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REPORTER'S RECORD
VOLUME 1 OF 1 VOLUME
TRIAL COURT CAUSE NO. 067-249214-10

AMERICAN AIRLINES, INC.) IN THE DISTRICT COURT
))
 Plaintiff,))
VS.) TARRANT COUNTY, TEXAS
))
SABRE, INC., ET AL))
))
 Defendants.) 67TH JUDICIAL DISTRICT

TRIAL ON THE MERITS

On the 25th day of October, 2012, the following proceedings came on to be heard in the above-entitled and numbered cause before the Honorable David Cleveland, Judge presiding, held in Fort Worth, Tarrant County, Texas:

Proceedings reported by machine shorthand.

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P R O C E E D I N G S

12:51PM 1
12:51PM 2 MS. GARCIA: Your Honor, I think we have
12:51PM 3 agreement amongst the third parties and the parties who
12:51PM 4 are here regarding sealing the courtroom. And we have,
12:51PM 5 I think, four different orders we'd like to present to
12:51PM 6 you, but there's a couple of things that we need to put
12:51PM 7 on the record, because we've written in some statements
12:51PM 8 where we have agreements --

12:51PM 9 THE COURT: Okay.

12:51PM 10 MS. GARCIA: -- so that's the purpose, but
11 we have agreement.

12:51PM 12 I'd like to start with American's proposed
12:51PM 13 sealing order on American's redacted material. This
12:51PM 14 order was granted last week before the motion to recuse,
12:51PM 15 but we didn't actually get a physical order signed.

12:52PM 16 I have removed the acknowledgment that we
12:52PM 17 had proposed as part of the order because Mr. Fredricks,
12:52PM 18 on behalf of Sabre, and I, as well as the third parties
12:52PM 19 who are currently here present, have agreed on a
12:52PM 20 different form of an order that's going to be submitted
12:52PM 21 as part of our order on third-party documents. It's
12:52PM 22 going to the same form of acknowledgment for all parties
12:52PM 23 and third parties, with the exception that I believe Air
12:52PM 24 Canada is going to have a slightly different variation.
12:52PM 25 But this is the order that American would request that

12:52PM 1 you sign for our temporary sealing order.

12:52PM 2 And one modification, Your Honor, the order
12:52PM 3 in there reflects the fact that the third parties who
12:52PM 4 didn't respond to our letter have essentially waived
12:52PM 5 their claims of confidentiality. That's only for the
12:52PM 6 documents that we specifically asked them to consider in
12:52PM 7 our letter, not all documents produced in the case.

12:52PM 8 MR. FREDRICKS: And deposition testimony.

12:52PM 9 MS. GARCIA: And deposition testimony.

12:52PM 10 THE COURT: Okay. All righty.

12:52PM 11 MR. FREDRICKS: And this is the form of the
12:53PM 12 sealing order with respect to the Sabre confidential
12:53PM 13 documents. That identifies the documents that Sabre has
12:53PM 14 asserted need to be sealed during these proceedings.

12:53PM 15 MS. GARCIA: Your Honor, Mr. Fredricks and
12:53PM 16 I plan to submit to you a conforming copy of the
12:53PM 17 acknowledgement and agreement. We have handwriting in
12:53PM 18 it right now that reflects a few changes we've made this
12:53PM 19 morning, but those orders will simply be amended to
12:53PM 20 include this acknowledgment from both parties. And
12:53PM 21 Mr. Fredricks and I will take care of that with your
12:53PM 22 clerk this afternoon.

12:53PM 23 I also have a proposed order granting
12:53PM 24 American's motion for ruling regarding third-party
12:53PM 25 documents. It is going to have an identical

12:53PM 1 acknowledgment and agreement for those designees,
12:53PM 2 corporate reps, who stay in during the sealed portion.
12:53PM 3 And it also provided for specific information regarding
12:53PM 4 agreements we've reached with various third parties.

12:53PM 5 So this is American's order for use of
12:54PM 6 third-party documents.

12:54PM 7 MR. DREZ: To be clear, to the extent a
12:54PM 8 third party is not mentioned, it does not apply to them,
12:54PM 9 correct?

12:54PM 10 MS. GARCIA: That's correct. Well, it has
12:54PM 11 general language about third parties and what they need
12:54PM 12 to do to assert those rights. So it protects them, but
12:54PM 13 you, Air Canada, who has a specific individual order,
12:54PM 14 that's going to govern.

12:54PM 15 THE COURT: All right.

12:54PM 16 MR. DREZ: Your Honor, I have a temporary
12:54PM 17 sealing order regarding Air Canada documents that I've
12:54PM 18 discussed with counsel for American and Sabre. Attached
12:54PM 19 is Exhibit A. It's the acknowledgment that the
12:54PM 20 corporate reps will sign if the confidential Air Canada
12:54PM 21 information is disclosed in open court.

12:54PM 22 It's my understanding also that the -- that
12:54PM 23 any witness who is questioned regarding the Air Canada
12:54PM 24 confidential information will be bound by the terms of
12:54PM 25 the protective order entered in the case as -- because

12:54PM 1 it's an expert witness.

12:54PM 2 THE COURT: All right. All right. If
12:55PM 3 you'll get that filed. Next?

12:55PM 4 MR. SCHAFER: Your Honor, I have a
12:55PM 5 temporary sealing order as well. My name is Roland
12:55PM 6 Schafer; I represent Expedia, Inc. And this is in
12:55PM 7 regard to an unopposed motion to redact certain
12:55PM 8 documents provided -- the list provided to us by
12:55PM 9 American and Sabre as well as to seal certain documents
12:55PM 10 during the use in open trial.

12:55PM 11 THE COURT: All right.

12:55PM 12 MR. SCHAFER: And we actually received
12:55PM 13 notice of Sabre's intent to use certain deposition
12:55PM 14 excerpts to which we have also provided redactions. And
12:55PM 15 I think what we intend to do and I just want to get the
12:56PM 16 Court's -- how you felt about this -- we'll be filing a
12:56PM 17 second motion for a temporary sealing order specific to
12:56PM 18 the deposition excerpts and then I can just bring it --
12:56PM 19 it will be -- right now it seems it will be unopposed.
12:56PM 20 And I can just bring that down.

12:56PM 21 THE COURT: Okay. That'll be fine.

12:56PM 22 MR. SCHAFER: Thank you, sir.

12:56PM 23 THE COURT: Thank you.

12:56PM 24 MS. GARCIA: Thank you, Your Honor. I
12:56PM 25 believe that's everything.

12:56PM 1 THE COURT: Okeydoke. And you wanted to --

12:56PM 2 MR. DUGGINS: I wanted to argue a motion,
12:56PM 3 if I may.

12:56PM 4 (Discussion off the record.)

12:56PM 5 THE COURT: When you're ready.

12:57PM 6 MR. DUGGINS: Good afternoon, Your Honor.

12:57PM 7 Ralph Duggins for Sabre.

12:57PM 8 When we first met with you Tuesday morning,
12:57PM 9 we alerted you that Sabre would be filing a motion for
12:57PM 10 mistrial based upon errors in the voir dire process and
12:57PM 11 a Batson violation by American. We're not yet in a
12:57PM 12 position to present that in a complete fashion and in
12:57PM 13 writing because despite the very hard and good efforts
12:57PM 14 of Ms. Lindstrom and those working with you -- with her,
12:57PM 15 rather, we don't yet have the reporter's record for the
12:57PM 16 three days of voir dire.

12:57PM 17 But yesterday, your ruling and order on the
12:57PM 18 three e-mails only adds further support to the motion.
12:57PM 19 So before any testimony is taken, Sabre is moving for a
12:57PM 20 mistrial.

12:57PM 21 The irrelevant and highly prejudicial
12:57PM 22 issues were a central issue -- excuse me. The highly
12:57PM 23 prejudicial e-mails were a central issue in the voir
12:58PM 24 dire process as a result of American's plan to introduce
12:58PM 25 those. And Judge Cosby's erroneous ruling they were

12:58PM 1 irrelevant when introduced would not distort the
12:58PM 2 fact-finding process.

12:58PM 3 Yesterday, Mr. Yetter said, and I quote --
12:58PM 4 this is the reporter's record -- "Your Honor, this jury
12:58PM 5 that has been empanelled has been voir dired extensively
12:58PM 6 on the use of bad language."

12:58PM 7 Whether they were or weren't, as I say,
12:58PM 8 when we get the complete reporter's record, we'll know
12:58PM 9 that and see that. But your October 24th ruling and
12:58PM 10 subsequent order makes clear that these e-mails are
12:58PM 11 irrelevant and have no place in this commercial case.
12:58PM 12 Yet the jury that is selected or has been selected was
12:58PM 13 based upon a process that required Sabre to assume that
12:58PM 14 language would be prominently used by AA. And as a
12:58PM 15 result, we have a constitutionally defective jury.

12:59PM 16 First of all, there's no question that this
12:59PM 17 jury and the panel were questioned about very offensive
12:59PM 18 language to women. Now, the actual words were not used,
12:59PM 19 but I don't think there's any doubt that you will see
12:59PM 20 when you read the record that everyone there could
12:59PM 21 assume, and in particular the women, which words were in
12:59PM 22 issue.

12:59PM 23 Two prospective jurors, Jurors 3 and 14,
12:59PM 24 were released for cause based upon their reaction to
12:59PM 25 this type of language. Juror 3 was a -- is a very

12:59PM 1 bright trust officer at Wells Fargo Bank, and she is
12:59PM 2 otherwise a well-qualified juror, but she said a result
12:59PM 3 of a prior experience with an employer who used that
12:59PM 4 type of language towards her, she could not deal with
01:00PM 5 it. And as a result, this otherwise well-qualified
01:00PM 6 juror was stricken for cause based upon evidence that
01:00PM 7 has no place in this case, as you've properly ruled.

01:00PM 8 Juror 14 was a man who, as I remember, said
01:00PM 9 he was a member of a Moose Lodge, and he came up, raised
01:00PM 10 his hand when this topic was discussed, and he said that
01:00PM 11 as a result of a verbal attack by a former boyfriend of
01:00PM 12 his daughter when she was 20, he couldn't deal with it.
01:00PM 13 So he was dismissed for cause as a result of American's
01:00PM 14 insistence on going off in the weeds on these highly
01:00PM 15 inflammatory and irrelevant comments.

01:00PM 16 After peremptories were made by each side,
01:00PM 17 Mr. Lind for Sabre made a Batson challenge noting that
01:00PM 18 American had stricken all men. Judge Cosby denied that
01:00PM 19 challenge without making American provide a neutral
01:01PM 20 explanation for its strikes, even though that's required
01:01PM 21 by the law.

01:01PM 22 In addition, Judge Cosby used inconsistent
01:01PM 23 standards for hardship at American's insistence as a
01:01PM 24 part of American's goal to remove men from this jury.

01:01PM 25 Juror 2 and Juror 20 were each men who had

01:01PM 1 job issues. Juror 37 also had a job issue. The
01:01PM 2 greatest contrast here is Juror 37, who is on our panel,
01:01PM 3 her employer is a doctor here named Mark Palmer. He
01:01PM 4 wrote Judge Cosby a letter and said, This is my surgery
01:01PM 5 coordinator. I've got to have her. Please release her.
01:01PM 6 American insisted that wasn't hardship.

01:01PM 7 But when we had the same exact complaint
01:01PM 8 with respect to Juror 20 who said he was a construction
01:01PM 9 superintendent and his boss was upset because they
01:02PM 10 needed him to perform work, Sabre said that's
01:02PM 11 hardship -- sorry, American said that's hardship.

01:02PM 12 Those two positions are irreconcilable, but
01:02PM 13 it was obvious American was targeting to strike men from
01:02PM 14 this jury.

01:02PM 15 And the fact that the hot-button language
01:02PM 16 was a part of voir dire is incurable error. The jury
01:02PM 17 that we have here will see the redacted e-mails, and
01:02PM 18 having heard the voir dire -- this is very important,
01:02PM 19 Judge -- having heard the illusion to the language, is
01:02PM 20 going to assume what the redacted language is. There's
01:02PM 21 no way to fix that.

01:02PM 22 Had they never heard the voir dire
01:02PM 23 questioning about the bad language, we wouldn't have
01:02PM 24 that problem, but they heard it. And they inferred from
01:02PM 25 the statements by the lawyers what language would be

01:02PM 1 used. Now they're going to see e-mails with redactions,
01:02PM 2 and they're going to know or infer that's what language
01:03PM 3 was in there. That cannot be fixed and that's why the
01:03PM 4 Supreme Court has said the use of this type of language
01:03PM 5 is incurable.

01:03PM 6 So the only remedy for this type of Batson
01:03PM 7 violation and these inconsistencies in the voir dire in
01:03PM 8 terms of hardships is to dismiss this jury and grant
01:03PM 9 Sabre a new trial and empanel a jury where none of this
01:03PM 10 irrelevant and inflammatory language is the subject of
01:03PM 11 voir dire and where the Court employs an even standard
01:03PM 12 on men and women for what is and what is not a hardship
01:03PM 13 and where we don't lose qualified jurors based on
01:03PM 14 alleged cause tied to inflammatory, irrelevant e-mails.

01:03PM 15 THE COURT: Does the plaintiff want to
01:03PM 16 speak to the motion?

01:03PM 17 MR. YETTER: Your Honor, just very briefly.

01:03PM 18 First of all, Your Honor, this is the sort
01:03PM 19 of motion that we could have been given some advance
01:03PM 20 notice on and been able to respond in more detail.

01:04PM 21 But the bottom line, Your Honor, is we have
01:04PM 22 a transcript of the voir dire, at least the third day,
01:04PM 23 which is the day that they say they would have made a
01:04PM 24 Batson challenge, and there is no Batson challenge.

01:04PM 25 The issue of bad language did come up, Your

01:04PM 1 Honor, but no specific language was used. As the Court
01:04PM 2 saw in opening yesterday, there are going to be some
01:04PM 3 e-mails with some bad language. There were some
01:04PM 4 yesterday. The jury was simply asked, would bad
01:04PM 5 language offend you to the point that you could not be
01:04PM 6 fair. Some folks said, yes, it would.

01:04PM 7 There is -- we went through days of voir
01:04PM 8 dire, Your Honor. We have a solid jury that took a lot
01:04PM 9 of work. And this jury has basically rearranged its
01:04PM 10 schedule. What the defendant seems to be doing now is
01:04PM 11 trying to raise a two-week-late Batson challenge when
01:04PM 12 the venire has been released based on what they allege,
01:04PM 13 which we believe the record does not reflect, is some
01:04PM 14 sort of improper questioning. They're the ones that
01:04PM 15 brought all that up.

01:04PM 16 So with due respect, Your Honor, we have --
01:05PM 17 we strenuously object to the motion for mistrial. We
01:05PM 18 are in the middle of trial. We have a proper panel --
01:05PM 19 jury that's empaneled, and we're -- we are prepared to
01:05PM 20 go forward.

01:05PM 21 Thank you.

01:05PM 22 MR. DUGGINS: I'll be very brief, Judge.
01:05PM 23 The transcript is going to show what statements were
01:05PM 24 made about language and what weren't. We're not here
01:05PM 25 just talking about bad language; we're talking about

01:05PM 1 language that is gender specific. And there is no
01:05PM 2 question that the 16 jurors who are in this jury box --
01:05PM 3 not here right now, but who have been seated --
01:05PM 4 understood what words we were talking about. And they
01:05PM 5 are going to be able to fill in the blanks when the
01:05PM 6 redacted e-mails are offered, number one.

01:05PM 7 Number two, this is not a late challenge.
01:05PM 8 This has only been heightened by the fact that you have
01:05PM 9 now followed the law, followed Rule of Evidence 401, 2,
01:06PM 10 and 3, and the *Garza* case and stricken completely
01:06PM 11 irrelevant, gratuitous comments that are gender specific
01:06PM 12 and that American used to target a mostly female jury.
01:06PM 13 We have eight versus four.

01:06PM 14 And the record does also speak for itself
01:06PM 15 about whether a Batson challenge was made. I have that
01:06PM 16 if you want to see that excerpt. I'm happy to tender it
01:06PM 17 to you if you'd like to see it. If I may approach,
01:06PM 18 I'll --

01:06PM 19 THE COURT: All right.

01:06PM 20 MR. DUGGINS: That's the portion of the
01:06PM 21 transcript that does -- where Mr. Lind did make a Batson
01:06PM 22 challenge and the Court, without requiring American to
01:06PM 23 explain its strikes, simply overruled the objection.

01:06PM 24 And the fact that we're in the middle of
01:06PM 25 trial is not -- that's not the point of this. The point

01:06PM 1 is to get a constitutionally firm, fair, objective, and
01:07PM 2 impartial jury, and we don't have that because the
01:07PM 3 entire process was tainted by American's injection of
01:07PM 4 these irrelevant and prejudicial e-mails.

01:07PM 5 THE COURT: All right. In looking at these
01:07PM 6 e-mails, it doesn't -- it doesn't appear to me that the
01:07PM 7 jury's going to necessarily infer that bad language was
01:07PM 8 stricken. The sentences before and the language that
01:07PM 9 was restricted don't necessarily connect in these. I
01:07PM 10 just -- I don't think they're going to necessarily infer
01:07PM 11 bad language.

01:07PM 12 MR. DUGGINS: Well, that's not the only
01:07PM 13 basis for the motion.

01:07PM 14 THE COURT: I understand.

01:07PM 15 MR. DUGGINS: The problem is that the
01:07PM 16 process was tainted by American's efforts to target
01:07PM 17 males and to eliminate males from the jury. And they
01:07PM 18 have -- that is a critical component of this motion.
01:08PM 19 And as I pointed out, when we have the full record, you
01:08PM 20 can see how American employed one hardship standard for
01:08PM 21 females and a different one for males.

01:08PM 22 MR. YETTER: Your Honor, if we're going to
01:08PM 23 talk about a voir dire, there will be a transcript and
01:08PM 24 we can show -- in fact, Judge, there is -- we have -- we
01:08PM 25 have absolutely no basis for this. We believe, Your

01:08PM 1 Honor, no basis for this motion. We had -- we went
01:08PM 2 through a very long voir dire, lots of people were
01:08PM 3 stricken, male and female on both sides. We moved for
01:08PM 4 cause on a number of females and males, so did Sabre.
01:08PM 5 At one point the judge even remarked that Sabre was
01:08PM 6 trying to strike women off the panel.

01:08PM 7 But the bottom line, Your Honor, even this
01:08PM 8 little excerpt, which is not the complete transcript,
01:08PM 9 reflects that there was never -- the word Batson is not
01:08PM 10 even used. The word "discrimination" is not used.
01:08PM 11 "Constitutional rights" is not used. There's no --
01:08PM 12 Mr. Lind doesn't even say "objection." There is nothing
01:08PM 13 here, Your Honor, that would have required anybody to
01:09PM 14 respond at the time. The venire was left, and now two
01:09PM 15 weeks later Sabre wants to create a Batson challenge
01:09PM 16 that never was made at the time in order to try all over
01:09PM 17 again.

01:09PM 18 We -- we mentioned at the outset, Your
01:09PM 19 Honor, Sabre has tried several times to delay this
01:09PM 20 trial. We personally believe that the recusal was an
01:09PM 21 effort to delay the trial. This mistrial, Your Honor,
01:09PM 22 obviously would have a practical effect of significantly
01:09PM 23 delaying the trial. We think this is just another,
01:09PM 24 probably the seventh time that they've tried to delay
01:09PM 25 the trial.

01:09PM 1 And we agree with the Court. Those
01:09PM 2 e-mails, we were never going to build our case around.
01:09PM 3 The redactions are -- it's entirely unclear what comes
01:09PM 4 after -- in the place of those redactions.

01:09PM 5 MR. DUGGINS: Your Honor, Page 10 of the
01:09PM 6 transcript I handed you, the Court said "Any objections"
01:09PM 7 at Line 1. Mr. Yetter said, "We have no objections."
01:09PM 8 Then Judge turned to Mr. Lind. He didn't say Sabre has
01:10PM 9 no objections. He stated an objection. And the Court
01:10PM 10 immediately overruled it without, as required by Supreme
01:10PM 11 Court precedent, requiring American to explain a
01:10PM 12 nongender basis for striking all males.

01:10PM 13 And this is not an effort to delay the
01:10PM 14 trial, nor was the recusal. And if the recusal had been
01:10PM 15 just a frivolous motion, Judge Walker wouldn't have
01:10PM 16 granted it. I can't even believe American has the nerve
01:10PM 17 to bring that up. This is a very serious motion because
01:10PM 18 the voir dire process was flawed from the beginning.

01:10PM 19 And Sabre over and over objected to any
01:10PM 20 efforts to inject these inflammatory e-mails in it, and
01:10PM 21 Sabre also objected to American's efforts to target
01:10PM 22 males to get off the jury, both on hardship basis, and
01:10PM 23 now we know flawed cause grounds. We lost Juror 14
01:10PM 24 based on these e-mails. We lost Juror 3 based on these
01:10PM 25 e-mails.

01:11PM 1 MR. LIND: And, Your Honor, we are
01:11PM 2 recognizing that -- I'm sorry.

01:11PM 3 MR. YETTER: How many lawyers are --

01:11PM 4 MR. LIND: -- not only was there an
01:11PM 5 objection stated, but Judge Cosby specifically
01:11PM 6 recognized it as an objection. He said, "Objection
01:11PM 7 noted. Overruled." There's no question it was an
01:11PM 8 objection.

01:11PM 9 MR. YETTER: Your Honor, if we are going to
01:11PM 10 argue about a voir dire that was transcribed, you should
01:11PM 11 have a transcript in front of you, because all we have
01:11PM 12 are counsel frankly, we believe, unfairly
01:11PM 13 misrepresenting the voir dire. It was a long, careful
01:11PM 14 voir dire that we believe Judge Cosby handled very
01:11PM 15 appropriately, and now at the end, without even saying
01:11PM 16 the word "objection" or "Batson" or "discrimination" or
01:11PM 17 "constitutional rights" or anything -- and I know this
01:11PM 18 Court had handled a number of Batson challenges -- they
01:11PM 19 are coming two weeks later to claim they made a Batson
01:11PM 20 challenge.

