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3 AND IT IS NOT A CITABLE DOCUMENT.

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5 REPORTER: PAMELA J. MAYER, RMR-CRR

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EXAMINATION

8 BY MR. ERICKSON:

15 A. We are a host agency. And our partner
16 relationships with our suppliers keeps us in business.
17 when you get an airline like United, comes along and
18 says, you can't sell us, all of our thousand agents look
19 at us and say, "united? You're not allowed to sell
20 them? what's wrong? There must be something wrong.
21 we're going to leave you and go to another host agency,"
22 of which there are many.

23 So knowing today, as you asked, what I know, we
24 would have terminated them the minute we had any thought
25 that these people were going to engage in the type of

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1 activity that they did, which would cause us to lose our
2 accreditation and ultimately our business.

3 Q. When you say "suppliers," what do you mean by
4 "suppliers"?

5 A. Airlines.

6 Q. And that's all that suppliers --

7 A. No. Airlines, cruise lines, tour operators,
8 insurance companies.

9 Q. As far as the evidence that you're going to use
10 to establish the things that you just talked about, have
11 you termed everything over to us?

12 A. As far as?

13 Q. Documents?

14 A. Everything that we have that is pertinent to
15 this case has been turned over.

16 Q. I'm going to give you what we'll go ahead and
17 mark as Exhibit 1.

18 (Deposition Exhibit 1 was marked for
19 identification.)

20 Q. BY MR. ERICKSON: Is Exhibit 1, is that familiar
21 to you?

22 A. In truth, I have a pile of these things. It
23 looks like something I've seen. I couldn't say for
24 sure. But --

25 Q. Are these the witnesses that are going to

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1 testify on your behalf at the arbitration in May, in
2 Exhibit 1?

3 A. There probably will be others.

4 Q. Tell me who those others are going to be.

5 A. In all likelihood, we'll be calling several of
6 the host agencies that Mom and son have worked with
7 prior to us, who they've always done the same thing to,
8 defrauded, left holding the bag, so to speak. Probably
9 Planners, the previous owner of

10 Penny Travel. There may be a couple of others that
11 we've uncovered that we're working on right now.

14 mother.

15 Q. when did he deny that?

16 A. Telephone, once, and in several conversations
17 with the FBI and the state Attorney General of New York.

18 Q. Did you see our response to your counterclaim
19 where we admitted that that was the case?

20 A. Yes.

21 Q. so he's not denying it, is he?

22 A. Not any longer, no.

3 Q. okay.

24 A. But it's interesting to know why he denied it in
25 the beginning.

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1 Q. But, I mean, you continue to say "mom." Is that
2 just to inflame her and get her upset?

3 A. No. No, because we've been using that term
4 around the office for about the last three months, so it
5 sort of just comes out.

6 Q. okay. And that's just to kind of get some
7 laughs out of the whole thing?

8 A. Yes.

9 Q. You said the host agencies. we're talking about
10 Exhibit 1. And I want to know specifically who the
11 witnesses are from those host agencies that you're going

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16 A. The owner of planners .

17 Q. And have you communicated with Tony since

18 July 7th ?

19 A. Yes.

20 Q. And do you have those communications?

21 A. This is telephonic.

22 Q. okay. Do you have any notes of those

23 conversations with Tony?

24 A. No.

25 Q. what's Tony going to testify about?

Q. when you say "defrauded," what do you mean?

6 A. Well, for example, what they did with us. They

7 engaged in activities that they fully know are against

8 airline regulations.

9 Q. which activities?

10 A. Hidden cities and throwaway tickets.

11 Q. And why is that fraud?

12 A. Because -- the fraud part comes in not that they

13 did this but that they will not pay the debit memos that

14 come to us for the difference in the tickets that they

15 wrote and the actual ticket -- the actual fares that the

16 airline is charging. So, for example, on any given

17 ticket that we have gotten debit memos on, there's

18 between 2500 and \$3,000 per ticket that should have been

19 charged for the fare. This is how they played their

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(20 game. They then leave us with those debit memos for us
21 to pay, and they are unwilling to take care of it.

22 Q. I mean, we'll get into that later, but tell me
23 who, in addition to Tony, you need to add to your witness
24 list for the arbitration.

25 A. I don't remember his name, but the previous

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1 owner of Penny Travel that they had purchased, and
2 my understanding is that this gentleman had to go
3 bankrupt because of an improper transfer of the agency
4 from him to them, and they then engaged in these same
5 activities, but, of course, the ownership did not
6 transfer properly with ARC and AITAN, and so the previous
7 owner got stuck with all the bills and had to go
8 bankrupt.

9 Q. But you don't know this person's name.

10 A. I forget his name. I'm an old man.

11 Q. Have you talked to -- well, does your age
12 prevent you from competently testifying today?

13 A. Not at all. But certain things I do forget and
14 need notes for.

15 Q. Okay. And you have notes about your

17 A. I've never engaged in any conversation with
18 them.

19 Q. okay. What notes did you just refer to?

20 A. Any notes about names and places and times.
21 can give you generalities, in some cases, specifics, but
22 as far as like time frame, it might be a day or two off
23 when I give you what date something happened.

