hub, that's correct. I mean, if Delta is going  
18 to serve those communities, it's going to have to serve them  
19 through Salt Lake City, because there is typically -- in a lot  
20 of those communities, there will be local traffic that wants to  
21 get to Salt Lake City, and so that helps to make the routes  
22 profitable.

23 THE COURT: And then Cincinnati, a lot of people just  
24 stay there?

25 THE WITNESS: Your Honor, I think what this chart

1 shows is the percentage of regional connections to mainline  
2 flying. Cincinnati has a larger proportion of regional jet  
3 flying. So I think they have a very high proportion of  
4 connections, but just more of them connect in Cincinnati to  
5 another regional jet service.

6 THE COURT: Okay.

7 BY MR. SPAN:

8 Q So the Delta Connection flying provides feed to the Delta  
9 mainline, correct?

10 A Correct.

11 Q It serves --

12 THE COURT: Wait, wait, I'm sorry. You just switched  
13 to another topic that you're a term and I have no idea what you  
14 mean by it.

15 MR. SPAN: All right. I --

16 THE COURT: I mean, you suddenly switched to this  
17 term, "Delta Connection," and it's used as, you know, a capital  
18 letter term, and we've never talked about it today.

19 BY MR. SPAN:

20 Q Mr. Kasper, what is "Delta Connection"?

21 A Delta Connection is the name that Delta uses to describe  
22 its regional carrier partners: Comair, ASA, Skywest. They're  
23 also sometimes referred to as either "Delta Connection" or  
24 abbreviated as "DCI."

25 THE COURT: Okay. And how many of those Delta

1 Connection airlines are owned by Delta?

2 THE WITNESS: I believe only one.

3 THE COURT: Which is?

4 THE WITNESS: Comair.

5 MR. SPAN: Comair.

6 THE COURT: Comair. Okay. And why do we call them

7 Delta Connections?

8 THE WITNESS: Because they -- it's a way in which you  
9 can communicate to the public that even though they're flying  
10 on a regional jet, it is a regional that's affiliated with  
11 Delta. So, for --

12 THE COURT: How do you do that?

13 THE WITNESS: I beg your pardon?

14 THE COURT: How do you do that?

15 THE WITNESS: Well, you do it in a couple of ways.  
16 The -- they're called "Delta Connection" widely. The codes  
17 they carry are Delta Air Line codes, so -- and the livery  
18 painted on the plane is the same color as the Delta livery. So  
19 it's made to feel as much like flying on Delta mainline as  
20 possible, but it's a smaller airplane.

21 THE COURT: Well, that's great. I love it, we lend  
22 out our name. I hope we have some good indemnity insurance.  
23 You lend out your name and the plane crashes. I think that  
24 somebody would think you're liable for it.

25 Okay. Now who flies the Delta Connection planes?

1 THE WITNESS: In terms of pilots?

2 THE COURT: Well, that's -- they're generally speaking  
3 the people --

4 THE WITNESS: The --

5 THE COURT: They're generally speaking the people that  
6 are flying the planes.

7 THE WITNESS: Each -- each Delta Connection carrier  
8 has a pilot group that flies those airplanes for them. I  
9 believe they're all -- they're all represented by pilots  
10 unions, and I believe at least two of them, maybe all three are  
11 ALPA.

12 THE COURT: Well, what about Comair?

13 MR. HUEBNER: Comair is -- Comair is -- by a division  
14 of ALPA, Your Honor.

15 THE COURT: No, no, I'm asking are the pilot -- their  
16 pilots are not the ones that are these pilots.

17 MR. SPAN: That's correct. They have -- Comair has  
18 its own --

19 THE COURT: Okay. So, basically, you're running these  
20 airlines for somebody else and making it look like they're  
21 yours even though they aren't yours, and you're not using Delta  
22 pilots.

23 MR. SPAN: Not quite, Your Honor.

24 THE COURT: Okay. Well, try me again then.

25 MR. SPAN: The -- in a way, it's similar to the code

1 sharing we talked about in the international expect --

2 THE COURT: Well, no, but the code sharing we talked  
3 about international. We had, you know, France's -- Air France  
4 flying Air France's colors. Now, I've flown on planes that  
5 were Comair and they're not wearing Comair colors.