01:11PM 21 THE COURT: All right. Well, I'll do this.
01:11PM 22 I'll overrule the motion.

01:11PM 23 Are you ready to call your first witness?

01:11PM 24 MR. YETTER: Yes, Your Honor, for American
01:11PM 25 we are.

01:11PM 1 THE COURT: Defendant ready for the jury?

01:11PM 2 MR. GRIMSLEY: Yes, Your Honor.

01:11PM 3 MR. LIND: Your Honor, we'd like to invoke
01:11PM 4 the rule on witnesses, too, sequestration for the
01:12PM 5 witnesses who are actually supposed to be here.

01:12PM 6 MR. YETTER: I don't think we have --

01:12PM 7 THE COURT: Are there any witnesses in the
01:12PM 8 courtroom other than the first witness who will be
01:12PM 9 called?

01:12PM 10 MR. YETTER: And our corporate
01:12PM 11 representative, Judge. None other than our corporate
01:12PM 12 representative and our first witness.

13 THE COURT: All right.

01:12PM 14 MR. DUGGINS: Your Honor, I think Ryan
01:12PM 15 Mikolasik is in the courtroom, and he's definitely a
01:12PM 16 witness.

01:12PM 17 MR. YETTER: Well, we'll have -- he's not
01:12PM 18 one of our witnesses. And if he's one of theirs, we'll
01:12PM 19 certainly remove him, Judge.

01:12PM 20 THE COURT: Well, the rule as to witnesses
01:12PM 21 has been called for. If there are any witnesses in the
01:12PM 22 courtroom, you'll have to remain outside during the
01:12PM 23 testimony. Do not discuss this case or your testimony
01:12PM 24 with anyone. Don't let anyone discuss the case with you
01:12PM 25 or in your presence. You may talk to the attorneys one

01:12PM 1 at a time.

01:12PM 2 (Rule was invoked.)

01:12PM 3 THE COURT: So any witnesses, other than
01:12PM 4 the corporate representatives and the first witness to
01:12PM 5 be called, will have to remain outside the courtroom,
01:12PM 6 and that instruction will remain throughout the trial.

01:12PM 7 MR. ROTHMAN: Your Honor, can we approach
01:12PM 8 for a second?

01:12PM 9 THE COURT: All right.

01:12PM 10 (Discussion off the record.)

01:13PM 11 THE COURT: All right.

01:13PM 12 (Jury present.)

01:15PM 13 THE COURT: Now, ladies and gentlemen, I
01:15PM 14 notice that you have notebooks. You're -- you may take
01:15PM 15 notes during this trial, but your notes are not
01:15PM 16 evidence; therefore, you cannot share your notes with
01:15PM 17 other members of the jury. You can't tell other jurors,
01:15PM 18 this is what was said because I made a note of it and
01:15PM 19 here's the note. You can't do that.

01:15PM 20 Now, at the end of each day of testimony,
01:15PM 21 you'll give your notes to the bailiff and he will keep
01:15PM 22 them and give them back to you for testimony the next
01:15PM 23 day. You cannot share your notes with other members of
01:15PM 24 the jury.

01:15PM 25 All right, Counsel.

01:15PM 1 MR. ROTHMAN: Good afternoon, Your Honor.
01:15PM 2 I'm Rich Rothman. I'm working with Mr. Yetter for
01:15PM 3 American Airlines.

01:15PM 4 MR. LIND: Your Honor, can I just say that
01:15PM 5 my partner Sean Grimsley is going to be handling this
01:16PM 6 witness too. So I think we have a couple of new faces
01:16PM 7 today.

8 THE COURT: All right.

01:16PM 9 MR. LIND: Thank you.

01:16PM 10 THE COURT: Who are you calling as your
01:16PM 11 first witness?

01:16PM 12 MR. ROTHMAN: We call as our first witness
01:16PM 13 Monty Myers, who is our expert on technology and
01:16PM 14 computer software.

01:16PM 15 THE COURT: Right up here.

01:16PM 16 (Witness sworn.)

01:16PM 17 THE COURT: Have a seat and speak into that
01:16PM 18 mic.

01:16PM 19 MONTY MYERS,
20 having been first duly sworn, testified as follows:

21 DIRECT EXAMINATION

22 BY MR. ROTHMAN:

01:16PM 23 Q. Good afternoon, Mr. Myers. Would you please
01:16PM 24 state your full name and what you do for a living for
01:16PM 25 the record.

01:16PM 1 A. My name is Monty Myers. I am a software
01:16PM 2 engineer. I'm the founder of a software company in
01:16PM 3 Austin, Texas.

01:16PM 4 Q. Okay. And can you tell the jury a little bit
01:16PM 5 about your background, Mr. Myers, where you went to
01:16PM 6 school?

01:16PM 7 A. Yes. Well, I started my formal software
01:16PM 8 engineering experience in high school, actually. I
01:17PM 9 continued that in college. Went to Texas A&M and
01:17PM 10 studied engineering. I have a graduate degree -- an
01:17PM 11 honors degree from there. I went on to study graduate
01:17PM 12 studies in engineering at the University of Texas in
01:17PM 13 Austin.

01:17PM 14 And I also founded a software company about
01:17PM 15 26 years ago called Eureka Software, and so that's what
01:17PM 16 I've been doing for most of my adult life is running a
01:17PM 17 software company.

01:17PM 18 Q. And what does Eureka do?

01:17PM 19 A. Eureka Software is a company that is a
01:17PM 20 consulting company. We're hired by companies like Sears
01:17PM 21 and Motorola, Siemens, A&B, ConocoPhillips, and a lot of
01:17PM 22 smaller companies. But they come to me and my team and
01:17PM 23 ask us to help them design software, solve technical
01:17PM 24 problems.

01:17PM 25 In particular, companies often want to get

01:17PM 1 from older technology to something newer and they come
01:17PM 2 to us, and we're experts in that. And we sit down and
01:18PM 3 understand where they are and then help them plan a
01:18PM 4 course for moving to newer technology.

01:18PM 5 Q. How many people work with you at Eureka?

01:18PM 6 A. It fluctuates a bit with the economy, but we
01:18PM 7 have about 25 people now.

01:18PM 8 Q. Now, Mr. Myers, have you ever -- well, let me
01:18PM 9 ask you this first: Can you give the jury a few
01:18PM 10 examples of the kinds of projects you've done at Eureka
01:18PM 11 that may be relevant to what we're talking about here
01:18PM 12 today?

01:18PM 13 A. I'll give a couple of examples. One, for
01:18PM 14 example, Progressive Insurance is a big insurance
01:18PM 15 company. You may have heard of it. They had been on
01:18PM 16 some legacy technology -- well, I'll be talking about
01:18PM 17 that later -- some mainframe technology, and they came
01:18PM 18 to our firm and asked us to -- when the Internet came on
01:18PM 19 the scene, they wanted us to help them figure out a way
01:18PM 20 to get a lot of their data storage and information
01:18PM 21 systems delivered to the Internet. So we -- that's an
01:18PM 22 example.

01:18PM 23 Another good example that's very similar to
01:19PM 24 this one is a company called Rush Enterprises. They are
01:19PM 25 the largest distributor of trucks, big heavy trucks in

01:19PM 1 the U.S. They have -- from coast to coast, they have
01:19PM 2 centers, and so we helped them completely replace their
01:19PM 3 mainframe systems with new technology that they could --
01:19PM 4 to run all their business, from cradle to grave is what
01:19PM 5 we call it, and manage all their quotes for customers
01:19PM 6 and those kind of things.

01:19PM 7 And probably the one that's most directly
01:19PM 8 related to this is we worked with a client in the
01:19PM 9 automotive aftermarket. That's when you take your car
01:19PM 10 into the garage or to the dealership and get work on it,
01:19PM 11 there's a huge system out there that delivers those
01:19PM 12 parts. You take it in, they diagnose your problem, they
01:19PM 13 go online, and they order parts. Well, that -- this was
01:19PM 14 an industry that was way behind, had a lot of old
01:19PM 15 technology, and so they hired my firm to work with them
01:19PM 16 for about three years to help them, you know, migrate to
01:20PM 17 Internet technologies and really transform their
01:20PM 18 business.

01:20PM 19 And they were very similar to airline
01:20PM 20 distribution systems, which we'll be talking about more
01:20PM 21 today, but just in a different industry which was
01:20PM 22 distributing car parts.

01:20PM 23 MR. ROTHMAN: Monica, do you need him to
01:20PM 24 speak a little more slowly? Okay. We'll both try.

01:20PM 25 Q. (BY MR. ROTHMAN) Mr. Myers, have you ever

01:20PM 1 worked for a travel agent?

01:20PM 2 A. No, I haven't.

01:20PM 3 Q. Have you ever been employed by an airline?

01:20PM 4 A. No, I haven't.

01:20PM 5 Q. Do you think your experience working outside
01:20PM 6 the airline industry has helped in your work on this
01:20PM 7 case?

01:20PM 8 A. Yes. I think that's precisely why I was
01:20PM 9 engaged on the project.

01:20PM 10 Q. How so?

01:20PM 11 A. What I'm asked to do in this case is to
01:20PM 12 evaluate and -- broader industry trends and how -- and
01:20PM 13 to compare broader industries to what's been going on
01:20PM 14 particularly in the travel industry.

01:20PM 15 Q. Have you had any experience working in the
01:21PM 16 travel industry?

01:21PM 17 A. Yes. I -- in the course of my consulting at
01:21PM 18 Eureka Software, my firm, we've worked for, I believe,
01:21PM 19 three or four travel -- travel agencies over the years.
01:21PM 20 It's been some time ago, maybe over ten years ago, but I
01:21PM 21 have some experience in the travel industry.

01:21PM 22 Q. And have you had any -- any experience working
01:21PM 23 with a -- with a mainframe computer -- we'll talk about
01:21PM 24 that in a little bit -- or legacy systems like Sabre's?

01:21PM 25 A. Yes, I do.

01:21PM 1 Q. Why don't you give the jury a sense of that.

01:21PM 2 A. Well, I started -- some of my first programming
01:21PM 3 experience was programming on mainframe computers. Back
01:21PM 4 in those days, computers didn't have keyboards and
01:21PM 5 screens. We literally punched holes in cards and would
01:21PM 6 feed them into the computer. That's the way they
01:21PM 7 worked. So computers have come a long way. And so
01:21PM 8 that -- I did that.

01:21PM 9 Also in my professional career, I worked
01:22PM 10 with a variety of mainframes. Mainframes are good at
01:22PM 11 crunching data, so there would be services -- I managed
01:22PM 12 the software division for a transportation research
01:22PM 13 company, and we would create software and we would use
01:22PM 14 mainframes to crunch a lot of that information.

01:22PM 15 Q. How long have you been working on this case,
01:22PM 16 Mr. Myers?

01:22PM 17 A. A little over a year, I believe.

01:22PM 18 Q. And you've been paid for your service?

01:22PM 19 A. Yes, I have.

01:22PM 20 Q. How much do you get an hour?

01:22PM 21 A. Well, I've engaged a team. My rate is \$500 an
01:22PM 22 hour, and my team -- I use engineers from my software
01:22PM 23 engineering firm, and they're paid \$250 an hour.

01:22PM 24 Q. And approximately how many hours have you and
01:22PM 25 your team spent on the case?

01:22PM 1 A. I think it's a couple of thousand hours, is
01:22PM 2 what I would estimate.

01:22PM 3 Q. Okay. Would you describe the -- the work that
01:22PM 4 you did in order to arrive at the conclusions you've
01:22PM 5 come to about this case?

01:22PM 6 A. Well, we've been working very hard for, again,
01:23PM 7 over a year. I have -- first of all, there are many
01:23PM 8 documents that have been produced in this case and --
01:23PM 9 thousands. And so, you know, I've been going through
01:23PM 10 and studying those documents. We use software tools to
01:23PM 11 search and find the relevant documents for me and my
01:23PM 12 team.

01:23PM 13 We -- I interviewed a number of people, I
01:23PM 14 think about 15 or so people. And so -- the other -- the
01:23PM 15 other area I spent a lot of time with is actually
01:23PM 16 testing the software. I'll be talking about that later,
01:23PM 17 I believe, but there's Sabre's technology and software,
01:23PM 18 as well as Direct Connect technology, hands-on use of
01:23PM 19 those technologies.

01:23PM 20 Q. So have you actually used the Sabre system?

01:23PM 21 A. Yes, I have.

01:23PM 22 Q. And what about American's Direct Connect
01:23PM 23 system?

01:23PM 24 A. Yes, I have.

01:23PM 25 Q. Okay. And what was your overall assessment of

01:23PM 1 those two systems?

01:23PM 2 A. I would say overall, the Sabre technology,
01:23PM 3 while it has had some good qualities, it has gotten
01:24PM 4 behind and it has some challenges for it evolving and
01:24PM 5 moving forward.

01:24PM 6 Direct Connect is built on more modern
01:24PM 7 technologies and it's significantly more flexible.

01:24PM 8 Q. Mr. Myers, have you prepared some materials or
01:24PM 9 demonstrative exhibits, slides to go along with your
01:24PM 10 presentation today?

01:24PM 11 A. Yes. I have some very technical topics to talk
01:24PM 12 about, and I think -- I've created some slides that I
01:24PM 13 think will help speed the teaching process along so that
01:24PM 14 the jury will understand that.

01:24PM 15 Q. And me and Mr. Yetter may understand it too?

01:24PM 16 A. I can't say that, but...

01:24PM 17 Q. Would it help if you were to work with the
01:24PM 18 SMART Board on this?

01:24PM 19 A. Yes, it would.

01:24PM 20 MR. ROTHMAN: Your Honor, with your
01:24PM 21 permission, I would ask Mr. Myers to approach the board
01:24PM 22 at this time.

01:24PM 23 THE COURT: All right.

01:25PM 24 Q. (BY MR. ROTHMAN) Mr. Myers, you've referred
01:25PM 25 already to a number of terms --

01:25PM 1 MR. GRIMSLEY: Do you have a copy of that?

01:25PM 2 MR. ROTHMAN: Do we have a hard copy?

01:25PM 3 MR. GRIMSLEY: Judge wants a copy.

01:25PM 4 THE COURT: All right. If you have one.

01:25PM 5 Thank you.

01:25PM 6 Q. (BY MR. ROTHMAN) Mr. Myers, you've used a

01:25PM 7 number of terms already, like "legacy system,"

01:25PM 8 "mainframe computers." There may have been a few

01:25PM 9 others.

01:25PM 10 Would you take the jury now through what
01:25PM 11 you regard to be the relevant history of the technology
01:25PM 12 and software in this industry that will help you explain
01:25PM 13 to us what you think are the important issues in this
01:26PM 14 case?

01:26PM 15 A. Yes, I can. Let me lay out what I'm showing
01:26PM 16 the jury here. I'm going to be talking about some key
01:26PM 17 innovative periods in technology, and they're very
01:26PM 18 important in this case for you to understand what's
01:26PM 19 going on. So this is a timeline starting in 1950, and
01:26PM 20 it goes up through today.

01:26PM 21 And so the first period of innovation I
01:26PM 22 want to talk about is the mainframe computer. And
01:26PM 23 this -- these were the what we call in the industry "big
01:26PM 24 iron systems." These were -- filled up rooms. They had
01:26PM 25 huge tape drives and systems. And for back in the '50s

01:26PM 1 and '60s, this was the state of the art.

01:26PM 2 Here's another shot of that. You get a
01:26PM 3 feel -- here's some punch card technology I mentioned
01:26PM 4 earlier.

01:26PM 5 And at this time, mainframes were -- there
01:26PM 6 were about eight companies. So this was the state of
01:26PM 7 the art. This was the technology. Very expensive,
01:26PM 8 millions of dollars, and only the biggest of companies
01:26PM 9 could be involved in computers.

01:27PM 10 A huge revolution came. It was called the
01:27PM 11 personal computer. Things got a lot smaller. They fit
01:27PM 12 on your desktop. Rather than filling an entire room
01:27PM 13 with a computer, now suddenly you could have it on your
01:27PM 14 desktop.

01:27PM 15 One of the first computers that I
01:27PM 16 personally worked with is this one right here. It's the
01:27PM 17 Radio Shack TRS-80. And so -- interestingly enough,
01:27PM 18 here's a tape recorder. It didn't even have disk drives
01:27PM 19 yet. You would literally -- you know, some of you like
01:27PM 20 me know what a cassette tape is. You would actually
01:27PM 21 save all your programs on a cassette tape.

01:27PM 22 And so this was an amazing -- at the time,
01:27PM 23 an individual person could have a PC, and put it on
01:27PM 24 their desktop, and write software on it.

01:27PM 25 So there's other companies. One that's

01:27PM 1 very notable in this whole history is Apple Computer.
01:27PM 2 There's been a lot of talk -- Steve Jobs died within the
01:27PM 3 last year. This was one of his early computers, the
01:27PM 4 Apple II. So you have whole series of companies
01:27PM 5 delivering new computers. That was amazing at the time.
01:27PM 6 And Apple was early to the market.

01:28PM 7 And guess whose attention that got? It's
01:28PM 8 IBM. They were a big -- they were certainly a big
01:28PM 9 player in the mainframe. IBM was number one there, and
01:28PM 10 IBM did not like this little upstart called Apple
01:28PM 11 Computer delivering to the marketplace this -- this new
01:28PM 12 technology.

01:28PM 13 So they rushed to market a product called
01:28PM 14 the IBM PC. Maybe some of you have seen one of these.
01:28PM 15 Again, this was a great device at the time. One of the
01:28PM 16 things that was very notable about the IBM PC is that it
01:28PM 17 was built upon a very commodity part. They picked the
01:28PM 18 Intel processor. At this time, you know, Intel was not
01:28PM 19 nearly the company they are today, but that selection
01:28PM 20 really helped Intel on the path to where they --

01:28PM 21 MR. GRIMSLEY: Your Honor, I'd just ask for
01:28PM 22 a question to be inserted every once in a while.

01:28PM 23 MR. ROTHMAN: You beat me to the punch.

01:28PM 24 THE COURT: All right. Go ahead. Ask a
01:28PM 25 question.

01:28PM 1 Q. (BY MR. ROTHMAN) Mr. Myers, what do you mean
01:28PM 2 by "commodity parts"?

01:29PM 3 A. Well, what I mean by that is rather than having
01:29PM 4 a proprietary system where only they could sell -- no
01:29PM 5 one else could build similar computers, they were
01:29PM 6 off-the-shelf parts put into the system. And I'll -- a
01:29PM 7 good way to explain that is to talk about Dell computer.

01:29PM 8 Q. Can you go back just for one minute?

01:29PM 9 A. Yes. Well, I'll have to go back -- okay.

01:29PM 10 Q. Can you explain to the jury what the screens
01:29PM 11 were like on these computers at this time?

01:29PM 12 A. Yes. This is what you would call the DOS
01:29PM 13 screen. What I was about to say is that another
01:29PM 14 interesting part of the story is that a company called
01:29PM 15 Microsoft, you know, at that point a very small company,
01:29PM 16 was hired by IBM to build the operating system. And
01:29PM 17 this is the DOS operating system.

01:29PM 18 You see it's what we call a "green screen,"
01:29PM 19 that's where that terminology comes, and this is way the
01:29PM 20 computers looked back in this time period. And so --
01:29PM 21 does that answer your question?

01:29PM 22 Q. And are those screens, types of screens, the
01:30PM 23 green screens being used today?

01:30PM 24 A. I would say, no, not in the -- computer
01:30PM 25 technology in general has moved well beyond the green

01:30PM 1 screen. I'll be talking to that in a moment.

01:30PM 2 Q. Is Sabre still using a green screen?

01:30PM 3 A. Sabre still uses a green screen substantially.

01:30PM 4 Q. What was the next era of development?

01:30PM 5 A. I did want to touch on Dell and tie it -- make
01:30PM 6 sure you understand why this was important to the
01:30PM 7 technology development.

01:30PM 8 Part of the reason why the PC exploded was
01:30PM 9 IBM's decision to use standard parts. That meant other
01:30PM 10 people could go out and build a similar computer. And
01:30PM 11 Michael Dell -- when I was in college, I bought my first
01:30PM 12 PC from him. He was selling them out of his dorm. And
01:30PM 13 word got around this young whippersnapper was building
01:30PM 14 these clone computers. It was an amazing time.

01:30PM 15 Q. Where did he go to school?

01:30PM 16 A. He went to the University of Texas.

01:30PM 17 Q. Okay.

01:30PM 18 A. And so that event, you know, shaped computer
01:31PM 19 history. I mean, him and other people building these
01:31PM 20 clone computers was a big part of that, and we still
01:31PM 21 reap the benefits of that today in the industry.

01:31PM 22 Q. What came next in the developmental history of
01:31PM 23 computer business?

01:31PM 24 A. So the next period is very important as well.
01:31PM 25 And this company called Apple Computer keeps popping up

01:31PM 1 on the screen here because they are very much
01:31PM 2 innovators. Steve Jobs has always been an innovator.
01:31PM 3 He came out with technology called the graphic user
01:31PM 4 interface. Let me explain that. That means -- remember
01:31PM 5 that green screen that looked like this? Suddenly we
01:31PM 6 have a screen that looks like this.

01:31PM 7 This is the first Mac computer. And so you
01:31PM 8 have -- you went -- this is what a DOS screen looked
01:31PM 9 like, and then this is what that first Mac looked like,
01:31PM 10 the Mac that Steve Jobs came out with.

01:31PM 11 And let me explain for those of you who
01:31PM 12 don't know what that means, on the old green screens,
01:31PM 13 you would have to enter a command like "delete" or a
01:32PM 14 real cryptic command that would be hard to learn. With
01:32PM 15 this interface, simple things like the trash can are
01:32PM 16 available. You can just take a file -- use a mouse to
01:32PM 17 drag it to the trash can.

01:32PM 18 And part of the -- the mouse really wasn't
01:32PM 19 part of a computer like they are today. These screens
01:32PM 20 are more typing on a keyboard predominantly.

01:32PM 21 And then this is another example. Not to
01:32PM 22 be outdone, Microsoft, after seeing what the Mac came
01:32PM 23 out with, they quickly launched the Windows system to
01:32PM 24 compete with that.

01:32PM 25 Q. And what was the next era in the history of the

01:32PM 1 computer industry?