24 Q. we'd like to see those notes. would you provide

25 those to us?

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1 A. on what?

2 Q. The notes you just described, notes that you
3 take regarding the case and people that might be
4 testifying.

5 A. oh, absolutely.

8 Exhibit 1 that is your witness list?

9 A. we have an agency in California that they have
10 just been working with and screwed. If I can ask my son,
11 he'll give me the name of the company. Is that all
12 right?

13 Q. well, if you don't know, I mean, we'll talk to
14 him tomorrow.

15 A. It's a California company.

16 Q. okay. And what is his name?

17 A. Again, if I can ask my son, he can tell me.

18 Q. okay. Any notes of your conversations with this
19 person at this California --

20 A. Never spoken to him.

21 Q. HOW do you know he's going to testify, if you
22 haven't spoken with him?

23 A. He has spoken with Robert.

24 Q. okay. Anyone else in addition to those three
25 you need to add?

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1 A. Yeah. we have a gentleman who contacted us when
2 he saw an article in the newspaper about us, about this
(3 issue that the, I think it was Travel Trade or Travel

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3 A. Sure.

4 Q. Have you been deposed before?

5 A. Yes.

6 Q. How many times?

7 A. Once.

8 Q. what was the case in which you were deposed?

9 A. We had a lawsuit with SystemOne, which was a
10 reservation system.

11 Q. where was that lawsuit?

12 A. when?

13 Q. Where?

14 A. Oh. Miami.

15 Q. What year was it? The lawsuit involving
16 SystemOne, what year was it?

17 A. What are we, It must have been about
18 1999.

20 A. Yes.

21 Q. what was the nature of the dispute there?

22 A. Contractual issues.

23 Q. were you the plaintiff or the defendant?

24 A. Let's see. We started off as the plaintiff --
25 yeah. Plaintiff, yeah.

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1 Q. Was there a counterclaim, a countersuit against

3 A. of course. Isn't there always?

4 Q. Who was your attorney in that case?

5 A. Can I get back to you? She's dead. But I can

6 get you THE name. Everybody seems to be dying on us. At

13 Q. with Travel, you were doing the
14 same type of thing that you do with ?

15 A. No. It was a retail outlet where we did have
16 outside agents, and then we had a second location in
17 Mesa, also called Travel, and again using
18 outside agents, as well as retail. so that's different
19 than we have now, because now we have no retail at all.

20 Q. And Travel was never involved in
21 any litigation?

22 A. No.

23 Q. And let me qualify that with, when I mean
24 litigation, I mean in state, federal court, or
25 arbitration.

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1 A. No.

2 Q. Do you have any interests in business or other
3 enterprises other than right
4 now?

5 A. No.

6 Q. Let me give you Exhibit 2.

7 (Deposition Exhibit 2 was marked for
8 identification.)

9 Q. BY MR. ERICKSON: Exhibit 2, is that a -- well,
10 tell me what Exhibit 2 is, if you can.

11 A. well, it's information on

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13 Q. And is it from your web site?

14 A. It looks like it is.

15 Q. Can we agree that this was printed, at the
16 bottom, on January 16th of 2005, on the bottom right-hand
17 corner?

18 A. Yes.

19 Q. on this -- on the first page of Exhibit 2, is
20 that a fair representation of all the trade
21 organizations --

22 A. wait. There's something wrong with this. The
23 bottom of the page says "Member Ensemble Travel Advisory
24 Board." we used to be vacation.com, and we were members
25 of the advisory board, but we are not on the ensemble.

1 don't know how that happened. That is -- if I did it,
2 it's a mistake.

3 Q. well, let me -- let me ask you the question
4 first.

5 These are all trade organizations of which
6 is a member.

7 A. Yes.

8 Q. And you're saying everyone except the bottom
9 one, which is "Member Ensemble Travel Advisory Board"?

10 A. Correct.

11 Q. And is not a member of that board.

12 A. well, we're a member of ensemble, but not the
13 advisory board.

14 Q. Is everything else accurate on Exhibit 2?

15 A. Yes.

16 Q. And at the very top, the second paragraph down,

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t 17 where it says, "Utilizing state of the art Sabre
18 Reservation and Information Management hardware and
19 equipment," do you use other -- software other than
20 sabre?

21 A. Yes, we do.

22 Q. What other software do you use?

23 A. Amadeus.

24 Q. As far as is concerned, did you use
25 Amadeus for any travel between May and July

2 A. I'm sorry. Do you mean did we have both systems
3 at that time?

4 Q. Yes.

5 A. Yes, we did.

6 Q. Do you know if any of the travel sold by
7 was -- and correct me on the terms. I'm going to learn a
8 lot from you today -- travel that was booked by -- let me
9 reask the question.

10 book any travel through Amadeus?