6 MR. SPAN: The --

7 THE COURT: Assuming there is such a thing.

8 MR. SPAN: To answer your question, the two Delta  
9 Connection carriers that are not owned by Delta, Skywest and  
10 ASA --

11 THE COURT: Well, okay, but how many do we have?

12 MR. SPAN: Three.

13 THE COURT: Okay.

14 THE WITNESS: Three major ones.

15 MR. SPAN: Three major ones.

16 THE COURT: Okay.

17 MR. SPAN: The ones that are not owned by Delta are  
18 separate companies. They operate the aircraft. They have  
19 their own pilots. Their pilots fly the planes. They are  
20 painted with Delta colors, and there is a marketing agreement  
21 with respect to the passengers who fly on those tickets.

22 THE COURT: But you're letting those passengers think  
23 that Delta is responsible for the flying of those planes even  
24 though Delta is not.

25 MR. SPAN: Well, actually, there is a statement on the

1 --

2 THE COURT: On the side of the plane that says this  
3 plane is being flown by Comair, but it doesn't say and if it  
4 crashes, don't look to Delta.

5 THE WITNESS: Your Honor, if I might interject here,  
6 because again when I was at the Civil Aeronautics Board, we had  
7 regulatory responsibility for this, which has now been assumed  
8 by the Department of Transportation, and I can assure you that  
9 Delta and any other carrier and all the major carriers have  
10 regional affiliates are required to disclose on the ticket as  
11 well as in the advertising and in the schedules that this  
12 flight will be operated by a Delta Connection carrier or --

13 THE COURT: But you don't know that that plane is not  
14 owned by Delta, and that the people that are choosing to run it  
15 are not Delta people.

16 THE WITNESS: That --

17 THE COURT: But that's just here or there.

18 BY MR. SPAN:

19 Q And is this -- is this arrangement that we've been  
20 describing common --

21 THE COURT: It's common. Everybody lies to everybody  
22 else. I mean, seriously, you know, you paint a plane that  
23 looks like Delta plane, what's somebody going to think?  
24 They're going to think it's a Delta plane. I mean, even when  
25 you put this Comair stuff on the side, they're going to think

1 it's just a subsidiary.

2 Now it happens that Comair is the one I've seen and  
3 that happens to be one of your subsidiaries, but you know,  
4 you're letting them fly under your colors, and it sure makes it  
5 look like they're really your planes.

6 MR. HUEBNER: Your Honor, just so you understand, you  
7 may be raising the same question you asked us at the time of  
8 the ASA sale which is are we comfortable that we are  
9 appropriately insured and that the regional carriers that fly  
10 for us are appropriately insured and that we have cross  
11 indemnities and as Your Honor may remember, we agreed to  
12 double, triple and quadruple check all those things in --

13 THE COURT: And you did, and what happened?

14 MR. HUEBNER: And we are very comfortable that we have  
15 appropriate insurance as to each of the FAA-certificated  
16 regional partners that we have used in many cases for many  
17 years and appropriate cross-indemnities, all of which are  
18 overseen by the FAA.

19 So it's a very legitimate concern. I know that in  
20 some cases, hopefully much, much smaller than these, debtors  
21 let insurance lapse or skinny down their coverage as a way to  
22 save money. I can absolutely assure you in our first-day  
23 motions that were relative to that topic make it perfectly  
24 clearly like our pilots, we would never put anyone's safety --

25 THE COURT: Skinnying down insurance in the airline

1 business is not a good idea.

2 MR. HUEBNER: We quite agree, Your Honor. We hope  
3 that addresses your concern.

4 THE COURT: Okay. But, see, this is why I'm saying.  
5 You suddenly switch to Delta Connection. Now Delta's regional  
6 partners, are they the Delta Connection? Well, then why have  
7 we been calling them "Delta's regional partners" all afternoon  
8 instead of calling them the "Delta Connection"?