01:32PM 2 A. This is the Internet. Of all these innovative
01:32PM 3 periods, this one changed everything the most. Some of
01:32PM 4 you remember that the press called it the "Information
01:32PM 5 Superhighway." So for the first time, we could
01:32PM 6 communicate very rapidly all over the planet.

01:32PM 7 And so I want to brag on our state a little
01:33PM 8 bit. We -- we here in Texas, and particularly in
01:33PM 9 Austin, were really at the cutting edge. And so THEnet
01:33PM 10 was the Texas Higher Education Network that was set up
01:33PM 11 here in Texas here in the late '80s. This was -- before
01:33PM 12 the Internet was used by everybody, we were using it to
01:33PM 13 research. I was a graduate student. We were
01:33PM 14 communicating. We had e-mail for the first time. It
01:33PM 15 was amazing. And then --

01:33PM 16 Q. Excuse me. So before this point in time, there
01:33PM 17 was no e-mail?

01:33PM 18 A. That's correct.

01:33PM 19 Q. Okay.

01:33PM 20 A. And so another, I think, high-water point for
01:33PM 21 Austin, in particular, and Texas is that the first --
01:33PM 22 MCC, a consortium of research was selected -- the
01:33PM 23 University of Texas at Austin donated some land and it
01:33PM 24 was a big deal. This research for microcomputers and
01:33PM 25 electronics and computer technology consortium brought

01:33PM 1 in amazing talent and a lot of money, and so Austin
01:33PM 2 became a center for technology. You know, there's the
01:33PM 3 Silicon Valley, there was Austin and Boston, so we were
01:34PM 4 right at the forefront, you know, at this time in
01:34PM 5 Austin, Texas.

01:34PM 6 Q. What were you doing in those days?

01:34PM 7 A. Well, I had a front-row seat. I was running a
01:34PM 8 software company. And we were riding the wave. It was
01:34PM 9 a lot of fun, but it was a crazy time. Venture capital
01:34PM 10 was flowing and this was -- you may remember the dot-com
01:34PM 11 boom, and this was the boom. It was crazy, but it
01:34PM 12 was -- it was a fun time and a lot of neat innovation
01:34PM 13 was going on in this time period.

01:34PM 14 Q. And you have icons on there for Google,
01:34PM 15 American Airlines, Southwest, Amazon.

01:34PM 16 Why is that?

01:34PM 17 A. Well, I think this list speaks for itself.
01:34PM 18 Look at these, what are now household names, what was
01:34PM 19 changing.

01:34PM 20 So in this period -- just so everybody's
01:34PM 21 clear, 1995, the government finally said, we're going to
01:34PM 22 be let the Internet be completely public. We're not
01:34PM 23 going to keep control of it, so it was all commercial at
01:34PM 24 that point.

01:34PM 25 So look at this. Yahoo.com in '94,

01:35PM 1 Amazon.com in '95, Google in '96. And even in the
01:35PM 2 airline industry, Southwest Airlines and American both
01:35PM 3 are some of the first airlines to launch Web sites.

01:35PM 4 So before this, companies didn't even have
01:35PM 5 Web sites where you go and get information. So this was
01:35PM 6 the Internet boom. It was changing everything about
01:35PM 7 computers and technology and the businesses that use the
01:35PM 8 technology.

01:35PM 9 Q. Were those companies, Yahoo! and Google,
01:35PM 10 relying on the mainframe computers?

01:35PM 11 A. No. These companies were using new, modern
01:35PM 12 technologies and not relying on mainframes.

01:35PM 13 Q. And what was the next era that you'd like to
01:35PM 14 talk about?

01:35PM 15 A. Well, the next era here is what we call
01:35PM 16 convergence. All of these technologies have built upon
01:35PM 17 each other, and so today we have benefits of combining
01:35PM 18 these together. And I have this graphic to illustrate
01:35PM 19 this. Remember you used to have a separate telephone,
01:35PM 20 you used to have a separate calendar, you used to have a
01:36PM 21 phone, you used to have mail on your desktop, a radio,
01:36PM 22 and today all of that's now converged into one device
01:36PM 23 that many people have like an iPhone like I do. So this
01:36PM 24 is the concept. All of those technologies have come
01:36PM 25 together.

01:36PM 1 Now, what that means is that in the world
01:36PM 2 we all live in now, we have some key elements going on
01:36PM 3 that we all experience every day. Online shopping is
01:36PM 4 huge. We all buy much more of our stuff for life
01:36PM 5 through online shopping. Increasingly, it is
01:36PM 6 customized. What I mean by that is that it's
01:36PM 7 personalized. We get offers, we get special deals, I
01:36PM 8 love a good coupon or something like that. I'll talk of
01:36PM 9 some examples there.

01:36PM 10 Q. Wait a second. What is Randalls?

01:36PM 11 A. Randalls is one -- well, that's a grocery store
01:36PM 12 in Austin, and they have an iPhone app that is called
01:36PM 13 "Just For You." And so I can download -- I have that on
01:36PM 14 my phone, and Randalls is right next door to my office.
01:37PM 15 I eat lunch there regularly, so I'll get a coupon. You
01:37PM 16 go online and -- what I mean is that that's what we mean
01:37PM 17 by customized or personalized. You know, they look at
01:37PM 18 what I've bought in the past and they give me good deals
01:37PM 19 on what I like to buy, so...

01:37PM 20 Q. I won't ask you what you're buying, Mr. Myers.

01:37PM 21 A. And I think that was probably my next point
01:37PM 22 here. Mobile is a key part of that. Increasingly, it's
01:37PM 23 not only what you're doing at home, but it's also mobile
01:37PM 24 technology as part of delivering these functionalities
01:37PM 25 or capabilities when you're out and about town.

01:37PM 1 And then it's increasingly social.
01:37PM 2 Everybody's heard about Facebook. These, you know,
01:37PM 3 companies are looking at your network of people and
01:37PM 4 targeting information to give you a better deal based on
01:37PM 5 what you like.

01:37PM 6 Q. What about CarMax?

01:37PM 7 A. CarMax is a good example of helping you hone in
01:37PM 8 on what you really want, taking a lot of noise and
01:37PM 9 helping you filter down and find the car that looks
01:38PM 10 good. You may have seen their commercials. That's part
01:38PM 11 of their technology is to, you know, look at all the
01:38PM 12 cars out there and filter down by color and model and
01:38PM 13 all those features. That's the way they work.

01:38PM 14 And any other examples here of interest?

01:38PM 15 Q. Well, you've got American Airlines up there.
01:38PM 16 Have you seen any development in the airline business
01:38PM 17 that seeks to do the kinds of things you've talked about
01:38PM 18 in the era of convergence?

01:38PM 19 A. There are a few, definitely, and American
01:38PM 20 Airlines, that is a -- they have an iPhone app that I
01:38PM 21 use when I travel American. Southwest has one as well.
01:38PM 22 It's an app where you can check your flight, get your
01:38PM 23 boarding pass, all of those kinds of things. So this
01:38PM 24 is -- you know, what I'm trying to show here is that
01:38PM 25 technology has come to where we are today and there's a

01:38PM 1 lot of new and exciting, innovative services that can be
01:38PM 2 delivered through this cumulative technology here.

01:38PM 3 Q. And have you seen in the airline business any
01:38PM 4 attempt to do the kind of personalization you've talked
01:38PM 5 about?

01:39PM 6 A. Yes, companies are trying to do that.

01:39PM 7 Q. Okay. Now, let's step back. And you know this
01:39PM 8 case is about the GDS business and the Sabre product.

01:39PM 9 What I'd like you to do now is to help us
01:39PM 10 understand the production and the development of the
01:39PM 11 Sabre GDS, if you could. Where did it begin?

01:39PM 12 A. So this is a really interesting story. It
01:39PM 13 starts back in 1953. There was -- well, it's covered up
01:39PM 14 by the icon there.

01:39PM 15 The CEO of American Airlines happened to
01:39PM 16 sit on an airline next to an IBM salesman. This is
01:39PM 17 1953. IBM had been working on some --

01:39PM 18 MR. GRIMSLEY: Your Honor, may we approach
01:39PM 19 the bench?

01:39PM 20 THE COURT: All right.

01:39PM 21 (Discussion off the record.)

01:40PM 22 Q. (BY MR. ROTHMAN) Go ahead, Mr. Myers.

01:40PM 23 A. So this chance meeting between the CEO of
01:40PM 24 American Airlines and an IBM salesman, they get to
01:40PM 25 talking about the problems of American Airlines. The

01:40PM 1 problem was they were paper based. If you called up
01:40PM 2 your airline and wanted to book a flight, someone
01:40PM 3 effectively had a clipboard and had to look and see if
01:40PM 4 there's a space on an airplane. That's a complicated
01:40PM 5 process. You know, there was no computer at that time.
01:40PM 6 IBM had been working with some government research. And
01:40PM 7 these two gentlemen talked about it and said, I think we
01:40PM 8 can put this -- you know, put something together.

01:40PM 9 So about a year or two later, they kick off
01:40PM 10 a project. And then in about 1960 to '62, the first
01:40PM 11 version of Sabre was launched. At that time the
01:41PM 12 astronomical amount of money of about \$40 million was
01:41PM 13 spent on that project. In today's dollars, that's over
01:41PM 14 \$300 million was spent by one airline, American
01:41PM 15 Airlines. They were a key innovator in the industry.
01:41PM 16 And just to make sure you're clear on that, Sabre was
01:41PM 17 part of American Airlines at this time, and this was the
01:41PM 18 first system that was developed.

01:41PM 19 Q. Do you have a picture of what the Sabre system
01:41PM 20 looked like?

01:41PM 21 A. Yes. This is a video I found online. This is
01:41PM 22 American Airlines center, and this is the actual first
01:41PM 23 version in 1965 of the American Airlines Sabre system,
01:41PM 24 mainframe technology. So this was a documentary
01:41PM 25 produced by AT&T who was a part of it. I'll speak to

01:41PM 1 that in a moment. Things have changed a little bit.

01:41PM 2 Q. What was the next significant development in
01:42PM 3 the development of the Sabre system?

01:42PM 4 A. Well, the network was completed in 1964. Let
01:42PM 5 me tell you what that means. Remember, this was before
01:42PM 6 the Internet. There was no way to talk among all the
01:42PM 7 computers and systems, and that's why AT&T, they put
01:42PM 8 about 10,400 phone lines all over the country. They
01:42PM 9 effectively built their -- the first version of the
01:42PM 10 Internet, at least for American Airlines. So that came
01:42PM 11 out in about 1964.

01:42PM 12 And, you know, frankly, this was a
01:42PM 13 remarkable system. It was way before its time,
01:42PM 14 cutting-edge technology. They spent millions of dollars
01:42PM 15 and it was, you know, really phenomenal at the time.

01:42PM 16 Q. And what was the next stage?

01:42PM 17 A. So then the next innovation for American
01:42PM 18 Airlines was to go and put these terminals at travel
01:42PM 19 agencies. Prior to this, this was just the system used
01:42PM 20 by the airline itself. So if you called the airline or
01:42PM 21 you went to the ticket counter, they were using the
01:43PM 22 Sabre system to book your trip that you were taking. So
01:43PM 23 they started this in 1976. They were in 130 travel
01:43PM 24 agencies. This was revolutionary at the time. The
01:43PM 25 other airlines started to respond and it concerned them,

01:43PM 1 so they went and started building competing systems.

01:43PM 2 But this was creating a lot of competition in the

01:43PM 3 market.

01:43PM 4 Q. What was the next stage?

01:43PM 5 A. Sabre is -- the Sabre system is continuing to
01:43PM 6 evolve and change. So you may remember, this is before

01:43PM 7 the Internet, but they had CompuServe and America

01:43PM 8 Online, these dial-up services where you had a modem

01:43PM 9 that made weird sounds and you could log in and

01:43PM 10 communicate. This is a pre-Internet way so that people

01:43PM 11 could log into the system and start to shop for their

01:43PM 12 airline travel.

01:43PM 13 Q. And what are you depicting here in this
01:43PM 14 diagram?

01:43PM 15 A. So I'm showing a few milestones in the
01:44PM 16 development of Sabre. This is where the Sabre system
01:44PM 17 starts to show some of its age. Remember, it was
01:44PM 18 first -- started development back here in the '50s, and
01:44PM 19 it has been improved. A lot of money has been invested
01:44PM 20 in the system. We have -- the Internet boom begins
01:44PM 21 here, and American launches Travelocity.com, and they
01:44PM 22 launch Best Fare Finder. These are just the milestones.
01:44PM 23 They are improving the product and continuing to invest
01:44PM 24 in that.

01:44PM 25 Q. And you have a note there for the Y2K Project.

01:44PM 1 What was that?

01:44PM 2 A. Yes. Hopefully you guys remember the Y2K. It
01:44PM 3 was kind of a crazy time. That stands for "Year 2000."
01:44PM 4 The older computer systems like this were -- you know,
01:44PM 5 back in those days you just used a term like "76" for
01:44PM 6 the year 1976. The problem was, they didn't -- no one
01:44PM 7 thought these systems would still be around where we'd
01:44PM 8 have to use the date 2000. So after 1999 there was no
01:44PM 9 storage in the system for that -- for dates beyond
01:45PM 10 December 31, 1999.

01:45PM 11 So this was something -- and, you know, a
01:45PM 12 lot of people -- but particularly older systems,
01:45PM 13 Sabre -- the Sabre system had to spend five years and
01:45PM 14 about a million hours on that project to make -- to deal
01:45PM 15 with that problem.

01:45PM 16 And that goes to -- to something I want to
01:45PM 17 mention here. The Sabre system is built in very
01:45PM 18 low-level technology. This goes back to -- when the
01:45PM 19 system was first built, it used a similar code. I know
01:45PM 20 that's a techy word, but that means it's basically
01:45PM 21 hardware. Modern programing languages that are easy and
01:45PM 22 flexible to change your program weren't even available
01:45PM 23 when that project started. This was basically
01:45PM 24 hardwiring the machine code, millions and millions of
01:45PM 25 lines of machine code, and that made projects like Y2K a

01:45PM 1 big problem because you had to go in and really dig in
01:45PM 2 the weeds to try to figure out how to fix those
01:45PM 3 problems.

01:45PM 4 Q. So let's take a look now at Sabre in the
01:46PM 5 convergence period.

01:46PM 6 A. So I think this is important. Up to this point
01:46PM 7 in 2000, Sabre is part of American Airlines and the
01:46PM 8 company is sold. I think you heard that yesterday in
01:46PM 9 the openings. And the -- this is a notable milestone
01:46PM 10 here, this Sabre ATSE. That is -- for the first time,
01:46PM 11 Sabre is figuring out that we have a big problem, and
01:46PM 12 the Internet is creating that. Remember -- remember, I
01:46PM 13 talked about the amazing revolution here of the
01:46PM 14 Internet. And so I'm going to draw a picture here in a
01:46PM 15 minute of what that looks like.

01:46PM 16 In fact, can I pull up a chalkboard here so
01:46PM 17 I can draw on this? I just need a blank sheet.

01:46PM 18 MR. YETTER: I think Kim is doing it over
01:46PM 19 there.

01:46PM 20 THE WITNESS: So what's important to
01:47PM 21 understand here is up until here -- up until about 2001,
01:47PM 22 the core Sabre system, this is the TPF mainframe, okay.
01:47PM 23 So we have travel agents. In about 2000 there were --

01:47PM 24 Q. (BY MR. ROTHMAN) Are you demonstrating now why
01:47PM 25 you're a software expert and not an artist?

01:47PM 1 A. Yes. I'm just trying to make -- this will
01:47PM 2 help, I think, illustrate what's going on. Sorry about
01:47PM 3 the -- my artistic talent's not great.

01:47PM 4 But these are agencies. Okay? So in about
01:47PM 5 2000, there were about 10,000 travel agencies and they
01:47PM 6 had been communicating with Sabre. And when they went
01:47PM 7 to work every day, they would log in and they would
01:48PM 8 communicate with that system.

01:48PM 9 And so then what happened is the
01:48PM 10 Internet -- I'm going to just spare you a lot of
01:48PM 11 graphics here -- but there's a lot of people. Now,
01:48PM 12 suddenly, when we launch Travelocity, Orbitz, Expedia,
01:48PM 13 millions of people now need to access the system. It's
01:48PM 14 a whole different ball game, and so Sabre had to scratch
01:48PM 15 their head and say, what are we going to do? It's a
01:48PM 16 good problem to have. We got a lot of new people coming
01:48PM 17 into our system.

01:48PM 18 So just to put it in perspective, you know,
01:48PM 19 10,000 agents, about 15,000 locations for travel
01:48PM 20 agencies, which are a big part of this case, there were
01:48PM 21 about 280 million people in the U.S. So when you open
01:48PM 22 it up and let people shop, it was really overloading
01:48PM 23 their system. They had some decisions to make on how
01:48PM 24 they would deal with that technologically.

01:49PM 25 Q. What did they do?

01:49PM 1 A. So what they began to do is, what I'll say is
01:49PM 2 wrap the system. I'm going to draw this as a wrapper.
01:49PM 3 They had to protect it. There was no way that this old
01:49PM 4 technology that had been developed -- sure, they had
01:49PM 5 been working to improve it, put a lot of time and effort
01:49PM 6 into improving it, but they had -- there was no way the
01:49PM 7 mainframe could handle this. This is, you know, well
01:49PM 8 documented. And so they internally decided to go with a
01:49PM 9 wrapper.

01:49PM 10 And what this is, this is modern
01:49PM 11 technology. This is what companies would use to build
01:49PM 12 their -- they would start from scratch. This is the,
01:49PM 13 what we call service-oriented architectures, and it's
01:49PM 14 the latest and greatest. So Sabre today has this system
01:49PM 15 that is all modern. And it is current technology. They
01:49PM 16 made that, but they also have a substantial footprint
01:49PM 17 that is still at its core to this mainframe system.
01:49PM 18 It's this legacy technology that I'm going to be talking
01:49PM 19 about later today. While, you know, at one point it was
01:50PM 20 their strength, it was an amazing system, today it is
01:50PM 21 very antiquated and it's really the ball and chain
01:50PM 22 that's helping hold them back from innovating. So --
01:50PM 23 and they have the added expense of, you know,
01:50PM 24 maintaining two systems, modern and mainframe.

01:50PM 25 Q. So I want to go back to the picture, Mr. Myers.

01:50PM 1 A. Okay.

01:50PM 2 MR. GRIMSLEY: Do we -- I apologize. Do we
01:50PM 3 still have in the computer there somewhere that picture
01:50PM 4 that you just drew?

01:50PM 5 THE WITNESS: I don't think so.

01:50PM 6 MR. GRIMSLEY: Or is it gone? Okay. I'd
01:50PM 7 just ask that before we erase anything like that from
01:50PM 8 now on that I just have an opportunity to use one of
01:50PM 9 those iPhones to take a picture of it. All right?

01:50PM 10 MR. ROTHMAN: Yeah, that's totally fine.

01:50PM 11 MR. GRIMSLEY: Is that all right, Your
01:50PM 12 Honor?

01:50PM 13 THE COURT: Yes, sir.

01:50PM 14 MR. ROTHMAN: And if you'd like, he can
01:50PM 15 draw it again for you so you'd have it.

01:50PM 16 MR. GRIMSLEY: Thank you.

01:50PM 17 Q. (BY MR. ROTHMAN) Okay. Mr. Myers, let's go
01:51PM 18 back to the screen.

01:51PM 19 So I think we were talking about Sabre in
01:51PM 20 the era of convergence. Okay. And I believe you just
01:51PM 21 talked about the ATSE.

01:51PM 22 You haven't tried here to record everything
01:51PM 23 that Sabre did in this era, have you?

01:51PM 24 A. No. I'm hitting the key high points that I
01:51PM 25 think are relevant to this case.

01:51PM 1 Q. Okay. And we see you have in 2010 a note that
01:51PM 2 says, "Sabre Red with graphical view."

01:51PM 3 What is that?

01:51PM 4 A. Well, this is a good example of where Sabre is
01:51PM 5 struggling to keep up with technology. Remember I
01:51PM 6 mentioned earlier that graphical systems were being
01:51PM 7 launched in the marketplace with that Mac computer and
01:51PM 8 Windows computer. That was back mid -- 1984 was the
01:52PM 9 Mac, so by the end of the '90s, those were very
01:52PM 10 prevalent.

01:52PM 11 Sabre is launching -- still trying to
01:52PM 12 launch a graphical view here in 2010, and they're still
01:52PM 13 working on that. It's been a challenge for them to do
01:52PM 14 that. They've made a few attempts over time, but
01:52PM 15 they're making a renewed attempt even the last couple of
01:52PM 16 years.

01:52PM 17 And "My Sabre" was the previous version of
01:52PM 18 that -- "MySabre Red," we're going to hear a lot about
01:52PM 19 that, that is the agent desktop software. When the
01:52PM 20 travel agent gets up, goes to work, sits down at their
01:52PM 21 computer and they get a call from a traveler, that's
01:52PM 22 the -- that's the system that they type on and search
01:52PM 23 for airfare and other travel-related items.

01:52PM 24 Q. Okay, Mr. Myers, you can have a seat.

01:52PM 25 Now, are there things that the Sabre system

01:52PM 1 does well in this modern environment?

01:53PM 2 A. Yes. Sabre, you've got to give it credit
01:53PM 3 for -- it has a lot of airlines being in business a long
01:53PM 4 time. They've accumulated a lot of airlines. You know,
01:53PM 5 they're -- I don't know that anybody is better than them
01:53PM 6 in terms of having the most airlines. I think they have
01:53PM 7 400.

01:53PM 8 Their -- their -- the basic flight
01:53PM 9 information that they have, they've been strong there.
01:53PM 10 And so I think they -- they -- also while they were
01:53PM 11 faced with the challenge of the Internet, they found a
01:53PM 12 way to finesse it and they have, you know, wrapped it,
01:53PM 13 as I showed the wrap there, to handle the growth of the
01:53PM 14 Internet.

01:53PM 15 Q. Have they made investments in the system?

01:53PM 16 A. Yes. I think they've made substantial
01:53PM 17 investments.

01:53PM 18 Q. Let's talk now about a few aspects of the Sabre
01:53PM 19 system.