11 A. They had Sabre. They didn't do anything through
12 Amadeus.

13 Q. Do you -- does issue any rules on ticketing
14 policies?

15 A. You'll have to clarify that, please.

16 Q. Does have any rules on hidden city ticketing?

17 A. Yes.

18 Q. And we can probably resolve a lot of this by
19 narrowing down the policies that are relevant in the
20 case.

21 You've accused of hidden city

(--) 22 ticketing. Correct?

23 A. Correct.

24 Q. You've accused of throwaway segments.

25 Correct?

1 A. Correct.

2 Q. You're not accusing of back to back

3 ticketing.

4 A. I'm not -- let me explain. is the one

5 who's involved in the ticketing and day-to-day operations

6 of the organization. I live in Hell. I don't

7 usually get involved in any of the mechanical aspects of

8 ticketing. I can't even use a reservation system.

9 Q. well, let me ask you this way. Did any of your

10 pleadings in this case allege that violated back

11 to back ticketing policies?

12 A. I'd have to confer with Robert on that. I don't

13 know.

14 Q. Are there any other policies that you think may

15 be applicable here other than the three I mentioned?

16 A. using fraudulent credit card on at least two

17 occasions to buy tickets for a client, who the credit

18 card is not in the name of the client and the credit card

19 holder then disputed having no knowledge of the travel of

20 the passengers. So we are accusing them of using a

21 fraudulent credit card, committing interstate wire fraud,

22 and not making good on those credit cards when asked to

23 do so.

24 Q. But credit card use isn't a ticketing policy.

25 mean, you understand what I mean by a ticketing policy?

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1 A. well, you know, if you stretch the term
2 "ticketing policy," a ticket is purchased and is usually
3 purchased in legitimate funds. when a fraudulent credit
4 card is used to purchase that ticket, that is against
5 ticketing policies, wouldn't you say?

6 Q. So you're going to -- you're going to lump in
7 the use of fraudulent credit cards into a ticketing
8 policy in this case.

9 A. Yes.

10 Q. okay. what policies does have that they
11 issue on the use of fraudulent credit cards?

12 A. our contract asks that all of our agents sell
13 their travel in accordance with standard professional
14 regulations and legality. using a fraudulent credit card
15 certainly violates what we ask our agents to do. No
16 agent is forced to sign that contract or join us. If
17 they do sign it, then they agree that they are going to
18 be legitimate, they're going to conform with the
19 regulations of the industry, and if they don't, they've
20 violated our contract.

21 Q. I mean, we'll get into the contract later, but
22 are you aware of any part of the contract where it even
23 uses the term "fraudulent credit cards"?

24 A. NO.

25 Q. Is there any part of the contract that uses the

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1 term "hidden city ticketing"?

2 A. NO.

3 Q. Is there any part of the contract that uses the
4 term "back to back ticketing"?

5 A. NO.

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6 Q. How about throwaway segments, same question?

7 A. No. It is a general provision in our contract
8 that the agent conform to all regulations of the
9 industry. using any of these policies, any of these
10 hidden cities, any of these throwaways, is against normal
11 regulations of the travel industry.

12 Now, if these people were new to the industry, I
13 could understand the misunderstanding. But as soon as
14 they join us, they have access to our web site, and on
15 our web site, we do have sections on hidden cities and
16 the policies of the airlines.

17 In addition, we constantly e-mail every one of
18 our agents whenever a notice comes out from the airlines
19 warning us about hidden cities. It's not on a daily
20 basis, it's not on a weekly basis. It's whenever the
21 airlines tell us or send us something concerning these
22 practices.

23 so the people, having been in the
24 business for a long time, they know what the regulations
25 are. They have had Alexander Anolik, the big guru of

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1 industry attorneys, fight for them on several occasions.
2 He disagrees with the policy. It doesn't make a
3 difference if he disagrees with the policy. The airlines
4 make the regulations. It's their game. It's their
5 ball. They can take away ticketing privileges from
6 anybody for doing things they say don't do. we cannot
7 afford to have this happen, because there goes our
8 business. And so they know about these things.

9 Q. Harvey, we're going to be here a long time
10 today --

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11 A. I know.

12 Q. -- if we don't stay focused on my questions.

13 Your counsel will tell you you're going to have a lot of
14 time to tell the arbitrator your story, and I know you
15 want to do that, but I've got to stick to the questions
16 that we have for you today, so if you could just kind of
17 stay focused on the --

18 A. I know. I go off on a tangent because I'm
19 angry.

20 Q. You just said that your Web site posts
21 policies -- tell me if I'm wrong. I thought you said
22 that your web site posts policies on hidden city
23 ticketing.

24 A. The extranet. when they got their passwords to
25 get onto our Web site, we have about 5000 pages of

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1 information. And in those pages are the prohibitions
2 against doing what they did.

3 Q. Have you produced any of those pages in this
4 case?

5 A. No one has asked for them.

6 Q. Well, I'm asking for them now. will you turn
7 them over to us?

8 A. Yes.

9 MR. : We'll get them for you.

10 Q. BY MR. ERICKSON: And you're saying this is a --
11 this is something that is available to -- well, I mean,
12 let's look at your contract. The terms of your contract
13 uses, and like I said, we'll get to that, but I'm sure
14 you know well enough that in this case would
15 either be or agent. Is that right?