9 MR. SPAN: Perhaps we should have been more clear with  
10 our --

11 THE COURT: Okay. But you're saying to me when you  
12 say "Delta's regional partners" that I should also -- should  
13 say to myself, oh, Delta Connection.

14 MR. SPAN: Yes, that's right, Your Honor.

15 THE WITNESS: Yes, Your Honor.

16 THE COURT: Okay.

17 MR. SPAN: Your Honor, I have several other points to  
18 go into. I'm wondering if this -- when would be a convenient  
19 time to stop for the evening.

20 THE COURT: Do you want me to take a vote? I mean, I  
21 realize I'm required to sit up here and listen to this.

22 MR. SPAN: Well, let me suggest that I think this  
23 would be a convenient break.

24 THE COURT: Fine. Thank you. I mean, you know --  
25 now, what day am I being threatened with all -- whatever

1 breaking loose if I don't render a decision by? No, I was  
2 being yesterday -- I want to know what the date was.

3 MR. SPAN: Your Honor, the thirtieth day from the  
4 start of the hearing is November -- is December 16th, but I  
5 won't put that in the class of a threat, just a statement of  
6 fact.

7 THE COURT: It didn't sound that way to me yesterday,  
8 but then again, maybe we'll just forget about most of what  
9 happened yesterday. Okay. But that's the last day to tell you  
10 nicely yes or no.

11 Okay. How much more do you have?

12 MR. SPAN: In total?

13 THE COURT: Well, on this witness.

14 MR. SPAN: I think probably another half hour or  
15 forty-minutes. I'll try overnight to see if I can shorten it  
16 up a bit, and then we have --

17 MR. GALLAGHER: We have two more witnesses tomorrow,  
18 Your Honor, and we hope to get them both on and off.

19 THE COURT: Okay. And who are they?

20 MR. GALLAGHER: Tim Coleman from the Blackstone Group,  
21 Your Honor, an investment banker and financial advisor and  
22 Geraldine Carolan, our vice president of labor relations.

23 THE COURT: Okay. And which one are you going to put  
24 on first?

25 MR. GALLAGHER: Mr. Coleman.

1 THE COURT: How long do you think it will take?

2 MR. GALLAGHER: An hour, Your Honor.

3 THE COURT: What about your next witness?

4 MR. GALLAGHER: I would say two hours, Your Honor.

5 THE COURT: Okay. Well, what have we got over here?

6 That would leave you having to produce a witness tomorrow

7 potentially.

8 MR. SIMON: We're certainly prepared to do so, if we  
9 get to that point, Your Honor.

10 THE COURT: No --

11 MR. SIMON: I do not envision extensive cross-  
12 examination of Mr. Coleman although depending on his testimony,  
13 we do envision some considerable cross-examination based upon  
14 the declaration of Ms. Carolan, my guess is of a lesser  
15 duration than the direct will be.

16 THE COURT: What about Mr. Kasper?

17 MR. SIMON: I believe subject to what he does  
18 tomorrow, relatively brief. On the basis of what we have so  
19 far today, perhaps a half hour.

20 THE COURT: Okay. I --

21 MR. SIMON: Probably less.

22 THE COURT: I will say that it's fifty/fifty whether  
23 we'll reach one of your witnesses tomorrow. We'll come close.

24 MR. SIMON: We will be prepared, Your Honor.

25 THE COURT: No, I mean, we can decide that we won't or

1 we can decide -- I think it would be better if we decided that  
2 we would have one available if we needed it.

3 MR. SIMON: And we will have a witness available.

4 THE COURT: Okay. Let's try one o'clock tomorrow.  
5 Maybe that will do better.

6 (Proceedings adjourned to 11/30/05 at 1 p.m.)

7 (Concluded at 5:46 p.m.)

8 CERTIFICATION

9 I, certify that the foregoing is a correct transcript  
10 from the electronic sound recording of the proceedings in the  
11 above-entitled matter to the best of my knowledge and ability.

12

13

November 30, 2005

14 \_\_\_\_\_  
Coleen Rand

15 Certified Court Transcriptionist/Agency Director

16

17

18

19

20

21

22

23

24

25