01:53PM 20 First, how does the information about
01:53PM 21 airline flight availability and fares get from the
01:53PM 22 airlines to the travel agents using a GDS like Sabre's?

01:54PM 23 A. Yes, this is a very important part of the Sabre
01:54PM 24 system. So -- can I have a clicker where I can control
01:54PM 25 that?

01:54PM 1 Q. Yeah, I will relinquish the clicker.

01:54PM 2 MR. YETTER: Your Honor, here is -- I don't
01:54PM 3 know if you need a laser pointer in case you want to use
01:54PM 4 it up there.

01:54PM 5 THE WITNESS: Okay. Okay. So this is a
01:54PM 6 very important part of what makes the Sabre system --
01:54PM 7 it's causing it to have some challenges today as we try
01:54PM 8 to move to the modern era. And when the Sabre system
01:54PM 9 was first contemplated decades ago, we didn't have the
01:54PM 10 Internet. Remember I mentioned that. There weren't
01:54PM 11 high-speed connections.

01:54PM 12 And so a very logical way to manage that
01:54PM 13 problem was to process all these hundreds of airlines --
01:54PM 14 if you look at my first box there, all the airlines have
01:54PM 15 to get their flight information about the fares that
01:55PM 16 they have, the schedules. How are you going to allow
01:55PM 17 people to find the best options among all those?

01:55PM 18 So they got together and created a
01:55PM 19 warehouse. And you may hear these words, ATPCO and OAG.
01:55PM 20 Don't worry about those. Those are really just the
01:55PM 21 third-party warehouse where all this information is
01:55PM 22 uploaded.

01:55PM 23 Q. (BY MR. ROTHMAN) Where does it go from there?

01:55PM 24 A. From the warehouse, Sabre accesses that
01:55PM 25 information. And let me describe why this is such a

01:55PM 1 challenge for Sabre today. This is -- this is what --
01:55PM 2 the way their system works, four times a day that
01:55PM 3 information could be uploaded. Meaning if American
01:55PM 4 Airlines or any airline wants to change a fare, they're
01:55PM 5 going to have to wait four to maybe an average of six
01:55PM 6 hours to do that, because it's only that period of time
01:55PM 7 where they upload that. That -- that -- in a modern,
01:55PM 8 realtime world in computers, that's excruciatingly slow.

01:56PM 9 But it's worse than that. The
01:56PM 10 processing -- there's so much data that Sabre has to
01:56PM 11 process -- that second era there where I'm talking
01:56PM 12 about -- it takes another, my testing shows, about two
01:56PM 13 hours and 40 minutes to two hours and 50 minutes. So it
01:56PM 14 can take eight to ten hours for data to flow up from --
01:56PM 15 into the warehouse and for Sabre to have it live, and we
01:56PM 16 tested that.

01:56PM 17 Q. When you say you tested it, what did you do?

01:56PM 18 A. Well, we asked American Airlines to file some
01:56PM 19 new fares through the warehouse, you know, using the --
01:56PM 20 this is what they do every day. This is the way they
01:56PM 21 upload that information. And then we literally sat on
01:56PM 22 the computer and on -- we logged into the Sabre Red
01:56PM 23 system, which is -- which was provided to us by Sabre in
01:56PM 24 this case, and we just for a couple of hours sat there
01:56PM 25 and waited till that information came online. We did

01:56PM 1 that four times to prove that it was repeatable.

01:57PM 2 Q. Now, has ATPCO tried to shorten that time gap?

01:57PM 3 A. There is talk in Europe -- I think it's down to
01:57PM 4 an hour upload and -- but you still have the processing
01:57PM 5 time. Whatever the duration is, you still have
01:57PM 6 two and a half to three hours of processing on top of
01:57PM 7 that. So however you slice it, this is a big problem.

01:57PM 8 Remember I showed the personalization, the
01:57PM 9 dynamic products where American and other airlines are
01:57PM 10 wanting to, you know, dynamically offer things to the
01:57PM 11 client that are very relevant? It's hard to do that in
01:57PM 12 a system that from its core is built in this legacy
01:57PM 13 technology. Again, it was a great way to go back in the
01:57PM 14 '60s and '70s, but today it's causing challenges for
01:57PM 15 innovation.

01:57PM 16 Q. Where did information go from Sabre?

01:57PM 17 A. Well, the next part of the story here is I want
01:57PM 18 to introduce companies. We're -- we're -- which are --
01:57PM 19 we have three companies; Company A, Company B, and then
01:58PM 20 Company C. These represent corporate travel. That can
01:58PM 21 be IBM. Let's say Company B, this gentleman right here
01:58PM 22 is Joe.

01:58PM 23 Joe calls up his travel agent and says, I
01:58PM 24 need to go on business trip from Dallas to New York,
01:58PM 25 help me out, and he describes his travel.

01:58PM 1 So here's the way the Sabre system works
01:58PM 2 today: That travel agent logs into that Sabre Red
01:58PM 3 system, and that's the first arrow there I just added.
01:58PM 4 They send the basic request: Give me your flights.
01:58PM 5 Give me the options.

01:58PM 6 That then had to flow to the airline
01:58PM 7 systems. The airlines -- what -- the missing piece that
01:58PM 8 was not in the warehouse, the airlines have always had
01:58PM 9 the availability, you know, what seats are available.
01:58PM 10 All that pre-flying had to happen ahead of time because
01:58PM 11 the Internet didn't exist. But they -- the small
01:58PM 12 communication there that I'm talking about is the
01:58PM 13 airline keeps a record of what seats are available, so
01:59PM 14 that's why they have to communicate back to the airline.

01:59PM 15 They use a standard called EDIFACT, which
01:59PM 16 is a United Nations standard, believe it or not.

01:59PM 17 Q. What do you mean by "United Nations standard"?
01:59PM 18 When was it developed?

01:59PM 19 A. Well, it started being developed in the '70s
01:59PM 20 and '80s. It replaced a previous standard called X.11.
01:59PM 21 But it is -- it's indicative of -- this legacy
01:59PM 22 technology is very hard. If you want to go to a
01:59PM 23 committee of -- that involves the United Nations to get
01:59PM 24 your interface changed, it's not happening very fast.
01:59PM 25 So innovation is really blocked in this environment.

01:59PM 1 Q. Now, do you have a slide that shows how the
01:59PM 2 information flows differently in what you called the
01:59PM 3 "modern" or the "convergence" era?

01:59PM 4 A. I have one more to finish on this one just to
01:59PM 5 show that -- the last arrow, if you see that, the travel
01:59PM 6 agent finally gets the information back.

01:59PM 7 So this is the basic workflow. I'll call
02:00PM 8 this the legacy workflow of Sabre. Again, it worked
02:00PM 9 pretty well decades ago, but it's really struggling to
02:00PM 10 keep up with modern times.

02:00PM 11 Q. And now let's look at the more modern way of
02:00PM 12 doing it, Mr. Myers.

02:00PM 13 A. Okay.

02:00PM 14 Q. What are you showing on this slide?

02:00PM 15 A. This -- this slide is very straightforward. As
02:00PM 16 you can see, it's Direct Connect. This is a
02:00PM 17 demonstrative to show how Direct Connect works.

02:00PM 18 The upper part of the screen has the same
02:00PM 19 companies. They call their travel agent, and there's a
02:00PM 20 direct connection for all information between the
02:00PM 21 airline and the travel agent.

02:00PM 22 Again, this is using modern Internet-based
02:00PM 23 technology. You see that in the middle. The technology
02:00PM 24 has been built from the ground up to be realtime
02:00PM 25 latencies. It's very short so you can get the latest

02:00PM 1 update and it's easier on everybody and the whole supply
02:00PM 2 chain to operate under that method.

02:01PM 3 Q. Now, we've talked about Sabre's system
02:01PM 4 beginning with the mainframe technology.

02:01PM 5 Are Sabre -- is Sabre's system still based
02:01PM 6 entirely on the mainframe computer?

02:01PM 7 A. No. That's what I was describing earlier. The
02:01PM 8 wrapping -- they have protected the mainframe to the
02:01PM 9 extent they can, and they have put modern technologies
10 around that.

02:01PM 11 And it's also important to note they have
02:01PM 12 upgraded the mainframe itself as well. They have
02:01PM 13 gone -- the system has gotten old. IBM has forced them
02:01PM 14 to upgrade at times because they sunset technology.
02:01PM 15 They moved from what was called version 4.1 to ZTPF,
02:01PM 16 which is the latest version that IBM has for the TPF
02:01PM 17 mainframe, so they have made investments.

02:01PM 18 THE REPORTER: Can you slow down?

02:01PM 19 THE WITNESS: Sorry.

02:01PM 20 They've had to do that because the scale
02:01PM 21 and all the traffic on the Internet has been increasing
02:01PM 22 rapidly. So they've wrapped and they've improved their
02:02PM 23 mainframe.

02:02PM 24 Q. (BY MR. ROTHMAN) During the course of your
02:02PM 25 work, have you seen any evidence regarding concerns that

02:02PM 1 Sabre has about its mainframe technology?

02:02PM 2 A. It is -- the concern is well documented within
02:02PM 3 Sabre's internal documents. They have a number of
02:02PM 4 documents that describe the problem and how -- they ask
02:02PM 5 themselves, how are we going deal with it? Do you want
02:02PM 6 to completely rewrite and replace all that old
02:02PM 7 technology?

02:02PM 8 They discuss whether they want to use that
02:02PM 9 what would -- straddle method where they have some
02:02PM 10 technology in mainframe and some in the modern
02:02PM 11 technology. So it's well known within Sabre that this
02:02PM 12 is a challenge for the company.

02:02PM 13 Q. How has Sabre done in terms of keeping up with
02:02PM 14 the -- the kinds of -- delivering the kinds of modern
02:02PM 15 product that we saw in the era of convergence?

02:02PM 16 A. Well, the biggest problem is just their ability
02:02PM 17 to deliver in a timely manner. Sabre has a lot of
02:03PM 18 really smart people. They work very hard. They spend a
02:03PM 19 lot of money. They have to because they have these two
02:03PM 20 big behemoth systems that have to work together, but --
02:03PM 21 so they have worked hard to do that, but time to market
02:03PM 22 and the flexibility of this system to be able to add new
02:03PM 23 features that the market is demanding is -- is perhaps
02:03PM 24 their biggest Achilles heel at this point.

02:03PM 25 Q. Let's take a look now at the next slide that

02:03PM 1 you've prepared. What are you trying to show here,
02:03PM 2 Mr. Myers?

02:03PM 3 A. This is an example of what I was talking about
02:03PM 4 earlier in the convergence. We're talking about all the
02:03PM 5 shopping and options. This is representative of -- the
02:03PM 6 basic airfare is in the middle. That's the Chevy
02:03PM 7 Suburban. That's been around for a long time. But
02:03PM 8 airlines now want to offer extra services, like the
02:03PM 9 Sirius XM radio, 4-wheel drive, heated seats. That's --
02:03PM 10 that's where the industry is going. There's a whole
02:04PM 11 series of things you can buy.

02:04PM 12 And so translating this to the airline
02:04PM 13 industry, they have extra legroom. You can board early.
02:04PM 14 Go to the lounge while you're waiting for your flight.
02:04PM 15 Particularly in the business travelers, people that are
02:04PM 16 traveling a lot, you know, these are the kind of
02:04PM 17 amenities that are important to them, and that's what is
02:04PM 18 important in this case.

02:04PM 19 Q. All right. By the lounge, I take it you don't
02:04PM 20 mean the men's room?

02:04PM 21 A. No, I mean the airline lounge.

02:04PM 22 Q. Okay.

02:04PM 23 A. Let me mention one other thing.

02:04PM 24 Q. Excuse me.

02:04PM 25 A. Another important aspect of this slide is to

02:04PM 1 show these branded bundles of features. Airlines are
02:04PM 2 increasingly wanting to have a package. For example,
02:04PM 3 American Airlines has a bundle of extra services called
02:04PM 4 "Boarding and Flexibility" package. If any of you have
02:04PM 5 been to their system or their Web site, you'll see that.
02:04PM 6 That allows you to have early boarding. It allows you
02:05PM 7 to have -- go on standby, and it gives you a reduced
02:05PM 8 change fee, the kind of thing a business traveler might
02:05PM 9 value because they have a business meeting and they
02:05PM 10 don't know when they're going to be leaving, and so
02:05PM 11 those are -- for a small fee, they can add those
02:05PM 12 features to their package.

02:05PM 13 Q. Now, are a lot of airlines using Sabre to
02:05PM 14 deliver these kinds of personalized packages?

02:05PM 15 A. I would say very few. Out of 400 airlines that
02:05PM 16 they serve, there's approximately four that have some
02:05PM 17 form of an extra service, and they have -- I think they
02:05PM 18 have a handful that may be on the way. At least I've
02:05PM 19 seen announcements that they're working on that.

02:05PM 20 Q. In what ways, if any, is Sabre's system limited
02:05PM 21 in its ability to provide these types of either special
02:05PM 22 products or branded or bundled products?

02:05PM 23 A. Well, generally speaking, it's just inflexible
02:06PM 24 in the way it was built and architected from a
02:06PM 25 technological standpoint. Sabre's approach to extra

02:06PM 1 services now is to really double down on that warehouse
02:06PM 2 approach. Instead of updating their systems to be
02:06PM 3 modern and realtime on the Internet, what they're
02:06PM 4 proposing to the industry is to keep the warehouse
02:06PM 5 system and actually dramatically increase the problems
02:06PM 6 associated with it by -- by uploading all of this
02:06PM 7 additional information to the warehouse.

02:06PM 8 Q. Now, I believe you said that you have used the
02:06PM 9 Sabre system?

02:06PM 10 A. Yes, I have.

02:06PM 11 Q. What have you done?

02:06PM 12 A. I have studied it as a travel agent. I've
02:06PM 13 worked with -- first of all, let me say I haven't
02:06PM 14 endeavored to become a travel agent as part of this
02:06PM 15 project. I'm not an expert on the system. It's a big,
02:06PM 16 complicated system. I have really focused on the
02:06PM 17 process of shopping and comparing airfares, particularly
02:07PM 18 as it relates to the industry trends like extra services
02:07PM 19 and bundles and branded fares.

02:07PM 20 Q. Okay. Now, do you have a few slides on the
02:07PM 21 Sabre system that you can show the jury?

02:07PM 22 A. Yes, I do.

02:07PM 23 Q. What are we seeing here, Mr. Myers?

02:07PM 24 A. We have a technical issue there.

02:07PM 25 MR. YETTER: I see a blank screen.

02:07PM 1 THE WITNESS: Is there any way to move
02:07PM 2 that?

02:07PM 3 MR. ROTHMAN: That little icon?

02:07PM 4 THE WITNESS: That little icon.

02:07PM 5 MR. GRIMSLEY: That's not Sabre's fault.

02:07PM 6 MR. ROTHMAN: Right.

02:07PM 7 THE WITNESS: Outstanding.

02:07PM 8 Q. (BY MR. ROTHMAN) Okay. So what are we looking
02:07PM 9 at there, Mr. Myers?

02:07PM 10 A. Okay. I mentioned earlier the Sabre Red
02:07PM 11 Software. This is the software that a travel agent goes
02:07PM 12 to work, they login, and this is the screen they see.
02:08PM 13 And I've zoomed in on the key part of the green screen
02:08PM 14 that they look at. Now, I think you'll notice right off
02:08PM 15 the bat this is not a graphical user interface. This is
02:08PM 16 the, what even they call a green screen.

02:08PM 17 Q. Would it help if you were closer to the screen?

02:08PM 18 A. I think it would.

02:08PM 19 So what I'm going to demonstrate is how
02:08PM 20 today a typical agent finds a flight for me. In fact,
02:08PM 21 this is Monty Myers. They've entered my name in here,
02:08PM 22 and so a travel agent has to go through a process to
02:08PM 23 book a flight.

02:08PM 24 And I want to say, that Sabre does have a
02:08PM 25 graphical view, is what they call it. It's not widely

02:08PM 1 used. This is predominantly what the agents use today,
02:08PM 2 and I'll talk to some of the issues on why that is. But
02:08PM 3 this is still the standard in the travel agency business
02:08PM 4 for what Sabre provides to their customers.

02:09PM 5 So the first command here is -- this is
02:09PM 6 called the availability command. These are called
02:09PM 7 cryptic commands. So, again, this is not graphical.
02:09PM 8 You have to study it. It takes agents a long time to
02:09PM 9 learn all of this cryptic technology here. But the 1
02:09PM 10 command means that I want to find available flights on
02:09PM 11 the 1st of November from JFK to LAX at 8 a.m., and so
02:09PM 12 that -- that command is issued.

02:09PM 13 Q. And what are we looking at now?

02:09PM 14 A. So this is the response to that command. So
02:09PM 15 important to me, as I study this industry, this command
02:09PM 16 has no pricing on it. All it does is give you -- give
02:09PM 17 the agent a general sense of what's available in the
02:09PM 18 marketplace. It doesn't -- you don't know what they
02:09PM 19 cost. The only indication of cost are these buckets
02:09PM 20 like C, D, Z. Those are the classes. You've probably
02:09PM 21 all booked in a Y class or a J class. So, again, this
02:10PM 22 was built back decades ago and when it was very
02:10PM 23 expensive to send information, so they tried to keep it
02:10PM 24 very small so it's not particularly informative.

02:10PM 25 So all we've done now is get some basic

02:10PM 1 availability. You'll notice that there's United
02:10PM 2 Airlines, there's a New Zealand, and there's American
02:10PM 3 Airlines at Line 4. Okay.

02:10PM 4 Q. What's the next search?

02:10PM 5 A. So the next task the agent would do is actually
02:10PM 6 book that. This is the sale, one seat on Class N, Line
02:10PM 7 4. So they had this cryptic command that books one seat
02:10PM 8 right there. That's the way the agent works. So
02:10PM 9 there's the response to that. It just confirmed that
02:10PM 10 I -- and that basically reserved the seat on the
02:10PM 11 airplane.

02:10PM 12 Q. And then what happens?

02:10PM 13 A. So that is just the outbound flights. So if
02:10PM 14 it's a round trip -- I'm going on a business trip, so
02:10PM 15 that's just the -- those first two steps just have
02:11PM 16 temporarily reserved the outbound. So now I have to do
02:11PM 17 the next command, which is show me what's available for
02:11PM 18 a return flight on November 5th.

02:11PM 19 And so the agent enters that command, and
02:11PM 20 you see a similar availability screen here. And, again,
02:11PM 21 the cryptic commands, agents learn what these things
02:11PM 22 mean. No pricing information. We're still guessing or
02:11PM 23 the agent is making their best guess at what might be
02:11PM 24 the best deal for the client. And you'll notice here,
02:11PM 25 here is American Airlines on Line 2 and United Airlines

02:11PM 1 on Line 5.

02:11PM 2 Q. And then what's next?

02:11PM 3 A. The next command is, I have to do that sell
02:11PM 4 command again. This is to reserve the return flight.
02:11PM 5 So I do sell one seat, Class N, for Line 2, which is
02:11PM 6 American Airlines.

02:11PM 7 Q. Mr. Myers, in the real world if we weren't
02:11PM 8 demonstrating for the jury, would this move more quickly
02:11PM 9 with a real travel agent --

02:12PM 10 A. Yes. That's a good point. An agent is going
02:12PM 11 to be -- obviously, they do this every day, they'll be
02:12PM 12 quicker at this. But I'm trying to give you a sense of
02:12PM 13 the way they have to work and the commands and the
02:12PM 14 complexity of these commands.

02:12PM 15 So this confirms that I've now reserved my
02:12PM 16 seat, my return flight. So there's more. The next is
02:12PM 17 simply, I want to display what I've saved. Here is the
02:12PM 18 display all. And not all agents do this. You know,
02:12PM 19 many will show a summary of there's that outbound
02:12PM 20 flight, there's my return flight.

02:12PM 21 Next command, will you price, is what it's
22 commonly known as. I have to -- now for the first time
02:12PM 23 I'm going to get a price. I'm done, and so I did the WP
02:12PM 24 command. Wait, let me go back.

02:13PM 25 Okay. WP command, and here we get the

02:13PM 1 first pricing of the -- of the process. So for the
02:13PM 2 seats that I booked on the outbound and return flight,
02:13PM 3 this one is \$395.60 and that's with the tax and this has
02:13PM 4 got some general rules for that flight. Okay.

02:13PM 5 So what's important here is I've gone
02:13PM 6 through six steps at this point, and I have a good guess
02:13PM 7 at the right price. The travel agent's job is to find
02:13PM 8 the best deal for me as a traveler, and now we've gone
02:13PM 9 through six steps, and so we don't have that. We have a
02:13PM 10 good guess. Depending on the skill of the agent, they
02:13PM 11 may have a good idea of what that is.

02:13PM 12 So Sabre has additional commands called low
02:13PM 13 fare commands to find the -- this is the WPNI there.
02:14PM 14 This is the low fare search with their extras. Now, let
02:14PM 15 me explain this one. This is where it's going to go out
02:14PM 16 for the first time and find the best deal. This is what
02:14PM 17 Sabre offers to do that. And so this represents -- WPNI
02:14PM 18 is the base command, slash D says I want only direct
02:14PM 19 flights, passenger one is an adult, and this is the air
02:14PM 20 extras. Remember, we're talking a big part of this case
02:14PM 21 are these extra services that need to be bundled in.
02:14PM 22 People are no longer just buying the airfare, they want
02:14PM 23 all the fixings that go with that.

02:14PM 24 And this one is saying I want -- in-flight
02:14PM 25 entertainment is what IE stands for. And so they do

02:14PM 1 that command, and here it goes out and searches for
02:14PM 2 those. So here's the command and this is the response.
02:14PM 3 It shows the original guess that I made. See, it's 396.
02:14PM 4 And it also shows that it found a better price here of
02:14PM 5 \$306.35. So that is the basic flow of the Sabre green
02:15PM 6 screen software.

02:15PM 7 Q. Now, do the various GDSs use the same language,
02:15PM 8 same coding?

02:15PM 9 A. No. One of the interesting things about the
02:15PM 10 travel industry is that some of the other GDSs have
02:15PM 11 these similar cryptic commands, but they're all
02:15PM 12 different. If a travel agent goes to a different
02:15PM 13 company that uses a different, like a Worldspan, then
02:15PM 14 they have to learn all of this over again. There's a
02:15PM 15 whole different set of commands.