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16 A. Yes.

17 Q. Incentive would be the agency.

18 A. Or .

19 Q. And you're saying that prior to executing the
20 contract on, that had access to the
21 extranet at ?

22 A. No, they didn't.

23 Q. This information is available to --

24 A. Actually, they did. I'm sorry. Forgive me.
25 They did have access to it, because, back in 2001, I

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1 believe it was, they joined us under the name of
2 Travel, at which time we gave them access to
3 all of this information. They didn't do any work with
4 us. But they did have access to it, so they should have
5 known before they joined us a second time under the name

7 Q. well, that's all on the assumption that
8 was one and the same with

9 A. It was signed by

10 Q. Do you have a --

11 A. Yes, we have that contract.

12 Q. Would you please turn it over to us?

13 A. Be happy to.

14 And that's strange.

15 Q. Describe what an airline reporting corporation,
16 we're call it ARC, tell us what ARC is?

17 A. ARC is a an organization owned by all the
18 airlines, the purpose of which is to facilitate the
19 payment of fees and fares to the airlines and the
20 repayment of commission back to an agency. In years

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21 past, in the early years of travel, every agency had to
22 negotiate an agreement with the airline. The airline
23 then gave their own ticketing, paper tickets, to that
24 agency. At the end of the week or the month, whatever
25 the agreement was, all the fares that were produced on

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1 those paper stock would be paid to that particular
2 airline, and the airline would then give back
3 commission. ARC was formed to facilitate that so that one
4 standard generic paper ticket, now E tickets, of course,
5 can be used by all member airlines so that the fares are
6 sent to ARC, which is a clearinghouse and nothing more.
7 They then take those fares and give them to united, give
8 them to eastern, or -- to any of the airlines that you
9 wrote your tickets on, and then paid the commission back
10 to the agency that did the ticketing. So all it is is a
11 clearinghouse.

12 Q. But the only members of ARC are the airlines.
13 Right?

14 A. Correct.

15 Q. Consumers aren't members of ARC.

16 A. No. All owned by the airlines.

17 Q. Fair to say ARC is going to look out for the
18 best interests of the airlines?

19 A. Absolutely.

20 Q. You have a contract with ARC.

21 A. Yes.

22 Q. Can we have that contract?

23 A. Sure.

24 Q. what -- in that contract, what duties do you
25 agree to perform on behalf of ARC?

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1 A. well, you know, it's interesting. We don't
2 really agree to perform anything for ARC. Each airline,
3 when you apply for ARC approval, has to approve you as
4 the agency. Most do it as a matter of course. Some
5 actually come out and investigate you before they give
6 approval so that you can write their tickets. For
7 example, American Airlines. They come out and they
8 investigate you. They send out Equifax. They do all
9 sort of research before they'll allow you to write any
10 tickets on American Airlines.

11 Once that is done, then you can write tickets on
12 everybody.

13 Q. when is the last time that American Airlines
14 came out and investigated for anything?

15 A. When we applied for our ARC with Incentive
16 Connection back in 1990, '91.

17 Q. Prior to May 11, 2004 -- or, I'm sorry. Prior
18 to July 7, 2004, did American Express any concerns about
19 your contract with ?

20 A. American Airlines?

21 Q. Yes.

22 A. No.

23 Q. How about ARC, same question?

24 A. No.

25 Q. Do you hold any position with ARC, any

1 position -- I mean, on the board, or --

2 A. No.

3 Q. Do you contribute money to ARC?

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4 A. We do pay an annual fee.

5 Q. what's the annual fee?

6 A. It's minimal. Maybe \$150 a year. The only
7 other costs, when we get ticket stock, we have to pay for
8 that.

9 Q. Any idea how many organizations like yours are
10 contributing fees to ARC every year?

11 A. Everybody -- every agency that's a member of
12 ARC.

13 Q. Is it thousands?

14 A. I think there's 23,000 agencies in the
15 united states, because ARC only covers the u.s. and --
16 yeah, just the U.S.

17 Q. Have you attended meetings held by ARC?

18 A. No.

19 Q. Does ARC have -- do they issue anything in
20 writing about hidden city tickets?

21 A. In their manual, they have -- which is quite
22 extensive, there is quite a few regulations that are
23 given that you must follow if you want to maintain good
24 standing with the airlines. Hidden city is one of them.

25 Q. They specifically address hidden city ticketing

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1 in that manual?

2 A. Yes.

3 Q. How about throwaway segments?

4 A. You know, I haven't read the manual in probably
5 ten years. They probably do. But every airline also
6 issues their own regulations, and they all address hidden
7 cities and throwaways. And I think we've sent you the
8 regulations that came from Continental, united, and I

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9 think another airline. So you should have that in your
10 records.