02:15PM 16 Q. Now, I believe you said that Sabre also has a
02:15PM 17 graphical display?

02:15PM 18 A. Yes, I did.

02:15PM 19 Q. Would you explain what they've done in that
02:15PM 20 regard?

02:15PM 21 A. Yes. So what Sabre's done in their Sabre Red
02:15PM 22 products, they have recognized the challenges of just
02:15PM 23 having that old legacy green screen. They are working
02:15PM 24 towards having a more graphical view. It's not a
02:15PM 25 complete rewrite. They're trying to, you know, have one

02:16PM 1 foot still in the old technology and another foot
02:16PM 2 introducing some new features here. And a key thing
02:16PM 3 here is that most agents are not using this technology.
02:16PM 4 It just is not compelling enough, and I'll show you some
02:16PM 5 of the reasons why that is. But, clearly, it's
02:16PM 6 something they're working hard on to try to address
02:16PM 7 these deficiencies.

02:16PM 8 So, again, this just shows that -- before I
02:16PM 9 do that, let me say the graphical view only represents
02:16PM 10 about half of the total commands. So even if an agent
02:16PM 11 wanted to start using some of these graphical features,
02:16PM 12 they're going to have to go and work a lot in that green
02:16PM 13 screen that I've just showed you. So that's part of the
02:16PM 14 reason why it's been slow to be adopted by the travel
02:16PM 15 agents. It's not very efficient and good.

02:16PM 16 Q. Mr. Myers, what do you mean when you say it
02:16PM 17 only -- it only has half of the commands? What does
02:16PM 18 that mean?

02:16PM 19 A. So this first one here is availability.
02:16PM 20 Remember, I did two availability searches earlier and it
02:17PM 21 goes through -- I'm sorry. Let me just show this to
02:17PM 22 you. So this is the graphical view for Sabre that
02:17PM 23 they've implemented, JFK and LAX, 1st of November, a lot
02:17PM 24 of the same information.

02:17PM 25 Q. This is still Mr. Monty Myers traveling to LA?

02:17PM 1 A. Yes, it is.

02:17PM 2 MR. GRIMSLEY: Excuse me, Your Honor. Is
02:17PM 3 this the video or is somebody actually entering this
02:17PM 4 stuff in right now?

02:17PM 5 MR. ROTHMAN: This is a video.

02:17PM 6 THE WITNESS: It's a video.

02:17PM 7 And so there it comes back. Now, that's
02:17PM 8 the same. It's the same multistep process, but they've
02:17PM 9 put a graphical face on it. So it's not particularly
02:17PM 10 more efficient, but it is still generally the same
02:17PM 11 process.

02:17PM 12 Q. (BY MR. ROTHMAN) So has the adoption or the
02:17PM 13 implementation of the graphic view solved the
02:17PM 14 limitations of the Sabre system?

02:18PM 15 A. No, it hasn't. And I've got some more
02:18PM 16 demonstratives here. I'll describe that.

02:18PM 17 So one of their latest additions,
02:18PM 18 recognizing that the key to success for an agent is to
02:18PM 19 be able to -- or one of the key successes is to have
02:18PM 20 them find the best fare efficiently, the best deal for
02:18PM 21 the customer. Every customer wants to know they're
02:18PM 22 getting the right package, and they have added a
02:18PM 23 fare-led search.

02:18PM 24 In fact, what you're looking at right there
02:18PM 25 is their latest and greatest. They released this about

02:18PM 1 five or six weeks ago when I was working on this case.
02:18PM 2 So this is -- this is hot off the presses here. And
02:18PM 3 it's where they can go and search for the widest
02:18PM 4 spectrum of the right deal for the customer. And there
02:18PM 5 are some -- some key deficiencies in this.

02:18PM 6 Again, this case is about innovation and
02:18PM 7 moving towards these air extras. And, again, this was
02:18PM 8 not in Sabre's system prior to about four to six weeks
02:19PM 9 ago. This is something they just provided to me in the
02:19PM 10 last few weeks.

02:19PM 11 But there's some key problems with what
02:19PM 12 they've done here. This is, I think, showing the
02:19PM 13 difficulty they're having in migrating their technology
02:19PM 14 due to all the mainframe technologies that they're
02:19PM 15 dealing with. So the first thing is there's no
02:19PM 16 personalization. This is a -- this is an Achilles heel
02:19PM 17 for their system.

02:19PM 18 Q. Why is that?

02:19PM 19 A. Because, again, in the modern age they --
02:19PM 20 airlines want to have an offer that's relevant to me.
02:19PM 21 They know my history of where I've flown. For example,
02:19PM 22 if they lost my bag, they -- the airlines want to be
02:19PM 23 able to say, look, we're going to give you a free bag on
02:19PM 24 your next flight. Things like that are not possible in
02:19PM 25 the Sabre system. So there's just no access to the

02:19PM 1 information and data to make that happen.

02:19PM 2 Q. Anything else that you'd like to point out on
02:19PM 3 this?

02:19PM 4 A. Yes. So no personalization.

02:19PM 5 So another key part of the Sabre system is,
02:19PM 6 I mentioned earlier that they are doubling down on the
02:20PM 7 warehouse. I talked about the hours length going
02:20PM 8 through that system. So there's a standard that they've
02:20PM 9 put forward that they want everybody to follow and/or
02:20PM 10 they're promoting.

02:20PM 11 Q. What do you mean by a standard?

02:20PM 12 A. This is ATPCO. Working with ATPCO, there is a
02:20PM 13 standard that's been defined that they're adopting or
02:20PM 14 suggesting that get used. And it is -- defines what all
02:20PM 15 of these messages look like and what are the types of
02:20PM 16 information that can be part of an airfare.

02:20PM 17 And what's notable about this is the
02:20PM 18 standard that they're promoting, about half of the
02:20PM 19 items, like standby, upgrades, rule override, lounge,
02:20PM 20 and others, are not implemented in the Sabre system. So
02:20PM 21 these are all the Xs.

02:20PM 22 So -- and more significant than that is
02:20PM 23 this is a major deficiency in their latest technology.
02:21PM 24 This shows the difficulty they're having.

02:21PM 25 Remember I mentioned in my sample,

02:21PM 1 in-flight entertainment was what I put on the command
02:21PM 2 line. There's lots of in-flight entertainment. In
02:21PM 3 their own standard, Sabre has said, this is what we want
02:21PM 4 to do; we want to have this standard, but they haven't
02:21PM 5 implemented it.

02:21PM 6 In-flight entertainment can be Internet
02:21PM 7 access. That's important to business travelers. You
02:21PM 8 know, I use that a lot. I want to have power. In-seat
02:21PM 9 power is very important.

02:21PM 10 Sabre's system, their latest and greatest,
02:21PM 11 you can't specify any subcategory in their own standard
02:21PM 12 that they're promoting. So they have -- none of these
02:21PM 13 are available. And there's probably -- each of these
02:21PM 14 categories has numerous options, and so you can't search
02:21PM 15 the -- the fundamental flaw here is that you cannot make
02:21PM 16 a search within the Sabre system to differentiate on and
02:21PM 17 tell the system that I want these items. So that's a
02:22PM 18 problem.

02:22PM 19 Q. Do you know approximately how many airlines are
02:22PM 20 using Sabre to sell these types of specialized products?

02:22PM 21 A. I think I mentioned earlier there's about four
02:22PM 22 airlines and a few on the way that are selling extra
02:22PM 23 services. And they have a few that are selling some
02:22PM 24 form of a branded fare.

02:22PM 25 Q. Which ones are those, do you know?

02:22PM 1 A. I don't remember the exact -- I think Qantas
02:22PM 2 and Porter Airlines has some brand fares.

02:22PM 3 Q. Now -- you can have a seat, Mr. Myers.

02:22PM 4 A. I have couple more I was going to show to be
02:22PM 5 complete.

02:22PM 6 Q. I'll have a seat.

02:22PM 7 MR. GRIMSLEY: Can he ask a question?

02:22PM 8 THE COURT: We'll let counsel lead the
02:22PM 9 witness, rather than the witness leading counsel.

02:22PM 10 MR. ROTHMAN: Well, he knows more than me,
02:22PM 11 Your Honor.

02:22PM 12 Q. (BY MR. ROTHMAN) All right. Mr. Myers, now,
02:22PM 13 earlier we talked about Direct Connect. Can we go back
02:23PM 14 to the slide where you showed previously how the
02:23PM 15 information flows there?

02:23PM 16 A. Yes.

02:23PM 17 Q. Okay. And can you -- can you explain to the
02:23PM 18 jury, what are the airline Direct Connects, what are
02:23PM 19 they attempting to do?

02:23PM 20 A. The airline Direct Connects are attempting to
02:23PM 21 have systems where they can have the complete view of
02:23PM 22 their customer and offer these specialized deals for
02:23PM 23 their clients using modern technology. They'll be
02:23PM 24 personalized. They'll be up to date. And hopefully
02:23PM 25 they'll give the traveler exactly what they want at the

02:23PM 1 best price for that customer.

02:23PM 2 Q. Now, does a Direct Connect product like
02:23PM 3 American contain the full range of airline fares that
02:23PM 4 Sabre has, for instance?

02:23PM 5 A. No. It's not intended to do that.

02:23PM 6 Q. Why not?

02:23PM 7 A. Well, Direct Connect by its name is about an
02:23PM 8 individual airline having its content. And the idea is
02:24PM 9 that -- there are today a lot of airlines that have
02:24PM 10 Direct Connects, and they can connect and control and
02:24PM 11 have the personalization and manage their data. So it's
02:24PM 12 just a much more personalized relationship between the
02:24PM 13 travel agent, the traveler, and the airline.

02:24PM 14 Q. Are there examples of other airlines beside
02:24PM 15 American that have Direct Connects?

02:24PM 16 A. Yes.

02:24PM 17 Q. Can you name a few?

02:24PM 18 A. Some that people will recognize, Southwest
02:24PM 19 Airlines has a Direct Connect technology. Air Canada is
02:24PM 20 one that's had a real success with their Direct Connect.

02:24PM 21 Q. Do you have a slide relating to the Air Canada
02:24PM 22 Direct Connect?

02:24PM 23 A. I do.

02:24PM 24 Q. Would you show that.

02:24PM 25 A. Air Canada has been real successful in -- with

02:24PM 1 their Direct Connect. And they have I think 2- to 3,000
02:24PM 2 agencies using their Direct Connect in Canada.

02:24PM 3 They have -- this shows Hawkeye, which is a
02:24PM 4 product by Farelogix. This is important. Let me
02:25PM 5 mention this too; I don't think I did earlier. When --
02:25PM 6 with Direct Connect, the Direct Connect is the plumbing
02:25PM 7 and the engine. And what you're looking at here is the
02:25PM 8 face that's called Hawkeye. So this is not Direct
02:25PM 9 Connect proper; this is a face that shows you the
02:25PM 10 capabilities of the Direct Connect, which is, you know,
02:25PM 11 under the -- under the hood, so to speak.

02:25PM 12 So this is a search that they do. And this
02:25PM 13 is -- you see these branded fares. It's very popular
02:25PM 14 now for certain airlines to have branded fares. You see
02:25PM 15 that latitude? I'll blow that up. This is where an
02:25PM 16 airline can build a package. This one happens to be
02:25PM 17 fully refundable. They can do flight changes for the
02:25PM 18 price of the fare difference. They can get 100 percent
02:25PM 19 of their miles, complementary seat, and complementary
02:25PM 20 snack. So very quickly the customer can hone in on
02:25PM 21 exactly what they'd like to have in terms of a package.
02:25PM 22 It's making shopping in this more complex world easier
02:26PM 23 through this mechanism.

02:26PM 24 Q. Which came first, the Air Canada Direct Connect
02:26PM 25 or American's?

02:26PM 1 A. Air Canada came first.

02:26PM 2 Q. Okay. Now, I believe you said you've used the
02:26PM 3 American Direct Connect product?

02:26PM 4 A. Yes, I have.

02:26PM 5 Q. What's your assessment of that? First of all,
02:26PM 6 what have you done with it?

02:26PM 7 A. Well, I've tested it at several levels. I have
02:26PM 8 hands-on used with -- well, that is I call it the
02:26PM 9 face -- like a SPRK product. I'll show that to you in a
02:26PM 10 moment. But more importantly, I've really done a lot of
02:26PM 11 testing of the interface, the plumbing, because that's
02:26PM 12 what Microsoft effectively offers, is they have a hookup
02:26PM 13 where anybody that wants to have their -- their
02:26PM 14 information, their fares, they can hook up and use that
02:26PM 15 in their system. So we've done extensive testing of
02:26PM 16 that plumbing or the interface to their system.

02:26PM 17 I've also done reviews of code and walked
02:26PM 18 through with the engineering teams that built it, so
02:26PM 19 I've spent a lot of time over the last year looking at
02:26PM 20 that.

02:26PM 21 Q. And what's your assessment of American's Direct
02:26PM 22 Connect?

02:26PM 23 A. American Direct Connect is a very solid product
02:27PM 24 built on all the modern technologies I mentioned
02:27PM 25 earlier. It's an Internet-age product. It scales

02:27PM 1 horizontally. It's stateless. It's modular. A lot of
02:27PM 2 things that we look for -- if my firm were going to
02:27PM 3 build it, it's very similar to what we would build. So
02:27PM 4 it's good technology.

02:27PM 5 Q. When you say it's "stateless," what do you mean
02:27PM 6 by that?

02:27PM 7 A. That is important. It's very technical. It
02:27PM 8 allows you to be much more flexible with your interface
02:27PM 9 and not have to maintain as much context on the server.
02:27PM 10 It means you can scale a lot easier.

02:27PM 11 Mainframes are hard to scale because
02:27PM 12 they're monolithic. It's all in one big system.

02:27PM 13 Q. I'm sorry to slow you down. What do you mean
02:27PM 14 by "scale"?

02:27PM 15 A. Scale means the ability to handle a lot more
02:27PM 16 people accessing the system. So as a company grows, you
02:27PM 17 have to add more capacity. And so "scale" means your
02:27PM 18 ability to add capacity to handle more shopping.

02:28PM 19 Q. And one more clarification. What do you mean
02:28PM 20 by "modular"?

02:28PM 21 A. Modular is an important aspect of a modern
02:28PM 22 system because it allows you to pick and choose what you
02:28PM 23 want to use for a certain -- if you don't like the
02:28PM 24 functionality of a certain piece, you can plug in
02:28PM 25 something else. For example, Air Canada's Direct

02:28PM 1 Connect uses one -- a firm -- I'm sorry.

02:28PM 2 American Airlines' Direct Connect uses ITA
02:28PM 3 Google as their shopping engine. And so that is
02:28PM 4 something that's -- they believe gives them a
02:28PM 5 competitive advantage. And the system is built where
02:28PM 6 they can add value quickly by plugging that into their
02:28PM 7 system.

02:28PM 8 Q. And are there things that Direct Connect
02:28PM 9 enables American to do today that it can't do using the
02:28PM 10 GDS?

02:28PM 11 A. Yes. It's built to support the personalization
02:29PM 12 that I talked about earlier to support up-to-the-minute
02:29PM 13 updates -- if a traveler's bag is lost, all of those are
02:29PM 14 capabilities within that engine and can be enabled.

02:29PM 15 Q. Is it offering today all of the kinds of
02:29PM 16 products that it's capable of offering?

02:29PM 17 A. No. It's like any technology, it's evolving
02:29PM 18 and changing and they're rolling out new capabilities
02:29PM 19 and features as they can.

02:29PM 20 Q. And is American today offering any personalized
02:29PM 21 products or bundles to travelers?

02:29PM 22 A. Yes. I mentioned those earlier. A couple of
02:29PM 23 them are the same-day standby feature. They have
02:29PM 24 Group 1 boarding. They have a change -- reduced change
02:29PM 25 fee, and they package that in a bundle. They have some

02:29PM 1 paid seats where you can get a premium seat with a plug,
02:29PM 2 for example, or -- or in a more -- a more beneficial
02:29PM 3 part of the plane.

02:29PM 4 Q. Do you have a demonstration of the American
02:30PM 5 system that you can show the jury?

02:30PM 6 A. Yes. So, again, this is not American Direct
02:30PM 7 Connect from the -- what you're seeing on the screen.
02:30PM 8 American Direct Connect is the plumbing that's
02:30PM 9 underneath this. This is a way to see how it's working.

02:30PM 10 Q. What is -- I see here this SPRK. What is that?

02:30PM 11 A. SPRK is a product that is -- that a company
02:30PM 12 called Farelogix, who is a key technology partner behind
02:30PM 13 American Airlines' Direct Connect --

02:30PM 14 Q. And --

02:30PM 15 A. -- their user interface.

02:30PM 16 Q. What is the business of Farelogix?

02:30PM 17 A. They -- they are a technology company that
02:30PM 18 builds aggregation tools and Direct Connect technology.

02:30PM 19 Q. And by "aggregation tools," what do you mean?

02:30PM 20 A. They have technology to talk to multiple Direct
02:30PM 21 Connects or in the GDS, if allowed to, and bring that
02:30PM 22 information together for comparison shopping.

02:30PM 23 Q. Okay. What are we looking at on the screen
02:31PM 24 here now, Mr. Myers?

02:31PM 25 THE COURT: Excuse me, Counsel. You've

02:31PM 1 changed exhibits. We're halfway through our working
02:31PM 2 afternoon. We'll take 15 minutes.

02:31PM 3 (Break taken from 2:31 p.m. to 2:47 p.m.)

02:47PM 4 THE COURT: Counsel.

02:47PM 5 Q. (BY MR. ROTHMAN) Mr. Myers, I think before the
02:48PM 6 break you were about to -- you were about to talk to us
02:48PM 7 about the American Direct Connect over SPRK. What are
02:48PM 8 we seeing on the screen here now?

02:48PM 9 A. Yes. Just as we left, I had performed a
02:48PM 10 fare-led search, which is a fill-in-the-form, and this
02:48PM 11 is the result in one step. And the important thing
02:48PM 12 about the Direct Connect technology, instead of being,
02:48PM 13 you know, six or seven steps to get a list of fully
02:48PM 14 priced fares, it's a one-step process. So it's a lot
02:48PM 15 more efficient with the technology.

02:48PM 16 Q. Now, on its face, this doesn't look a whole lot
02:48PM 17 different, at least to me, than what we saw in the Sabre
02:48PM 18 graphic interface. From a technology standpoint, what
02:48PM 19 differences are there between the Direct Connect that
02:48PM 20 we're seeing now or that's underneath the hood, as you
02:49PM 21 said, and the Sabre system?

02:49PM 22 A. Yes. Well, you can't judge a book by its cover
02:49PM 23 in this case, because it's the capability to do the
02:49PM 24 customization, the personalization, filtering out all
02:49PM 25 the options, being able to search based on the criteria

02:49PM 1 for a particular traveler. Do they want in-flight
02:49PM 2 entertainment? Do they want other criteria as part of
02:49PM 3 their search? It's not as many steps. There's a number
02:49PM 4 of differences.

02:49PM 5 Q. You showed us before a number of the -- the
02:49PM 6 products that we see in what you called the era of
02:49PM 7 convergence?

02:49PM 8 A. Yes.

02:49PM 9 Q. How does Direct Connect compare with those in
02:49PM 10 terms of technology basis and what they're trying to do?

02:49PM 11 A. Well, the plumbing is there to provide those
02:49PM 12 services that are being delivered to the market. I
02:49PM 13 showed you Air Canada, for example, they have branded
02:49PM 14 fares where a traveler can select a brand. They have
02:49PM 15 extra services that you can add to your flight, and so
02:50PM 16 the technology supports a lot of flexibility.
02:50PM 17 One-to-one marketing is what we call that. It's where
02:50PM 18 the offer can be based on what that particular traveler
02:50PM 19 wants. Like a lost bag, they can -- the airline can
02:50PM 20 respond and say, look, we're going to give you a free
02:50PM 21 trip to the -- to the lounge or whatever you'd like.

02:50PM 22 Q. Are there any agencies that are using Direct
02:50PM 23 Connect today?

02:50PM 24 A. There are about a dozen or so agencies using
02:50PM 25 Direct Connect.

02:50PM 1 Q. Who's got the clicker, Mr. Myers?

02:50PM 2 A. I do.

02:50PM 3 Q. Okay. Let's go to the next slide.

02:50PM 4 What are we seeing here? The title is

02:50PM 5 "Priceline Uses American's Direct Connect."

02:50PM 6 A. Yes. This is -- Priceline is probably a name
02:50PM 7 that everyone here has heard of. They are a well-known
02:50PM 8 online travel agency. Consumers or businesspeople can
02:51PM 9 go on there and book flights.

02:51PM 10 Q. Who is this guy?

02:51PM 11 A. That's William Shatner. "The Negotiator," I
02:51PM 12 think he's known as.

02:51PM 13 Q. I remember him as "Captain Kirk."

02:51PM 14 A. So this is -- Priceline is a firm that uses
02:51PM 15 American Airlines' Direct Connect, and this is showing
02:51PM 16 that -- the seat selection where you can have a premium
02:51PM 17 seat -- maybe it has power or it may have other
02:51PM 18 features -- and it's tied into American's Direct Connect
02:51PM 19 from Priceline.

02:51PM 20 Q. And you've heard the term "shopping" in
02:51PM 21 connection with distribution of airline tickets?

02:51PM 22 A. Yes.

02:51PM 23 Q. What does that mean?

02:51PM 24 A. That's the process of looking for the best deal
02:51PM 25 for the client based on all of the requirements that

02:51PM 1 they have.

02:51PM 2 Q. Is Priceline using Direct Connect for the
02:51PM 3 shopping function?

02:51PM 4 A. No. It's using it for the booking and for the
02:51PM 5 extra service there that's showing on the screen.

02:51PM 6 Q. What does it use for the shopping function, if
02:52PM 7 you know?

02:52PM 8 A. They use Worldspan, another company that -- for
02:52PM 9 that feature.

02:52PM 10 Q. Now, Sabre is -- I think you were here for the
02:52PM 11 opening statements yesterday?

02:52PM 12 A. Yes, I was.