11 Q. And, I'm sorry, from American and Continental,
12 what records do we have?

13 A. Their regulations on what they expect and what
14 they will allow.

15 Q. I haven't seen those regulations, so if you
16 could give them to your counsel --

17 MR. : I think we cited them in the
18 response.

19 Q. BY MR. ERICKSON: That is -- I recall the United
20 Rule 100. Right? You cited that.

21 A. well, Robert took care of the numbers, but there
22 was, I think three airlines that we quoted to you.

23 Continental, I think, American, and united --

24 THE WITNESS: -- wasn't it?

25 MR. : Luftansa.

1 THE WITNESS: Luftansa.

2 Q. BY MR. ERICKSON: We'll go through that in a
3 little bit.

4 okay. We've covered fraudulent credit cards,
5 hidden city ticketing, throwaway segments, and possibly
6 back to back. Are there any other violations that you're
7 alleging in this case against ?

8 A. I think that covers it.

9 Q. Since -- and you said you haven't looked at the
10 manual for ARC in ten years?

11 A. Yeah.

12 Q. I mean, that manual can sure change in ten
13 years, couldn't it?

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14 A. It's all on-line now. They don't even print one.

15 Q. This is Exhibit 3.

16 (Deposition Exhibit 3 was marked for
17 identification.)

18 Q. BY MR. ERICKSON: Are you familiar with this GAO
19 report that is Exhibit 3?

20 A. Never saw it before.

21 Q. Have you ever heard of it?

22 A. No, I haven't.

23 Q. So you're not aware of any input that
24 gave for this report in 2001?

25 A. No.

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1 Q. Go ahead and turn to page 3, which is at the
2 very bottom of Exhibit 3, with the heading where senator
3 Hollings' name is referenced at the top.

4 Are you on page 3?

5 A. Yes.

6 Q. About halfway down the paragraph, I want to read
7 this definition of hidden city ticketing, and just tell
8 done whether you agree or disagree with this definition.
9 "Hidden-city ticketing occurs when a passenger books a
10 flight to one city but purposefully deplanes at an
11 intermediate city. Though never intending to make the
12 last leg of the flight, the passenger purchases the
13 ticket because it is cheaper than a ticket to the
14 intermediate city."

15 Do you agree or disagree with that definition?

16 A. I agree.

17 Q. Is that a definition that applied in May of

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19 A. Yes.

20 Q. And it applied throughout your contract with
21 these bad dudes ?

22 A. Yes.

23 Q. Turn to page 30 of Exhibit 3.

24 I'm just going to give you a minute to kind of
25 scan that paragraph, and then I want to ask you some

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1 questions.

2 A. okay.

3 Q. That opening sentence of that paragraph on
4 page 30 of Exhibit 3, do you agree that the airlines have
5 these policies, that is, hidden city and back to back, to
6 discourage passengers from using these policies?

7 A. Yes.

8 Q. Do you agree, in that paragraph, that the
9 policies derive specifically from the carriage contract
10 between passenger and the airline?

11 A. Yes.

12 Q. It doesn't talk about including anyone else in
13 that carriage contract between the passenger and the
14 airline. Right?

15 A. This paragraph doesn't say anything about it.

16 Q. In this case, you're essentially holding
17 to that carriage contract, aren't you?

18 A. No. The carriage contract is between the
19 airline and the passenger. I'm holding them responsible
20 for violating the contract between my host agency and the
21 airline. It has nothing to do with the passenger and the
22 airline. It's the airline and me.

23 Q. I'm not going to attach this yet as an exhibit,

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24 but -- well, we'll get to that later.

25 How long are full fare tickets valid for use?

1 A. I believe it's one year. At least that's what
2 it used to be, and I think it still is.

3 Q. Exhibit 4. I'm going to actually hand you two
4 articles to take a look at. That's No. 4.

5 (Deposition Exhibit 4 was marked for
6 identification.)

7 Q. BY MR. ERICKSON: That's No. 5.

8 (Deposition Exhibit 5 was marked for
9 identification.)

10 Q. BY MR. ERICKSON: So Exhibit 4 is dated -- let
11 me just clarify on the record.

12 Exhibit 4 is the October 18, 2004, article from
13 Travel weekly. And then Exhibit 5 is the article from
14 October 26, 1999.

15 Are you familiar with either one of those
16 articles?

17 A. No. I don't see No. 5.

18 I'm not familiar with either of these. But that
19 doesn't mean anything, because these articles come out on
20 a regular basis.

21 Q. Let's go through Exhibit 4 first.

22 A. Exhibit 4 is the one without the pure?

23 Q. Yes. 4 is the 2004 article, October 18.

24 Are you in any way familiar with the class
25 action that's pending in California that was -- that's

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1 identified in the third paragraph of Exhibit 4?

2 A. NO.

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3 Q. You haven't heard anything about that lawsuit.

4 A. Again, there are just so many of these coming
5 by, I just don't have the time to read them all.

6 Q. Well, aside from the article, are you aware that
7 there's going to be a trial in California in April of
8 this year involving the airlines and westways world
9 Travel?