02:52PM 13 Q. And you heard Mr. Lind talk about a number of
02:52PM 14 things that Sabre believes is not so good about Direct
02:52PM 15 Connect?

02:52PM 16 A. Yes.

02:52PM 17 Q. Okay. You heard Mr. Lind talk about some
02:52PM 18 documents which refer to Direct Connect as vaporware?

02:52PM 19 A. I heard him say that.

02:52PM 20 Q. Do you agree that Direct Connect could be
02:52PM 21 fairly described today as vaporware?

02:52PM 22 A. No. I have had my hands in the clay. I've
02:52PM 23 tested it; I've used it. I know it's not vaporware.

02:52PM 24 Q. And when you say you've tested it, what did you
02:52PM 25 test it for?

02:52PM 1 A. Well, just functionality as well as
02:52PM 2 performance. We do -- in my normal business, we test
02:53PM 3 interfaces. I mentioned the plumbing is a key part of
02:53PM 4 how these kind of systems work in the Internet age.

02:53PM 5 Q. Give it to me again, Mr. Myers, what do you
02:53PM 6 mean by "functionality"?

02:53PM 7 A. Those are the capabilities that it supports,
02:53PM 8 the messages, the responses. And these are just the
02:53PM 9 nuts and bolts of what an interface does.

02:53PM 10 Q. Now, I think you also may have heard Sabre
02:53PM 11 asserts that Direct Connect is -- will kill transparency
02:53PM 12 or the ability to comparison shop. Did you hear that?

02:53PM 13 A. I did hear that.

02:53PM 14 Q. Do you agree with that?

02:53PM 15 A. I do not.

02:53PM 16 Q. Aside from anything Sabre is doing, can --
02:53PM 17 should travelers or travel agencies be able to
02:53PM 18 comparison shop using Direct Connect?

02:53PM 19 A. Yes, they should.

02:53PM 20 Q. How would they do that?

02:53PM 21 A. There are a number of ways they can do that.
02:53PM 22 There are aggregation technologies that can communicate
02:54PM 23 with various providers. They're used a lot in the
02:54PM 24 industry today. And they put everything on an
02:54PM 25 integrated screen where the agent can go find the best

02:54PM 1 option for the customer.

02:54PM 2 Q. Have you prepared a slide that focuses on that?

02:54PM 3 A. Yes.

02:54PM 4 Q. This one is entitled, "Comparison Shopping with
02:54PM 5 Direct Connects."

02:54PM 6 Would you explain, Mr. Myers, what we're
02:54PM 7 looking at here? First of all, what are these -- what
02:54PM 8 are these companies that we see inside the travel agency
02:54PM 9 box?

02:54PM 10 A. So this is the travel agency, the green box.
02:54PM 11 And today, travel agents are using a variety of tools to
02:54PM 12 facilitate comparison shopping, meaning they pull
02:54PM 13 information from different sources and compare it so
02:54PM 14 they can find the very best deal for the customer. And
02:54PM 15 these -- Concur, Farelogix, Travelfusion, Rearden,
02:55PM 16 BookingBuilder, AgentWare, and PASS -- are all examples
02:55PM 17 of companies that sell technology that do aggregation
02:55PM 18 and comparison shopping.

02:55PM 19 Q. They sell them to travel agents?

02:55PM 20 A. Yes. They're used extensively in travel
02:55PM 21 agencies.

02:55PM 22 Q. And what do these -- what do these boxes on the
02:55PM 23 outside with the airline names in them, what do they
02:55PM 24 represent?

02:55PM 25 A. Well, these are examples of airlines with

02:55PM 1 Direct Connects. So many of these airlines are -- are
02:55PM 2 being connected via a Direct Connect technology with
02:55PM 3 these tools, Concur, Travelfusion, PASS. And so Direct
02:55PM 4 Connects are used extensively in the marketplace today.

02:55PM 5 Q. And so what is a firm -- let's take Concur or
02:55PM 6 Rearden, for instance, what do they do in order to
02:55PM 7 enable travel agents or corporate customers to
02:55PM 8 comparison shop if they're only getting flight
02:56PM 9 information from one airline, one particular airline on
02:56PM 10 the Direct Connect?

02:56PM 11 A. Well, they bring it all together so the travel
02:56PM 12 agent can see all the options. And I think I have a
02:56PM 13 slide here. This is an example of the Rearden as the
02:56PM 14 corporate booking tool where it shows Southwest Airlines
02:56PM 15 right next to United Airlines, and I believe it's
02:56PM 16 Continental and American.

02:56PM 17 So this is what I mean by comparison
02:56PM 18 shopping, bringing all the content, whether it's in a
02:56PM 19 Direct Connect or from a GDS or whatever the source,
02:56PM 20 where it can be compared in one place.

02:56PM 21 Q. From a technology standpoint, is that difficult
02:56PM 22 to do in this day and age?

02:56PM 23 A. No, it's straightforward.

02:56PM 24 Q. Now, I believe -- well, strike that.

02:56PM 25 Did you hear Mr. Lind say in his opening

02:56PM 1 that in order to adopt the Direct Connect, the travel
02:56PM 2 agency would have to find their own way to aggregate all
02:56PM 3 those fares and flights? Did you hear that?

02:57PM 4 A. I did.

02:57PM 5 Q. Setting aside Sabre's conduct, how difficult
02:57PM 6 would it be to find an aggregator for a travel agent who
02:57PM 7 wanted to aggregate fares from American and fares from a
02:57PM 8 GDS?

02:57PM 9 A. There is -- there are several options in the
02:57PM 10 marketplace with success aggregating content, and so it
02:57PM 11 would be very straightforward.

02:57PM 12 Q. Now -- can you shrink this?

02:57PM 13 A. (Complying.)

02:57PM 14 Q. With respect to the Direct Connects, in order
02:57PM 15 for Concur or Rearden to aggregate, does the airline
02:57PM 16 need to directly access the Sabre system?

02:57PM 17 A. I'm sorry. I didn't hear your question.

02:57PM 18 Q. In order for an aggregator like Concur or
02:57PM 19 Rearden to aggregate the flight information from the
02:58PM 20 Direct Connect and information that the aggregator is
02:58PM 21 getting from Sabre, does the airline have to directly
02:58PM 22 insert itself into the Sabre system?

02:58PM 23 A. It wouldn't have to, no.

02:58PM 24 Q. Now, can you give us some examples of some of
02:58PM 25 the larger travel agencies who were using these kinds of

02:58PM 1 aggregators and taking advantage of the -- of the
02:58PM 2 offerings of Direct Connects?

02:58PM 3 A. Sure.

02:58PM 4 This is a slide I produced that shows --
02:58PM 5 let me describe this. On the left column, I have
02:58PM 6 several large travel agencies: American Express, CWT as
02:58PM 7 it's called, BCD, HRG. These are four of the biggest
02:58PM 8 travel agencies that are in the business -- they serve
02:58PM 9 business clients predominantly.

02:58PM 10 Q. Which is the biggest?

02:58PM 11 A. American Express.

02:58PM 12 Q. And what are we seeing in the second column
02:59PM 13 under "Agency Tool Access Direct Connects"?

02:59PM 14 A. Well, these are agency tools -- these are the
02:59PM 15 tools I just showed you in my last slide that are being
02:59PM 16 used by these agencies. American Express, for example,
02:59PM 17 is using Concur, they're using Farelogix, they're using
02:59PM 18 AgentWare and Rearden.

02:59PM 19 And you can see down the list, we have
02:59PM 20 other aggregation technologies that these companies are
02:59PM 21 using.

02:59PM 22 Q. And then in the third column, what is that
02:59PM 23 reflecting?

02:59PM 24 A. This shows airlines that are enabled or
02:59PM 25 connected to these tools. All of these would be readily

02:59PM 1 accessible via these tools. So these are a number of
02:59PM 2 Direct Connects that are being used in the marketplace.

02:59PM 3 Q. Now, Mr. Myers, I want to show you a document.

02:59PM 4 MR. ROTHMAN: And, Kim, if you could put it
02:59PM 5 up. It's Plaintiff's Exhibit 1004.

03:00PM 6 Q. (BY MR. ROTHMAN) This is a document, you see
03:00PM 7 it's entitled "Universal Agent Desktop Partner Request,"
03:00PM 8 and I believe it's an American Express business travel
03:00PM 9 document.

03:00PM 10 Have you reviewed this?

03:00PM 11 MR. GRIMSLEY: Excuse me, Your Honor. Can
03:00PM 12 you let me know what exhibit number that is?

03:00PM 13 MR. ROTHMAN: Yes, I said PTX 1004.

03:00PM 14 MR. GRIMSLEY: Thank you.

03:00PM 15 MR. ROTHMAN: Sure.

03:00PM 16 Q. (BY MR. ROTHMAN) Is this a document you've
03:00PM 17 reviewed in the course of your work, Mr. Myers?

03:00PM 18 A. Yes, it is.

03:00PM 19 Q. What is it?

03:00PM 20 A. This is what we call a "Request for
03:00PM 21 Information" or "Request for Proposal." This was
03:00PM 22 produced by American Express, the largest travel
03:00PM 23 management company in the United States. And what an
03:00PM 24 RFI is, is where a company puts -- clearly documents
03:00PM 25 what they want from a product or technology and they

03:00PM 1 provide it to other companies so they can solicit
03:00PM 2 responses from other companies that -- how they would
03:01PM 3 address the needs expressed in that document.

03:01PM 4 So it's really common in the technology
03:01PM 5 industry that a company like American Express would put
03:01PM 6 that together and ask for companies to respond to that.
03:01PM 7 It expresses very clearly what they want.

03:01PM 8 Q. And let's take a look, if we could, at Page 4.
03:01PM 9 And we've highlighted the first paragraph. And you see
03:01PM 10 under "Vision and Purpose," the document says, "It is
03:01PM 11 American Express's vision to have a single point of sale
03:01PM 12 throughout its network. It will be GDS and content
03:01PM 13 diagnostic and offer functionality at a minimum equal to
03:01PM 14 but preferably greater than current GDS content and
03:01PM 15 transaction coverage."

03:01PM 16 And then you'll see in the last sentence of
03:01PM 17 the paragraph it says, "It should be intuitive in
03:01PM 18 nature, easily trained, stable and reliable, with access
03:02PM 19 to both GDS and non-GDS content."

03:02PM 20 Can you translate that for the laymen in
03:02PM 21 the room here?

03:02PM 22 A. Yes, I'd be glad to. That's very simply saying
03:02PM 23 that American Express has a vision where they want their
03:02PM 24 technology for their agents on their desktop to be able
03:02PM 25 to access both GDS and non-GDS content on an integrated

03:02PM 1 screen. And non-GDS content is the same as Direct
03:02PM 2 Connect. And so that's what this is saying.

03:02PM 3 Q. Let's flip ahead to Page 8. And here we see in
03:02PM 4 the second bullet point -- 2.1, (as read) "The ability
03:02PM 5 to connect with multiple content providers, paren, GDS
03:02PM 6 and non-GDS, and to integrate search results into a
03:03PM 7 single presentation layer."

03:03PM 8 What is your understanding of what American
03:03PM 9 Express is doing here?

03:03PM 10 A. American Express is making this very clear that
03:03PM 11 in this key component of their system called "the
03:03PM 12 supplier gateway," they want to have a technology that
03:03PM 13 combine both GDS and non-GDS Direct Connect content on
03:03PM 14 an integrated screen.

03:03PM 15 Q. And finally let's take a quick look, if we
03:03PM 16 could, at Page 11. And rather than reading, I will let
03:03PM 17 the jury read and ask you if you could explain what
03:03PM 18 we're looking at here.

03:03PM 19 A. This is a diagram in the American Express RFI
03:03PM 20 that shows, again, in a graphical way that they need to
03:03PM 21 have non-GDS content. And then they particularly
03:03PM 22 mention aggregators like Farelogix, which is the
03:03PM 23 technology behind American Airlines' Direct Connect.

03:04PM 24 Q. Now, let's take a look at another document.
03:04PM 25 This one is PTX 1005. And you see this is a Sabre

03:04PM 1 document entitled "Desktop for the Future, Response to
03:04PM 2 American Express Universal Agent Desktop RFI."

03:04PM 3 What is this document, Mr. Myers?

03:04PM 4 A. So this document represents the response by
03:04PM 5 Sabre to that -- our request for information that -- the
03:04PM 6 document we saw previously -- AmEx presented to several
03:04PM 7 companies what they would like to have in their
03:04PM 8 technology products. And this is Sabre responding to
03:04PM 9 that.

03:04PM 10 This is a very detailed response. In our
03:04PM 11 industry, a lot of time and effort goes into formulating
03:04PM 12 these. This document is maybe three-quarters of an inch
03:04PM 13 thick and approximately half an inch. So it's a very
03:05PM 14 formal response to that request.

03:05PM 15 Q. Let's take a look at Page 1, and here you see
03:05PM 16 Sabre's saying, "With appropriate executive level
03:05PM 17 project governance from AmEx and Sabre, the scope
03:05PM 18 outlined in the RFI and the full global deployment of
03:05PM 19 the AmEx universal agent desktop can be achieved in a
03:05PM 20 time frame of 18 to 24 months from contract agreement."

03:05PM 21 What do you understand that to mean, sir,
03:05PM 22 based on your experience in the technology field?

03:05PM 23 A. This is Sabre communicating back to American
03:05PM 24 Express that your vision as described in your RFI and
03:05PM 25 our response to that, we can deliver that, what you've

03:05PM 1 asked for, in approximately 18 to 24 months.

03:05PM 2 Q. And now let's skip ahead, if we could, to
03:05PM 3 Page 48. And here Sabre says that the cost for
03:06PM 4 development, implementation, and hardware is estimated
03:06PM 5 to range between \$4 million to \$5 million. The fees do
03:06PM 6 not include annual maintenance fees, which typically
03:06PM 7 runs at 25 percent of development.

03:06PM 8 Mr. Myers, based on your experience, does
03:06PM 9 Sabre's -- does Sabre's proposal showing that it
03:06PM 10 believed it could develop the system in 18 to 24 months
03:06PM 11 for 4- to \$5 million, is that surprising to you?

03:06PM 12 A. No, that seems very reasonable.

03:06PM 13 Q. Have you seen evidence that other travel
03:06PM 14 management companies or travel agents have sought to
03:06PM 15 develop similar multisource solutions to what AmEx is
03:06PM 16 doing?

03:06PM 17 A. Yes, I have.

03:06PM 18 Q. By the way, I use the word "multisource." What
03:06PM 19 does that mean in the field?

03:06PM 20 A. Multisource is another word for the technology
03:07PM 21 we've been talking about that aggregates and pulls
03:07PM 22 information from multiple sources. So multiple sources,
03:07PM 23 the GDS, one Direct Connect, a second Direct Connect, it
03:07PM 24 pulls it all together for comparison shopping by a
03:07PM 25 travel agent.

03:07PM 1 Q. And, Mr. Myers, I'd like to go back now, and
03:07PM 2 maybe ahead in our presentation with the slide, we
03:07PM 3 showed the various aggregators.

03:07PM 4 What is the -- no, let's go to the next
03:07PM 5 one, if we could. Right.

03:07PM 6 Now, you recall you said that companies
03:07PM 7 like Concur and Rearden are aggregating the content from
03:07PM 8 Direct Connect, such as Air Canada or Southwest, with
03:07PM 9 the information in Sabre in order to enable travel
03:08PM 10 agents to comparison shop. Do you recall that?

03:08PM 11 A. Yes.

03:08PM 12 Q. Are they also doing that for American?

03:08PM 13 A. No, they're not.

03:08PM 14 Q. Why not?

03:08PM 15 MR. GRIMSLEY: Objection, Your Honor,
03:08PM 16 foundation on this issue.

03:08PM 17 THE COURT: I'll sustain it. I'll sustain.

03:08PM 18 Q. (BY MR. ROTHMAN) Mr. Myers, have you examined
03:08PM 19 actions that Sabre has taken in order to determine
03:08PM 20 whether or not the content from American's Direct
03:08PM 21 Connect is being aggregated?

03:08PM 22 A. Yes, I have.

03:08PM 23 MR. GRIMSLEY: And I would just object,
03:08PM 24 again, Your Honor, as beyond the scope of this
03:08PM 25 gentleman's expertise.

03:08PM 1 THE COURT: Well, I'll let him answer.
2 Overruled.

03:08PM 3 Go ahead.

03:08PM 4 THE WITNESS: Yes. I've reviewed the
03:08PM 5 entire situation here and I -- one of the critical
03:08PM 6 components of the American Airlines technology is that
03:08PM 7 it's built on a company called Farelogix. And Farelogix
03:09PM 8 was an authorized developer of Sabre, and there was a
03:09PM 9 termination by Sabre of the authorized developer
03:09PM 10 agreement which effectually blocked the use of
03:09PM 11 American's Direct Connect.

03:09PM 12 Q. (BY MR. ROTHMAN) Why did it block the use of
03:09PM 13 Direct Connect? How did it affect -- how did the
03:09PM 14 termination of Farelogix affect the development of
03:09PM 15 Direct Connect?

03:09PM 16 MR. GRIMSLEY: Objection, again, Your
03:09PM 17 Honor. This is beyond the scope of this gentleman's
03:09PM 18 expertise.

03:09PM 19 MR. ROTHMAN: Your Honor, this is exactly
03:09PM 20 what --

03:09PM 21 THE COURT: Overruled. I'll let him answer
03:09PM 22 it.

03:09PM 23 MR. ROTHMAN: Thank you, Your Honor.

03:09PM 24 THE WITNESS: Would you ask the question
03:09PM 25 again, sir?

03:09PM 1 Q. (BY MR. ROTHMAN) Yes. What was the practical
03:09PM 2 effect, from a technology standpoint, of the termination
03:09PM 3 of Farelogix upon the development of Direct Connect?

03:09PM 4 A. Well, there were two practical effects. Number
03:09PM 5 one, because the underlying technology of American's
03:09PM 6 Direct Connect was built on Farelogix, it meant none of
03:09PM 7 the integrators that are on that screen or anyone else
03:10PM 8 would be able to access that information if they had an
03:10PM 9 existing relationship with Sabre.

03:10PM 10 Q. You said there were two. Was there anything
03:10PM 11 else?

03:10PM 12 A. Yes. That termination was certainly a big
03:10PM 13 chilling effect in the industry, and I've talked to
03:10PM 14 other companies that were -- it was very -- when one
03:10PM 15 company like Farelogix was terminated and no longer
03:10PM 16 could be a developer in that --

03:10PM 17 MR. GRIMSLEY: Your Honor, I'll object
03:10PM 18 again, just in terms of this gentleman not being an
03:10PM 19 expert on what the facts or the determination of
03:10PM 20 Farelogix was on other industry players. He's a
03:10PM 21 technical expert.

03:10PM 22 THE COURT: I'll sustain that objection.

03:10PM 23 Q. (BY MR. ROTHMAN) Mr. Myers, based on your
03:10PM 24 knowledge of technology, is it important for a company
03:10PM 25 like Farelogix or Concur or Rearden to have a

03:10PM 1 relationship with Sabre?

03:10PM 2 A. It's very important. Sabre is the -- the
03:10PM 3 800-pound gorilla in the industry. And, for example, I
03:10PM 4 interviewed the CEO of PASS Consulting and he told me
03:11PM 5 that he would be out of business if they lost access to
03:11PM 6 any of the top three GDSs.

03:11PM 7 Q. Why would they be out of business?

03:11PM 8 A. Because so much of the marketplace uses Sabre
03:11PM 9 as part of their system. If you're a travel -- if
03:11PM 10 you're a company that's a developer that serves the
03:11PM 11 travel agency industry, you have to be able to build
03:11PM 12 products that work with the Sabre ecosystem.

03:11PM 13 Q. Now, would you go to the next slide, Mr. Myers.

03:11PM 14 What has been the impact of Sabre's actions
03:11PM 15 upon American from a technology standpoint?

03:11PM 16 A. Well, very -- very clearly, American Direct
03:11PM 17 Connect, while all the other Direct Connects here have
03:11PM 18 been allowed to participate, the American Direct Connect
03:11PM 19 has been blocked.

03:11PM 20 Q. And has Sabre blocked Southwest?

03:12PM 21 A. No.

03:12PM 22 Q. Air Canada?

03:12PM 23 A. No.

03:12PM 24 Q. Are you familiar with the term "passive
03:12PM 25 segments"?

03:12PM 1 A. Yes, I am.

03:12PM 2 Q. What are passive segments?

03:12PM 3 A. Passive segments is a technique used in the
03:12PM 4 industry for if a booking is made through another source
03:12PM 5 like a Direct Connect and the travel agent wants it to
03:12PM 6 flow through their mid-office and back office systems,
03:12PM 7 those are the systems that crunch the data and process
03:12PM 8 it for reporting purposes and other purposes. If they
03:12PM 9 want it -- passive is a way to enter that booking from
03:12PM 10 another system and have it flow into the travel agency's
03:12PM 11 normal system.

03:12PM 12 Q. Why would a travel agent want to do that?

03:12PM 13 A. Because that's the way they work. It's their
03:12PM 14 normal process and it has all of their recordkeeping and
03:12PM 15 reporting. It's part of that system.

03:12PM 16 Q. And does Sabre generally charge agents to use
03:13PM 17 passive segments?

03:13PM 18 A. Yes, they do.

03:13PM 19 Q. Does it generally allow agents to use passive
03:13PM 20 segments?

03:13PM 21 A. It allows agencies to use passive segments.

03:13PM 22 Q. Can travel agents use passive segments with
03:13PM 23 American's Direct Connect?

03:13PM 24 A. No, there's a --

03:13PM 25 MR. GRIMSLEY: Objection, Your Honor.

03:13PM 1 Again, this is going to the contractual agreements of
03:13PM 2 Sabre's contract. This is not a technical issue.
03:13PM 3 There's no technical issue with regard to how or why
03:13PM 4 Direct Connect could use passive segments. Those are
03:13PM 5 all commercial issues.

03:13PM 6 THE COURT: I'll let him answer that
03:13PM 7 question.

8 MR. ROTHMAN: Thank you.

03:13PM 9 THE COURT: Overruled.

03:13PM 10 Q. (BY MR. ROTHMAN) You can -- you have the
03:13PM 11 question, Mr. Myers?