10 A. No.

11 Q. You haven't heard anything about that case.

12 A. No, I have not.

13 I don't understand what the question refers to,
14 though.

15 Q. Well, I'm going to kind of walk you through
16 Exhibit 4 first to kind of show you the parallels here.

17 You see where, in Exhibit 3, the plaintiffs --
18 the plaintiffs in that case that we're talking about, the
19 1999 west way world travel case, have alleged that --

20 MR. : Rick, are you talking about
21 Exhibit 3 or 4?

22 MR. ERICKSON: Exhibit 4.

23 MR. : Okay.

24 Q. BY MR. ERICKSON: Where the plaintiffs allege
25 that the agents have no control of the conduct of their

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1 customers. Do you agree or disagree with that?

2 A. I agree.

3 Q. Go to the bottom, where it talks about the ARC
4 settlement and where ARC settled on the following terms,
5 and I just want to have you read through those bullet
6 points through page 2 of Exhibit 4.

7 A. okay.

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8 Q. Have you received this settlement statement from
9 ARC stating these terms that are in Exhibit 4?

10 A. No. At least I haven't seen it.

11 Q. Do you see where it's issued a statement that it
12 will not aid in the enforcement of contested debit memos?

13 A. Correct. I see that.

14 Q. It also states as part of the settlement there
15 that it's not going to terminate accreditation of any
16 agency refusing to pay debit memos.

17 A. ARC doesn't have that authority.

18 Q. But, I mean, that's part of their statement that
19 they've given in the case.

20 A. Yes. That's part of the statement, yes.

21 Q. From that statement, it's fair to assume that
22 ARC is not going to jeopardize your accreditation due to
23 any debit memos issued in this case.

24 A. In this case? No.

25 Q. And at least as far as this statement is

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1 concerned in Exhibit 4, you won't have to pay any debit
2 memos as required by ARC.

3 A. You're missing a point here. They're talking
4 about debit memos that are issued by ARC. ARC issues
5 their own debit memos. If you don't pay them, they have
6 the right to take away your entire ticketing privileges
7 for all airlines. That's not the issue here. Here, we
8 are getting debit memos from an airline that then has the
9 right to take away your ticketing privileges for that
10 airline. ARC would take it away from everyone.

11 Q. So ARC would never issue a debit memo -- well,
12 let me ask it this way.

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13 You'd never receive a debit memo from both ARC
14 and the airline?

15 A. We have had debit memos from ARC, yes.

16 Q. No debit memos from ARC in this case.

17 A. No. Because ARC was paid.

18 Q. Paid by who?

19 A. By us.

20 Q. How much?

21 A. Are you talking about in this case?

22 Q. Yes.

23 A. okay. In this case, we paid what the fare on
24 the ticket was supposed to be. we paid our bills. ARC
25 has no issue with us. The issue is the airline saying,

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1 "Yes, you paid your bill, but you didn't pay it in full.
2 You owe us an additional amount of money because of the
3 way these tickets were written." It has nothing to do
4 with ARC. ARC has no problem with us. It's the airline
5 that was defrauded of a given amount of money who came to
6 us and said, "This is the amount of money you now owe us
7 because of the way these tickets were written." No issue
8 at all with ARC. So this has no bearing.

9 Q. well, if you look at Exhibit 4, the accusation
10 against ARC in that litigation was that they were
11 conspiring with sabre and the airline to enforce these
12 debit memos. Right?

13 A. But this is a different issue. It's not the
14 same thing. This case is different than our case.

15 Q. well --

16 A. Here, somebody is going after ARC and saying,
17 "Hey, you are working with the airlines and the.

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18 reservation systems to coerce us into doing certain
19 things." In our case, we are talking about -- let's talk
20 about just one airline. one airline comes along, united,
21 and says, "The ticket should have been \$7000. You only
22 paid 4. Now fork up the rest of the \$3000 that you owe
23 us if these tickets were written correctly." ARC was
24 paid what the ticket said. They don't care. They're
25 gone. They're out of the pure. All we're talking

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1 about now is an airline trying to recollect the amount of
2 money that they should have gotten.

3 Q. well, this is -- Exhibit 4 is talking about a
4 case that was brought in 1999 against the airlines and
5 ARC. Right?

6 A. uh-huh. Yes.

7 Q. And ARC issues a statement that it's not going
8 to aid -- in order to settle out, part of the deal is
9 that it's got to issue this statement. Fair?

10 A. Yes.

11 Q. And in that statement, they say they're not
12 going to aid in the enforcement of contested debit
13 memos. Isn't it fair to assume that, prior to issuing
14 the statement, they were aiding in the enforcement of
15 contested debit memos with the airlines?

16 A. It depends on how the debit memo was issued. If
17 ARC was involved and ARC sent us a debit memo, then they
18 would be the involved party. ARC was paid. The ticket
19 said this amount of money. ARC was paid that amount of
20 money. They got what they needed. They got what they
21 wanted. so this is -- this has nothing to do with our
22 issue here. ARC will not aid in this situation because

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23 they were not hurt. ARC got what they wanted.

24 Q. what did they get relating to any tickets booked

25 by ?

1 A. They got full money, full value of what that

2 ticket said.

3 Q. How did ARC get that?

4 A. we paid it.

5 Q. Have you produced any records showing that you

6 paid those?