03:13PM 12 A. Yes. Sabre has a policy of not allowing this
03:13PM 13 passive segments of American Airlines to flow through
03:13PM 14 the system -- anybody's -- any agency's system.

03:13PM 15 Q. You heard Mr. Lind say yesterday that travel
03:13PM 16 agents don't like or want Direct Connect. Do you recall
03:14PM 17 hearing that?

03:14PM 18 A. I heard that.

03:14PM 19 Q. Do you recall him saying that the fact that
03:14PM 20 travel agents haven't embraced Direct Connect has
03:14PM 21 nothing to do with Sabre?

03:14PM 22 A. I remember him saying that.

03:14PM 23 Q. Let me show you now a document that's been
03:14PM 24 labeled Plaintiff's Exhibit 991.

03:14PM 25 MR. ROTHMAN: Your Honor, can we approach?

03:14PM 1 THE COURT: Sure.

03:14PM 2 (Discussion off the record.)

03:14PM 3 THE COURT: Go ahead, Counsel.

03:14PM 4 MR. ROTHMAN: Do you want to -- do we need

03:14PM 5 to excuse people?

03:15PM 6 THE COURT: Who needs to be excused?

03:15PM 7 MR. ROTHMAN: It would be...

03:15PM 8 (Discussion off the record.)

03:15PM 9 THE COURT: All right. Anyone except for

03:15PM 10 the attorneys in the courtroom, if you'd step out in the

03:15PM 11 hall just a minute, please, except for the attorneys.

03:15PM 12 MR. ROTHMAN: Attorneys and corporate

03:15PM 13 representatives.

03:15PM 14 THE COURT: And corporate representatives,

03:15PM 15 yes.

03:15PM 16 (Discussion off the record.)

03:16PM 17 MR. ROTHMAN: This is a document that was

03:16PM 18 produced by American Express. They're not a party to

03:16PM 19 the litigation. They're what we call a third party, and

03:16PM 20 there are certain numbers in this document which they

03:16PM 21 felt were very confidential and they didn't want shown

03:16PM 22 to anybody but the jury and the lawyers. So that's why

03:16PM 23 we've asked people to leave.

03:16PM 24 THE COURT: And this part of the court

03:16PM 25 reporter's record will be sealed until I note otherwise.

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MR. ROTHMAN: Fair enough.

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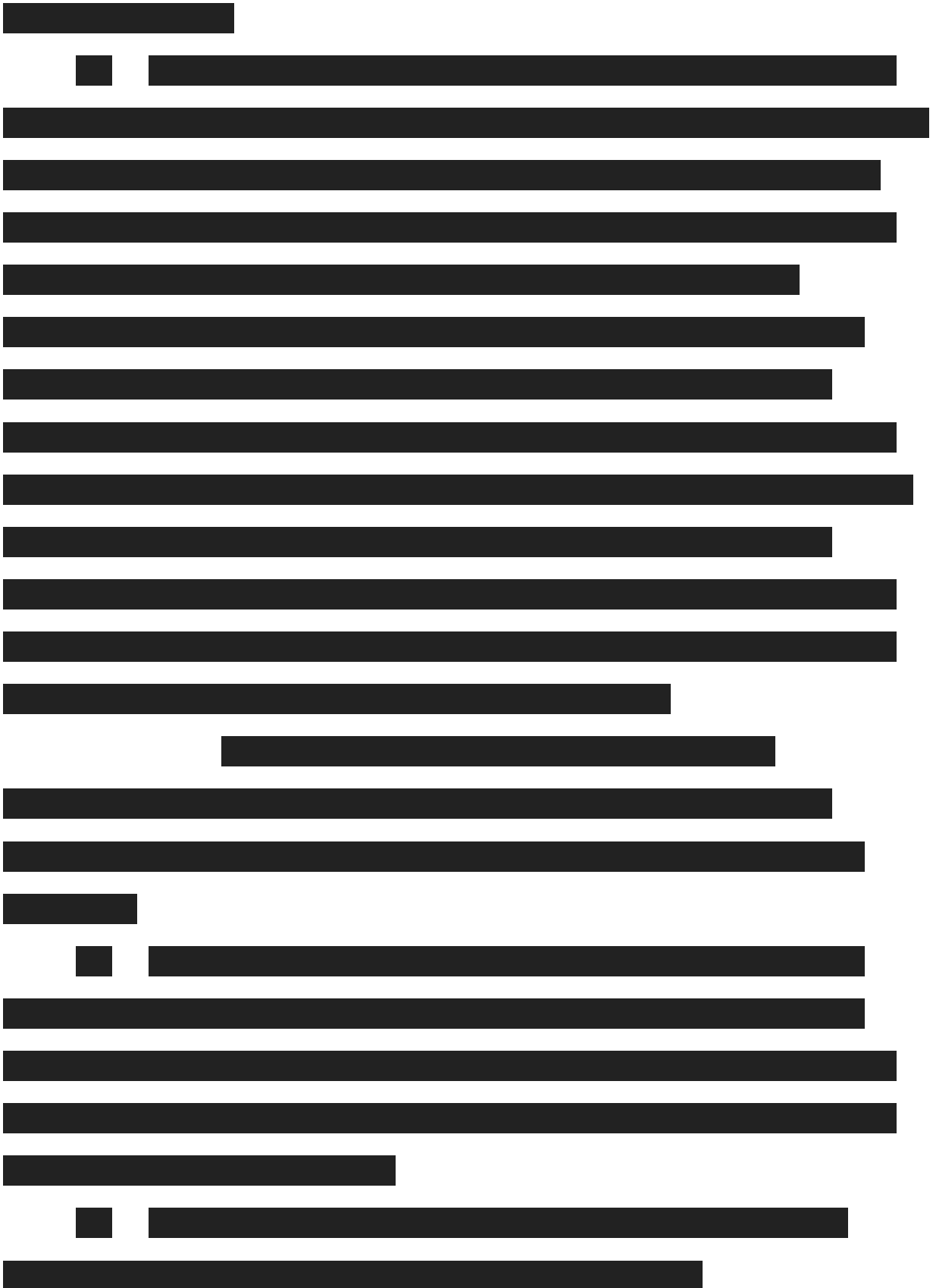


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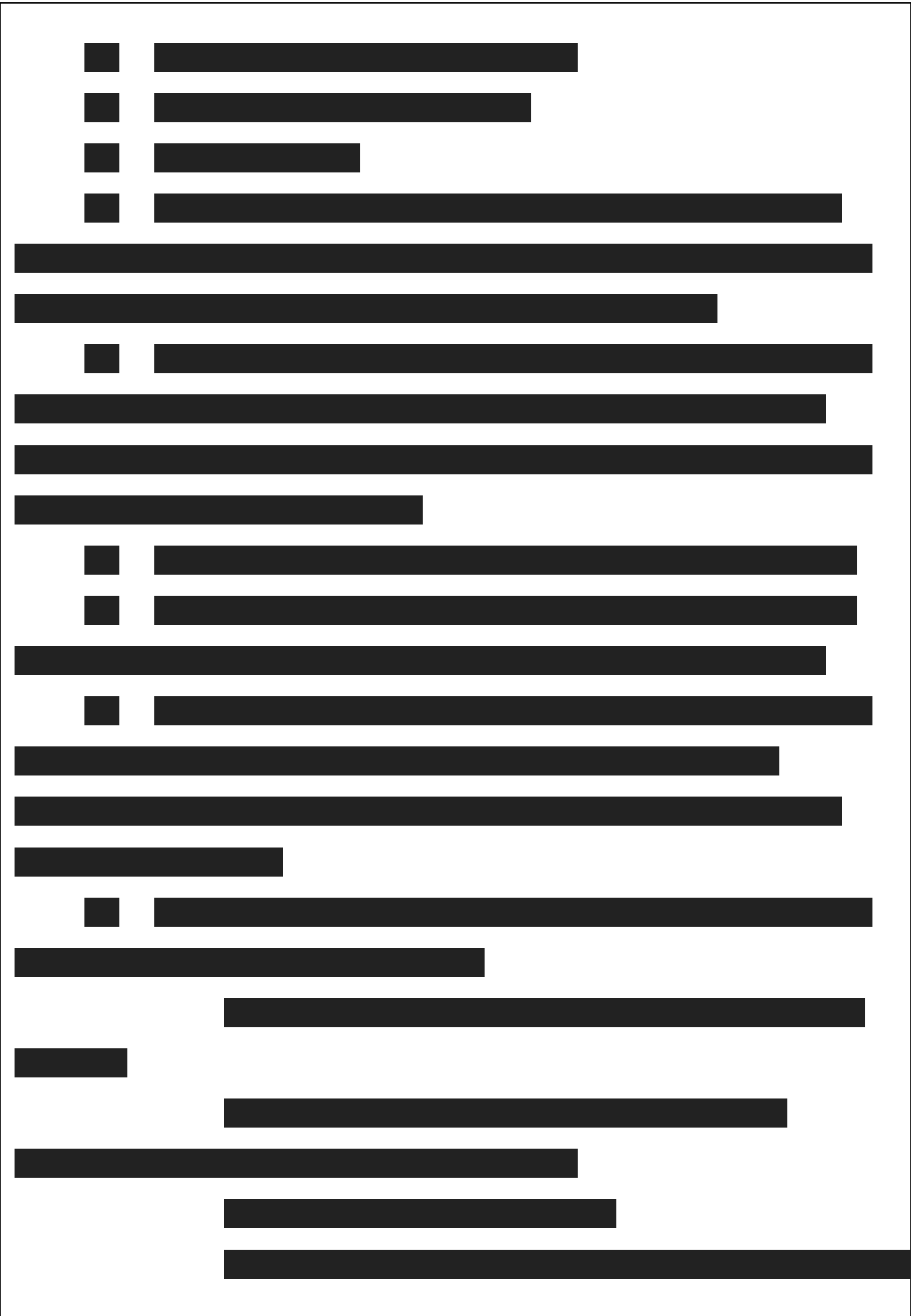
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THE COURT: Reach a logical stopping place

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about 4 o'clock.

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MR. GRIMSLEY: I'll let you know, Your

03:33PM

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Honor.

03:35PM

11

CROSS-EXAMINATION

12

BY MR. GRIMSLEY:

03:35PM

13

Q. Good afternoon, Mr. Myers.

03:35PM

14

A. Good afternoon.

03:35PM

15

Q. You don't work for American Airlines, do you?

03:35PM

16

A. No, I don't.

03:35PM

17

Q. You don't work for Sabre, do you?

03:35PM

18

A. No, I don't.

03:35PM

19

Q. You've never worked for an airline, have you?

03:35PM

20

A. As I mentioned in my direct, I have not.

03:35PM

21

Q. You have not worked for a GDS, have you?

03:35PM

22

A. I have not.

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23

Q. You were not responsible for actually

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24

developing the technology from the Sabre GDS that you

03:35PM

25

talked about during your direct examination, were you?

03:35PM 1 A. No, I was not.

03:35PM 2 Q. You didn't participate in that at all, did you?

03:35PM 3 A. No, I did not.

03:35PM 4 Q. You didn't participate in the development of

03:35PM 5 the American Airlines Direct Connect product, did you?

03:35PM 6 A. No, I didn't.

03:35PM 7 Q. And as you've said, you've actually never

03:35PM 8 worked for a travel agency, have you?

03:35PM 9 A. Not as an employee.

03:35PM 10 Q. You've done some consulting work, you said, for

03:35PM 11 travel agencies?

03:35PM 12 A. That's correct.

03:35PM 13 Q. But that was over ten years ago?

03:35PM 14 A. Yeah. I think I said that on direct, yes.

03:35PM 15 Q. But you've not been a travel agent?

03:36PM 16 A. No, I haven't been a travel agent.

03:36PM 17 Q. Prior to your being hired by American Airlines

03:36PM 18 in this case, had you used the Sabre Red workspace?

03:36PM 19 A. No, I have not.

03:36PM 20 Q. Had you used American Airlines' Direct Connect?

03:36PM 21 A. No, I had not.

03:36PM 22 Q. How many hours do you think you've actually

03:36PM 23 spent on the Sabre Red workspace yourself working?

03:36PM 24 A. I would say maybe 50 to 60.

03:36PM 25 Q. How many hours or how many days does a travel

03:36PM 1 agent, do you think, work to get that level of time? A

03:36PM 2 week? Two weeks, maybe?

03:36PM 3 A. I don't know how the travel agent would manage

03:36PM 4 their time.

03:36PM 5 Q. And you don't profess to be a travel agent, do

03:36PM 6 you?

03:36PM 7 A. No, I'm not a travel agent.

03:36PM 8 Q. Now, you talked a bit about the Sabre

03:36PM 9 technology. Do you recall that testimony?

03:36PM 10 A. I do.

03:36PM 11 Q. And you talked about the architecture and the

03:36PM 12 development of the Sabre technology up here on the SMART

03:36PM 13 Board?

03:36PM 14 A. Yes.

03:36PM 15 Q. Now, you would agree that the people who would

03:37PM 16 know best about the development of the Sabre technology,

03:37PM 17 and the GDS in particular, would be those people at

03:37PM 18 Sabre who actually developed it, right?

03:37PM 19 A. I think they all know a lot about that system.

03:37PM 20 Q. Well, they would be the best people to know

03:37PM 21 about the actual timeline of the development, sir,

03:37PM 22 wouldn't they?

03:37PM 23 A. Yes, I believe so.

03:37PM 24 Q. And they would be the best people to ask about

03:37PM 25 what type of hardware is actually used in the Sabre GDS

03:37PM 1 for a particular purpose; isn't that right?

03:37PM 2 A. I think they'll have good visibility of those
03:37PM 3 things.

03:37PM 4 Q. Well, they're the ones who actually work with
03:37PM 5 it on a day-to-day basis, right?

03:37PM 6 A. Yes.

03:37PM 7 Q. And they would be good people, perhaps, to ask
03:37PM 8 about what mainframes are used for versus what open
03:37PM 9 systems are used for in the Sabre GDS, right?

03:37PM 10 A. They would have visibility of that.

03:37PM 11 Q. Because you know, sir, that mainframes are not
03:37PM 12 the only technology that are used at the Sabre GDS;
03:37PM 13 isn't that right?

03:37PM 14 A. Yes. I tried to describe that earlier and show
03:37PM 15 they had a lot of new technology as well.

03:37PM 16 Q. In fact, there's a lot of open system
03:37PM 17 technology actually being utilized at the Sabre GDS
03:38PM 18 right now?

03:38PM 19 A. Absolutely.

03:38PM 20 Q. Now, did you go out and interview any of those
03:38PM 21 people from Sabre about Sabre's information technology
03:38PM 22 as you prepared your work in this case?

03:38PM 23 A. I did not have access to those people.

03:38PM 24 Q. Did you ask maybe to talk to any of those
03:38PM 25 people?

03:38PM 1 A. I -- I asked to talk to the broadest spectrum
03:38PM 2 of people I could.

03:38PM 3 Q. You understand that there are things called
03:38PM 4 depositions that were taken in this case?

03:38PM 5 A. Yes, I do.

03:38PM 6 Q. In fact, I took your deposition?

03:38PM 7 A. Yes, you did.

03:38PM 8 Q. And American Airlines had the opportunity to
03:38PM 9 take the deposition of any of the Sabre employees it
03:38PM 10 wanted to. Do you realize that?

03:38PM 11 A. That's probably a legal matter that I don't
03:38PM 12 know about.

03:38PM 13 Q. Can you name me a single Sabre IT employee that
03:38PM 14 American Airlines deposed in this case to ask about the
03:38PM 15 Sabre system?

03:38PM 16 MR. ROTHMAN: Objection, Your Honor.

03:38PM 17 THE COURT: Sustained.

03:39PM 18 THE WITNESS: I --

03:39PM 19 THE COURT: Excuse me. You don't need to
03:39PM 20 answer that question.

03:39PM 21 THE WITNESS: Okay.

03:39PM 22 Q. (BY MR. GRIMSLEY) Well, there was -- you
03:39PM 23 studied the depositions in this case for purposes of
03:39PM 24 coming up with your expert opinions?

03:39PM 25 A. I have.

03:39PM 1 Q. Have you seen any, in your study of depositions
03:39PM 2 to come up with your expert opinions, any deposition of
03:39PM 3 a Sabre IT person?

03:39PM 4 A. I don't recall seeing one offhand.

03:39PM 5 Q. Do you recall having seen a deposition of Barry
03:39PM 6 Vandevier, the head of Sabre's IT department?

03:39PM 7 A. I don't recall seeing a depo by him.

03:39PM 8 Q. Do you recall seeing the deposition of Robert
03:39PM 9 Wiseman, the chief technology officer at Sabre?

03:39PM 10 A. I do not.

03:39PM 11 Q. Do you recall seeing the deposition of Shelly
03:39PM 12 Terry in this case, somebody responsible for
03:39PM 13 merchandising products in the Sabre GDS?

03:39PM 14 A. I don't recall seeing a deposition by her.
03:39PM 15 I've seen some materials relating to her, but I have not
03:39PM 16 seen a deposition.

03:39PM 17 Q. Wouldn't you personally as an expert have been
03:39PM 18 interested to hear what they might have to say about the
03:39PM 19 Sabre system?

03:39PM 20 A. I -- I -- as an expert I access as much as I
03:40PM 21 can and base my opinions on what I'm provided.

03:40PM 22 Q. Well, you talked to a lot of folks at American
03:40PM 23 in their IT department, right?

03:40PM 24 A. I wouldn't say a lot, but a few.

03:40PM 25 Q. Well, Mr. Kumar you spoke with?

03:40PM 1 A. Yes.

03:40PM 2 Q. And there were others that you spoke with?

03:40PM 3 A. Maybe two or three others.

03:40PM 4 Q. And you spoke with the technology guys at
03:40PM 5 Farelogix?

03:40PM 6 A. Yes, I did.

03:40PM 7 Q. But Sabre, you haven't spoken to them, one, and
03:40PM 8 you haven't seen a deposition from any of them?

03:40PM 9 A. No, I haven't. But I was provided a lot of
03:40PM 10 documentation, internal documentation, which is what I
03:40PM 11 used extensively.

03:40PM 12 Q. You didn't show any of that documentation,
03:40PM 13 though, during your presentation, did you?

03:40PM 14 A. No. Well, I should correct that. I mean,
03:40PM 15 there were elements of the documents I've seen reflected
03:40PM 16 in my slides.

03:40PM 17 Q. Well, you showed some American Express
03:40PM 18 documents. I remember that. But you didn't show any
03:40PM 19 actual Sabre documents on Sabre's technology, did you?

03:40PM 20 A. No. What I was saying is when I was outlining
03:40PM 21 the Sabre -- the history and technology, a lot of that
03:41PM 22 history is based on, you know, internal documents that
03:41PM 23 Sabre has that I reviewed.

03:41PM 24 Q. Now, on some of your slides you put up when you
03:41PM 25 were explaining the history of the computer age, you put

03:41PM 1 up a number of companies at various points. Do you
03:41PM 2 remember that?

03:41PM 3 A. Yes.

03:41PM 4 Q. And you put up Yahoo!, Target, Netflix, Amazon.
03:41PM 5 Do you recall those?

03:41PM 6 A. Yes, I do.

03:41PM 7 Q. Are any of those using American Airlines'
03:41PM 8 Direct Connect?

03:41PM 9 A. No, they're not.

03:41PM 10 Q. One that you focused on predominantly was
03:41PM 11 Apple. Do you remember that?

03:41PM 12 A. I don't know if I predominantly did, but I did
03:41PM 13 mention it.

03:41PM 14 Q. Well, you mentioned that they're an innovative
03:41PM 15 company. You talked about Steve Jobs. Do you remember
03:41PM 16 that?

03:41PM 17 A. Yes.

03:41PM 18 Q. Do you know what distribution technology Apple
03:41PM 19 uses for its travel?

03:41PM 20 A. No, I don't.

03:41PM 21 Q. Would it surprise you if it's Sabre?

03:41PM 22 A. It wouldn't surprise me.

03:41PM 23 Q. Would it surprise you if you found out that
03:42PM 24 there's actually somebody from Apple on Sabre's advisory
03:42PM 25 board advising about technology at Sabre?

03:42PM 1 A. It wouldn't surprise me.

03:42PM 2 Q. And you know that the Apple folks who work at
03:42PM 3 Apple have this program called Get There on their
03:42PM 4 desktops. Do you know what Get There is?

03:42PM 5 A. Yes, I do.

03:42PM 6 Q. What is Get There?

03:42PM 7 A. It's a product that is a corporate booking tool
03:42PM 8 or online booking tool, and it allows an employee to
03:42PM 9 book their own travel and look for options.

03:42PM 10 Q. And Get There is actually Sabre's corporate
03:42PM 11 booking tool, right?

03:42PM 12 A. That is correct.

03:42PM 13 Q. It's a tool provided by Sabre Corporations, and
03:42PM 14 behind that tool is running the Sabre GDS?

03:42PM 15 A. That is correct.

03:42PM 16 Q. All right. So that's, would it surprise you,
03:42PM 17 the program that's on the desktop of the Apple folks?

03:42PM 18 A. That wouldn't surprise me. Sabre's a very big
03:42PM 19 company.

03:42PM 20 Q. Yeah. Would it also surprise you that Get
03:42PM 21 There is on their mobile devices, given what you said
03:42PM 22 earlier about Sabre technology?

03:42PM 23 A. It wouldn't surprise me.

03:43PM 24 Q. It wouldn't surprise you that Get There has
03:43PM 25 mobile technology where people can look at flights, book

03:43PM 1 them, right from their iPhone?

03:43PM 2 A. It has some mobile technology that I've seen.

03:43PM 3 Q. I want to ask you some questions about -- can I
03:43PM 4 hook up here?

5 A. Yeah.

03:43PM 6 Q. I want to ask you a few questions just about
03:43PM 7 the Sabre GDS and some of its capabilities because it
03:43PM 8 sounded like it was pretty old and tired technology from
03:43PM 9 your presentation.

03:43PM 10 How many --

03:44PM 11 A. Is there a way to get to my screen here? It's
03:44PM 12 got a problem.

03:44PM 13 Q. Can you see right here?

03:44PM 14 A. I'll try to look over this. Okay.

03:44PM 15 Q. And this is just a graphic that shows some of
03:44PM 16 the processing capabilities of Sabre. Sabre does
03:44PM 17 1 billion -- handles 1 billion data requests or API
03:44PM 18 calls a day. Do you have any reason to doubt that?

03:44PM 19 A. No, I don't.

03:44PM 20 Q. What companies out there actually handle that
03:44PM 21 level of volume besides Sabre?

03:44PM 22 A. There's very few that handle the transactions,
03:44PM 23 but it's important to make sure you're looking at the
03:44PM 24 right kind of transactions. Transactions aren't all
03:44PM 25 created equal.

1 Q. Okay.

03:44PM 2 A. So it's just symmetric.

03:44PM 3 Q. In terms of number of transactions per day,
03:44PM 4 it's actually Sabre's system is on par with Google,
03:44PM 5 Facebook, and Twitter, in terms of just number of
03:44PM 6 transactions that are processed daily; is that right?

03:45PM 7 A. I won't dispute that they have a lot of
03:45PM 8 transactions. They're a great big company and they do
03:45PM 9 have a lot of technology, but the transactions that I
03:45PM 10 think Sabre taunts are a bit different than -- and not
03:45PM 11 necessarily comparable to other systems.

03:45PM 12 Q. Do you know how many low-fare searches are
03:45PM 13 actually performed per day on the Sabre system?

03:45PM 14 A. I haven't been provided that system.

03:45PM 15 Q. 23 million sound surprising to you?

03:45PM 16 A. No, it doesn't. Doesn't surprise me.

03:45PM 17 Q. And are you aware that Sabre is the system that
03:45PM 18 actually powers Expedia?

03:45PM 19 A. Yeah, I'm aware of that.

03:45PM 20 Q. So when consumers go online and they put in all
03:45PM 21 this search information and the results come back,
03:45PM 22 that's all coming back from Sabre?

03:45PM 23 A. Yes.

03:45PM 24 Q. Were you aware that Sabre stores 2.3 billion
03:45PM 25 airfares in the Sabre system at any given time?

03:45PM 1 A. I was aware that they stored several billion or
03:45PM 2 multibillion of fares.

03:45PM 3 Q. And that Sabre sells roughly 385 million
03:46PM 4 airline segments every year. Do you know that?

03:46PM 5 A. I don't know that I knew that precise number.

03:46PM 6 Q. How many API calls a day does American's Direct
03:46PM 7 Connect currently handle?

03:46PM 8 A. It handles a few thousand.

03:46PM 9 Q. Not a billion?

03:46PM 10 A. No.

03:46PM 11 Q. Do you know how many it handled at the end of
03:46PM 12 2010 in the period of development for American's Direct
03:46PM 13 Connect?

03:46PM 14 A. No. I didn't focus on the historical
03:46PM 15 perspective. I've looked at it in today's technology is
03:46PM 16 more what I focused on.

03:46PM 17 Q. So you didn't look to see whether in fact
03:46PM 18 American Airlines' Direct Connect product was ready to
03:46PM 19 go in 2009?

03:46PM 20 A. No. I think other people will be speaking to
03:46PM 21 that. I evaluated the technology today.

03:46PM 22 Q. But from a technology perspective, you didn't
03:46PM 23 assess whether American Airlines' Direct Connect was
03:46PM 24 ready to go in 2009?

03:46PM 25 A. Well, I was aware that it was in production in

03:46PM 1 Qatar Airlines and it was being used, and in that time
03:47PM 2 frame I believe American's Direct Connect had started.
03:47PM 3 So I had a general awareness that it was online and
03:47PM 4 actually booking tickets, but I didn't try to go analyze
03:47PM 5 that period of historical time.

03:47PM 6 Q. You mentioned Qatar Airlines as Direct Connect.
03:47PM 7 That's not American's Direct Connect, right?

03:47PM 8 A. It's based on Farelogix's engine which is the
03:47PM 9 same as American's Direct Connect.

03:47PM 10 Q. Well, American's Direct Connect is not just the
03:47PM 11 Farelogix technology, right, sir? There's a shopping
03:47PM 12 engine that's involved, there's a host system that's
03:47PM 13 involved for American Airlines' Direct Connect, right?

03:47PM 14 A. Yes. I mentioned those earlier.

03:47PM 15 Q. Okay. So you didn't look to see in 2009
03:47PM 16 whether, from a technology perspective, American
03:47PM 17 Airlines' Direct Connect was ready for widespread use
03:47PM 18 amongst travel agencies?

03:47PM 19 A. I did not go study that particular time frame.

03:47PM 20 Q. So you have no opinion on that in particular,
03:47PM 21 because you didn't study it, sir?

03:47PM 22 A. I think I know people who will be speaking to
03:47PM 23 that, so I don't have an opinion on it.

03:47PM 24 Q. And you didn't study that for the beginning of
03:47PM 25 2010 either, did you?

03:48PM 1

A. No.

03:48PM 2

Q. And similarly you did not study that for the beginning of 2011, did you?

03:48PM 3

03:48PM 4

A. No, I did not.

03:48PM 5

Q. What you've looked at really is where is American's Direct Connect today?

03:48PM 6

03:48PM 7

A. I think that I would better characterize it like this: I think this case is about where it is today and where it needs to go and wants to go. So my analysis was much more on a forward-looking basis.

03:48PM 8

03:48PM 9

03:48PM 10

03:48PM 11

Q. So you were looking at what it could do today and what maybe it could do in the future?

03:48PM 12

03:48PM 13

A. Yes. And what's in the engine and the plumbing to support the industry and the needs and trends.

03:48PM 14

03:48PM 15

Q. Now, you said you thought that -- well, let's talk about the green screen for a minute because you spent some time on that.

03:48PM 16

03:48PM 17

03:48PM 18

A. Okay.

03:48PM 19

Q. Are you aware that Sabre attempted to launch much earlier than 2010 a graphical user interface version of its desktop?

03:48PM 20

03:48PM 21

03:48PM 22

A. Yes. They have had at least a couple of big failures in that effort. In ninety -- about '98 and '99 they had their Planet -- Planet Sabre launch that was pretty widespread, and representative of a failure.

03:49PM 23

03:49PM 24

03:49PM 25

03:49PM 1 Then they also came back in the early 2000s with another
03:49PM 2 product called eVoya, and it struggled in the market.
03:49PM 3 So I think I tried to describe that they have attempted
03:49PM 4 to, you know, innovate in that area, but it hasn't gone
03:49PM 5 like they'd like it.

03:49PM 6 Q. Well, you're certainly aware, then, sir, that
03:49PM 7 the reason or one of the principal reasons it failed is
03:49PM 8 that travel agencies didn't want it; isn't that right?

03:49PM 9 A. I don't know that that's the case.

03:49PM 10 Q. They actually preferred having the green screen
03:49PM 11 to use because that's something they had gotten used to,
03:49PM 12 right?

03:49PM 13 A. That may have been a portion of that. People
03:49PM 14 get used to something, but you also have to have
03:49PM 15 something compelling to go to. And if you look at even
03:49PM 16 Sabre's, what they're offering in the market today, it's
03:49PM 17 a very incomplete and unconvincing offer, even after all
03:50PM 18 of these years.

03:50PM 19 Q. But, sir, you haven't actually gone out and
03:50PM 20 interviewed any travel agencies about whether they would
03:50PM 21 prefer a graphical user interface over the green screen,
03:50PM 22 have you?

03:50PM 23 A. I haven't done interviews of them.

03:50PM 24 Q. But you've looked at documents in this case
03:50PM 25 that have said many travel agencies, in fact, prefer the

03:50PM 1 green screen today, haven't you?

03:50PM 2 A. Some do, and I've seen other information that
03:50PM 3 would -- that would indicate others want more graphical
03:50PM 4 user interface. So there's a mixture.

03:50PM 5 Q. Now, when you were using the green screen
03:50PM 6 earlier, you said that there was a certain workflow to
03:50PM 7 it, and you did what's called an availability search and
03:50PM 8 you talked about how prices aren't there and how
03:50PM 9 somebody has to kind of guess at what the price was. Do
03:50PM 10 you remember that?

03:50PM 11 A. Yes.

03:50PM 12 Q. You are aware, though, sir, that there are
03:50PM 13 other ways you can search, even through the native
03:50PM 14 format in the Sabre GDS, that would yield prices
03:50PM 15 immediately, don't you?

03:50PM 16 A. Yes.

03:50PM 17 Q. Okay.

03:50PM 18 A. But, you know, no prices, though, with
03:50PM 19 ancillaries and options. I showed the way that you can
03:50PM 20 do that with -- particularly focused on what's at issue.

03:51PM 21 Q. Well, let's break it down. There are searches
03:51PM 22 that you could have done, had you chosen to do so,
03:51PM 23 called low-fare searches that would have brought back in
03:51PM 24 the green screen or the graphical display prices of
03:51PM 25 flights compared to one another?

03:51PM 1 A. Well, you do have to see the way the Sabre
03:51PM 2 system is set up. You have to -- it uses the basic
03:51PM 3 commands to feed into the low-fare searches. So
03:51PM 4 there -- you know, there are several ways to flow
03:51PM 5 through the system. And what I represented is the
03:51PM 6 common approach that most agents use in the real world.

03:51PM 7 Q. But you haven't interviewed a lot of travel
03:51PM 8 agencies about what the most common approach is that
03:51PM 9 they use, have you?

03:51PM 10 A. Well, I was involved with people with extensive
03:51PM 11 experience in the travel agent industry as part of the
03:51PM 12 team that I was working with.

03:51PM 13 Q. As a matter of fact, prior to coming to the
03:51PM 14 opinions that you put in your report, you didn't talk to
03:51PM 15 anybody at AmEx, any travel agent at BCD, any travel
03:52PM 16 agent at CWT, or any travel agent at HRG. A lot of
03:52PM 17 letters, but those are the four largest travel agents in
03:52PM 18 the world, aren't they?

03:52PM 19 A. Well, I did work extensively with a gentlemen
03:52PM 20 that had been at American Express for a good while, so
03:52PM 21 he was certainly a part of my team and helped educate
03:52PM 22 me. I was trying to become a travel agent. I used his
03:52PM 23 experience to help me understand the way the system is
03:52PM 24 typically used.

03:52PM 25 Q. But he was not a travel agent?

03:52PM 1 A. He certainly was involved in the travel agency
03:52PM 2 extensively. I don't think he booked flights all day
03:52PM 3 every day.

03:52PM 4 Q. But you never did go out and interview any
03:52PM 5 travel agent that actually worked at any of those four?

03:52PM 6 A. No, I did not.

03:52PM 7 Q. But yet you were going to say you understand
03:52PM 8 what the typical travel agency workflow is here?

03:52PM 9 A. I have -- as I said, I have talked to
03:52PM 10 individuals that -- on a team that have been involved in
03:52PM 11 agencies. And I studied the manuals. And Sabre has a
03:53PM 12 number of videos online that I studied that describe
03:53PM 13 their system. And so I used a number of tools to try to
03:53PM 14 understand that. And I think we captured it well at the
03:53PM 15 end.

03:53PM 16 Q. But you did all that after being hired by
03:53PM 17 American Airlines in this case, right?

03:53PM 18 A. Yes.

03:53PM 19 Q. You were being paid as an expert in this case
03:53PM 20 by American Airlines at that point, weren't you?

03:53PM 21 A. Yes.

03:53PM 22 Q. And how many hours did you say you've worked on
03:53PM 23 the case, do you think?

03:53PM 24 A. I don't know the exact number. It's not just
03:53PM 25 me. I had a team. I had a team of five or six people.

03:53PM 1 It was probably a couple of thousand hours. I don't
03:53PM 2 know the exact number.

03:53PM 3 Q. How many hours have you personally worked on
03:53PM 4 the case?

03:53PM 5 A. It would be 800 to 1,000 as an estimate.

03:53PM 6 Q. So we're talking about roughly half a million
03:53PM 7 dollars you've made off this case?

03:53PM 8 A. That's probably an estimate. Not me. It goes
03:53PM 9 into my company.

03:53PM 10 Q. How much have you made off of this case?

03:53PM 11 A. I don't know. We -- just like any company, we
03:53PM 12 have revenues come in and I get a paycheck. I don't
03:53PM 13 equate the two directly.

03:53PM 14 Q. Well, sir, you actually get 49 percent of all
03:54PM 15 profits over and above salaries and cost for your
03:54PM 16 employees, right?

03:54PM 17 A. That's true.

03:54PM 18 Q. So the big check comes in, you get 49 percent
03:54PM 19 of anything above normal costs, right?

03:54PM 20 A. Yes.

03:54PM 21 Q. You haven't bothered to check how much of this
03:54PM 22 amount of money coming in from American Airlines has
03:54PM 23 gone in your own pocket?

03:54PM 24 A. This project is relatively small in the scheme
03:54PM 25 of what we do. We have a real software company running

03:54PM 1 every day and I'm a busy person. I don't stand around
03:54PM 2 trying to calculate that.

03:54PM 3 Q. Well, sir, when I deposed you, you said that
03:54PM 4 roughly 20 to 25 percent of not only your time but your
03:54PM 5 company's time has been dedicated to this case since you
03:54PM 6 took on the assignment. Does that sound about right?

03:54PM 7 A. I don't think that's what I said. I think I
03:54PM 8 was saying my time -- I do try to spend about 30 to
03:54PM 9 35 percent of my time on these cases. I do run the
03:54PM 10 software company, and so this is something I do
03:54PM 11 occasionally on the side.

03:54PM 12 Q. Well, do you know how much -- maybe I asked the
03:55PM 13 wrong question -- how much of Eureka's revenue has come
03:55PM 14 from American Airlines over the last year or so since
03:55PM 15 you took on your engagement here?

03:55PM 16 A. I looked that up after you deposed me because
03:55PM 17 you asked me that question and I didn't know. It's
03:55PM 18 under 10 percent.

03:55PM 19 Q. Well, you had said at the time you thought it
03:55PM 20 was about 20 percent, right?

03:55PM 21 A. Yes, I said under 20, I think, but I didn't
03:55PM 22 know exactly. That was -- but I looked at and it's
03:55PM 23 under 10 percent.

03:55PM 24 Q. I want to go back to the questions on the green
03:55PM 25 screen.

03:55PM 1 You're aware that there have been actually
03:55PM 2 studies done quite recently about travel agencies' use
03:55PM 3 of the green screen versus graphical user interfaces,
03:55PM 4 don't you?

03:55PM 5 A. I've seen some studies.

03:55PM 6 Q. In fact, there's a study by an organization
03:56PM 7 called Focus Right?

03:56PM 8 A. Yes.

03:56PM 9 Q. You're familiar with them?

03:56PM 10 A. I am.

03:56PM 11 Q. And you're aware they did, in fact, do a study
03:56PM 12 on this very issue, the role of how travel agencies use
03:56PM 13 GDSs? Have you taken a look at that study?

03:56PM 14 A. I can't recall looking at this specific study,
03:56PM 15 but I've seen others. I may have seen this one.

03:56PM 16 Q. It's Defendant's Exhibit 2599. Look to Page 4.
03:56PM 17 Do you see that, "Green Screen versus GUI Transit Agents
03:56PM 18 Drive Slow Transition"?

03:56PM 19 A. Yes, I see that.

03:56PM 20 Q. Okay. And do you see up here what is actually
03:56PM 21 said about the green screen and travel agencies even as
03:56PM 22 of today in terms of what their preference is? It says:
03:57PM 23 "Most agents" -- and I'm looking at the highlighted
03:57PM 24 portion -- "Most agents schooled in the esoteric arts of
03:57PM 25 GDS command languages became extremely efficient in the

03:57PM 1 legacy system and prized the near subsecond response
03:57PM 2 times that slowed considerably with the introduction of
03:57PM 3 the GUI environment."

03:57PM 4 That's graphical user interface
03:57PM 5 environment, correct?

03:57PM 6 THE REPORTER: Can you slow down?

03:57PM 7 Q. (BY MR. GRIMSLEY) It goes on to say, "Still
03:57PM 8 travel agents today spend far more time in the classic
03:57PM 9 GDS environment than in more modern GUI systems when
03:57PM 10 conducting any type of itinerary research."

03:57PM 11 Do you see that?

03:57PM 12 A. I see that.

03:57PM 13 Q. You have any reason to disagree with that?

03:57PM 14 A. I have seen materials in this case that would
03:57PM 15 indicate that this is not necessarily a consistent view.
03:57PM 16 And I have a bit of a skeptical view toward this kind of
03:57PM 17 research. Focus Right, I've seen studies that they do
03:57PM 18 and some funded by your companies that you represent,
03:57PM 19 Sabre, and so --

03:58PM 20 Q. You're not saying this was funded by us or --

03:58PM 21 A. I don't know.

03:58PM 22 Q. You have no reason to be skeptical of this
03:58PM 23 particular study, do you, sir?

03:58PM 24 A. I have seen a number of Focus Right studies
03:58PM 25 that have been funded by parties that had an invested

03:58PM 1 interest.

03:58PM 2 Q. If you look at -- it says at the bottom, "The
03:58PM 3 percentage of time spent in legacy environments by
03:58PM 4 corporate agents is understandably higher at 82
03:58PM 5 percent."

03:58PM 6 Do you see that? So it's saying here that
03:58PM 7 82 percent of the time spent by corporate travel agents
03:58PM 8 is spent in the native environment, the green screen?
03:58PM 9 Do you see that?

03:58PM 10 A. That doesn't surprise me. There's not much
03:58PM 11 else to be in today in Sabre.

03:58PM 12 Q. And you mentioned a number of times what this
03:58PM 13 case was about during your direct examination. This
03:58PM 14 case is about corporate travel agents at the end of the
03:58PM 15 day, isn't it, and what technologies they use, right?

03:58PM 16 A. Yes, that's at the heart of this case.

03:58PM 17 Q. Now, I know that the green screen looks a
03:58PM 18 little strange to people who are not used to it, but
03:58PM 19 just because something looks strange doesn't mean it's
03:59PM 20 old or useless or antiquated, does it?

03:59PM 21 A. Not necessarily.

03:59PM 22 Q. In fact, there are a lot of devices in the
03:59PM 23 world that for the uninitiated, they might look odd, but
03:59PM 24 to those using it, they're very efficient, fast, and
03:59PM 25 much better than the other options out there, aren't

03:59PM 1 there?

03:59PM 2 A. Yes, that's what the GUIs are being designed
03:59PM 3 for. In fact, in the AmEx proposal or RFI that Sabre
03:59PM 4 responded to, creating graphical user interfaces was a
03:59PM 5 key need in the industry to train new agents. You know,
03:59PM 6 the old agents, because they've learned something, they
03:59PM 7 don't necessarily want to move, but training of new
03:59PM 8 agents is a key element that this is not capturing.

03:59PM 9 Q. Just because something looks old doesn't mean
03:59PM 10 it's not useful or there's a better way to do things?

03:59PM 11 A. If you can't hire people that want to learn
03:59PM 12 that stuff, it does impact your business.

03:59PM 13 Q. Well, there's somebody in this courtroom,
04:00PM 14 Monica, who's using a device that looks kind of strange
04:00PM 15 to the rest of us, but do you think she'd prefer that
04:00PM 16 over a regular computer with a regular interface?

04:00PM 17 A. I don't think that translates to what we're
04:00PM 18 talking about here.

04:00PM 19 Q. Have you asked travel agencies whether it in
04:00PM 20 fact translates?

04:00PM 21 A. I've looked at the documents produced in this
04:00PM 22 case with travel agents, yes.

04:00PM 23 Q. One of which says 82 percent of them still use
04:00PM 24 the green screen?

04:00PM 25 A. Is this the travel agencies saying this or is

04:00PM 1 this a study of some kind?

04:00PM 2 Q. It's a study of travel agencies.

04:00PM 3 See right here, "The GDSs are again making
04:00PM 4 a push to introduce new GUI environments as part of the
04:01PM 5 new generation of agent desktop platforms. These
04:01PM 6 platforms provide a mix of traditional green screen
04:01PM 7 interfaces to accommodate agents that want to stick with
04:01PM 8 the environments they know, as well as the new GUIs and
04:01PM 9 tools to aid in the user migration from green screen to
04:01PM 10 point-and-click."

04:01PM 11 Do you see that?

04:01PM 12 A. Yes.

04:01PM 13 Q. And so you acknowledge that Sabre has its own
04:01PM 14 graphical view?

04:01PM 15 A. That's exactly what I demonstrated earlier in
04:01PM 16 my direct.

04:01PM 17 Q. But, again, 82 percent of agents still use the
04:01PM 18 green screen?

04:01PM 19 A. Yes. The incompleteness of the current
04:01PM 20 graphical screen would almost demand that.

04:01PM 21 MR. GRIMSLEY: Stopping point, Your Honor.

04:01PM 22 THE COURT: All right. Ladies and
04:01PM 23 gentlemen, we're going to recess each day at about
04:01PM 24 4 o'clock. The court reporter has a lot of work to do
04:01PM 25 and the attorneys have work to do, so that's the reason

04:01PM 1 we're quitting at 4:00. We'll see you at 8:30 in the
04:01PM 2 morning. Have a good evening.

04:01PM 3 (Jury not present.)

04:02PM 4 (Recess for the day at 4:02 p.m.)

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1 C E R T I F I C A T E

2 THE STATE OF TEXAS)

3 COUNTY OF TARRANT)

4 I, MONICA A. LINDSTROM, Official Court Reporter in
5 and for the 67th District Court of Tarrant County, State
6 of Texas, do hereby certify that the above and foregoing
7 contains a true and correct transcription of all
8 portions of evidence and other proceedings requested in
9 writing by counsel for the parties to be included in
10 this volume of the reporter's record, in the
11 aforementioned cause, all of which occurred in open
12 court or in chambers and were reported by me.

13 I FURTHER CERTIFY that this reporter's record of
14 the proceedings truly and correctly reflects the
15 exhibits, if any, offered and/or admitted by the
16 respective parties.

17 I FURTHER CERTIFY that the total cost for the
18 preparation of this immediate copy reporter's record is
19 \$1,656.00 and was paid by Defendants.

20 WITNESS MY OFFICIAL HAND this the 25th day of
21 October, 2012.

22

23

24 /s/ Monica A. Lindstrom
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