7 A. Have we produced any? No. No.

8 Q. Other than your testimony, what's going to

9 corroborate that that occurred?

10 A. well, we have an ARC statement that comes out
11 every week showing every ticket and how much we've paid.

12 Q. And we'd like a copy of that statement.

13 MR. : Back up. There's no issue that
14 didn't pay ARC.

15 THE WITNESS: That's why I say this has nothing
16 to do --

17 MR. : That's not an issue that --

18 MR. ERICKSON: I mean, are you objecting as to
19 form or foundation of the question? I mean, it sounds
20 like you're testifying, and -- I mean -- do you want me
21 to reask the question?

22 MR. : You're asking for records, so I'm
23 objecting to it, because I don't think it's an issue in
24 the case.

25 MR. ERICKSON: So it's a foundation objection.

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1 MR. : And relevancy as well. And

2 I also -- while we're at it, you're interpreting an
3 article on a settlement agreement between other parties,
4 to which has had zero involvement, so I think there's
5 a lot of personal knowledge issues here.

6 Q. BY MR. ERICKSON: Well, ARC -- who is ARC
7 issuing this statement to? I mean, everybody but you?

8 A. No. They're issuing it to everybody, except
9 it's under certain circumstances and certain conditions.

10 Q. Where does the statement say that? Look at
11 Exhibit 4 and tell me where it says --

12 A. Okay. It says that they will not aid and abet
13 in the collection of debit memos. We don't have an issue
14 with ARC. ARC expt.cts to be paid for the value on the
15 ticket. We paid that. We always pay our bills. It's
16 the airline who says, "Yes, you paid for this ticket, but
17 the way the ticket was written, it should have been a
18 whole lot more, and we want the difference." ARC is not
19 involved in it.

20 Q. So you're saying simply because -- ARC is not
21 involved because you didn't get debit memos from ARC.

22 A. Because they got paid.

23 Q. Who are the officers of ?

24 A. Myself.

25 Q. What's your position?

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1 A. I take out the garbage a lot.

2 I think I'm treasurer. I'm not sure.

3 Q. Your title is treasurer.

4 A. I think so.

5 Q. What's Robert's title?

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15 Q. who is ?

17 president.

18 Q. what's her last name?

19 A. Butler.

20 Q. How many employees do you have?

21 A. Let's see. Five, besides the family.

22 Q. Five besides you

. So --

24 A. So it would be ten people.

25 Q. who issues the tickets at ?

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1 A. The agent.

2 Q. what do you mean by that?

3 A. Like the

4 Q. who -- but somebody at has to issue the

5 ticket in order for it to be processed. Right?

6 A. Not necessarily. If we trust the people, we

7 allow them to do their own ticketing, they can do it

8 24 hours a day. They do it right from their home, and

9 the tickets just print out in our office.

10 Q. Then why does need you to issue tickets?

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r) 11 A. Oh. I see what you're saying.

12 You have to have an accredited agency. You have
13 to be accredited by the airlines, ARC or AITAN, in order
14 to be able to issue tickets on behalf of the airline.
15 And since lost their accreditation because of
16 such activities, they had to go to host agencies, like
17 ourselves, to use their accreditation to be able to
18 conduct their business as usual, because the airlines
19 wouldn't let them do it directly.

20 Q. so only an accredited agency can issue tickets.

21 A. Yes.

22 Q. And you are an accredited agency.

23 A. Yes.

24 Q. And by "you," I mean .

25 A. Yes.

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1 Q. who controls the tariffs that are applied to the
2 tickets?

3 A. The airlines.

4 Q. And how does the airlines determine how that
5 tariff -- well, how does the airlines apply the tariff?
6 Is it a set rate? Is it a percentage of the sale? HOW
7 does the tariff apply?

8 A. well, they have these little gnomes in the
9 fourth subbasement of a building that determine how much
10 they should charge for each fare and how much -- it's
11 really called yield management. They determine whether a
12 plane has a very popular route. If it's a popular route,
13 they can charge a high amount for the passengers going
14 there because the people are going to pay it. They also
15 determine each class of service, how much should be

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16 charged on each class of service, again, based on yield
17 management. If they can fill a plane at a thousand
18 dollars a ticket, they'll charge a thousand dollars a
19 ticket. If that plane is not filling, they'll change the
20 tariff on a daily basis, sometimes on an hourly basis.
21 They load it into the different reservation systems, and
22 you can look at a ticket today, right now, it will be
23 \$565. Look at that same tariff, same airline, same
24 routing in an hour, it could go up a hundred dollars, it
25 could go down a hundred dollars. They change -- I think

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1 I read someplace, 63,000 fares are changed a day from all
2 the airlines.

3 Q. How many of your travel services agreements did
4 you enter into in the year 2004?

5 A. You mean new agents?

6 Q. Yes.

7 A. How many new agents we brought into the
8 company.

9 This is pure speculation. Probably 150.

11 A. Yes.

12 Q. Do you keep a list of your agents?

13 A. of course.

14 Q. Can we have a copy of that list?

15 A. No.

16 MR. : We're not going to produce that.

17 Q. BY MR. ERICKSON: Why not?

18 A. The only asset that a host agency has is their
19 agent list. In the wrong hands, it could go to another
20 host agency and they could solicit our agents away. We

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(--)
21 spend money on advertising to get those agents to come to
22 us. That is proprietary information, and there's no way
23 I'm going to give that up.

24 Q. Same reasoning applies to customer
25 lists. Right?

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1 A. Not in this case. In this case, we have to be
2 able to find those customers to find out just how they
3 went to, what they were offered as far as a
4 discount off of the regularly scheduled pricing of an
5 airline, did they know that they were going to get a
6 ticket that was going to Bangladesh and they were going
7 to get off in Rome because it's cheaper to go to
8 Bangladesh than it is to Rome, were they aware that they
9 were violating the airline tariffs. we must have that
10 list so that we can interview them.

11 Q. But that completely assumes the legitimacy of
12 your claims. Right? I mean, to get into their customer
13 list assumes that you're right in this case.

14 A. I am right.

15 Q. I mean, the question was, it assumes you're
16 right.

17 A. Yes.

18 Q. And if our theory is the opposite, and we think
19 we're right, then under our theory, we should get into
20 your agent lists in order to make the same inquiry,
21 shouldn't we?

22 A. what inquiry would you make of an agent?

23 Q. well, we want to know if you are essentially
24 luring unsuspecting agents to log onto your site, to
25 contract with you, to then have them book substantial

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1 travel over a two-month period, at which time you
2 terminate without cause, without notice, without
3 opportunity to cure, and then require the unsuspecting
4 agent to put up \$100,000 in security in order to avoid
5 having all their tickets canceled and their customers
6 jeopardized.

7 A. with all due respect, you're really stretching.

8 Q. we think you are too.

9 A. That's why we're going to arbitration.

10 Q. And my point with the lists is, I mean, maybe
11 we'll just agree to disagree, but, I mean, the same
12 reasoning should apply to giving up your agent list as it
13 would to our customer list.

14 MR. : No.

15 THE WITNESS: Not at all. Not at all. You're
16 really stretching.

17 Q. BY MR. ERICKSON: Have you had -- and here's
18 another reason we want your list, is, have you had any
19 litigation with other agents?

20 A. No.

21 Q. with a thousand agents, you've never had any
22 problems with them.

23 A. oh, of course we've had problems, but nothing
24 like this.

25 Q. And that was my mistake in use of terms. what

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1 kinds of problems have you had with other agents?

2 A. some agents would come on board with us
3 expecting things that we couldn't deliver.

L) 4 Q. Like what?

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5 A. For example, an agent would come on board
6 because they heard about all the perks of the travel
7 industry, all the free travel that you get. we don't
8 give free travel to anybody unless they're a producer.
9 And when somebody just joins us and says, "well, I'm a
10 travel agent, so I want to go to Cabo and I want to go
11 for \$100, then we say, no, they leave us."

12 Q. You want us to just assume that there's no other
13 agent out there similarly situated to as far as
14 the complaints that we've alleged?

15 A. we did have one.

16 Q. Tell me who that was.

17 A. George .

18 Q. And who is George ?

19 A. He is someone who engages in fraudulent
20 activity, as the who was caught by united
21 Airlines. united came to us back three years ago,
22 believe it is, and -- with \$64,000 in debit memos, for
23 this very same activity, and he's still -- he's still
24 active today, by the way, and ARC knows about him, but
25 they won't shut him down. And the reason they don't shut

1 him down is because he didn't violate any regulations,
2 because we were the host, and we were the ones who
3 violated the regulations, because he ticketed through us,
4 just like they did. so they are not held responsible, 5
they are not held responsible. we're the ones who get
6 screwed.

7 Now, the same fellow did the same things. The
8 debit memos came through for \$64,000. He negotiated it
9 down to \$16,000, which we had to pay.

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10 Q. Does this George have a company?

11 A. He works out of his house in Scottsdale. I can
12 get you his name. ARC knows about him, so you can ask
13 them about it as well.

14 Q. How do you spell ?

15 A. K-o-l -- no. K-o-v-a-l-i-k.

16 Q. And in what form are you litigating this \$64,000
17 that you think he owes you?

18 A. We're not litigating it.

19 Q. Why not?

20 A. Because he had a credit card on file with us,
21 include we charged him, got back our money.

22 Q. And did he sue you for that?

23 A. No.

24 Q. Has he threatened to?

25 A. No.

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1 Q. How much revenue did generate for you
2 between May and July of ?

3 MR. : You mean gross revenue?

4 THE WITNESS: Can I ask my son? I don't know.

5 Q. BY MR. ERICKSON: Should I defer to Robert on
6 that?

7 A. If I can ask him, I can tell you.

8 MR. : That's for Robert to answer.

9 Q. BY MR. ERICKSON: Let me break it down. Do you
10 have any idea how much in commissions that
11 generated for you during --

12 A. No idea.

13 Q. Do you have a contract currently with united?

14 A. Yes.

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15 Q. Can we have a copy of that?

16 A. I'm not sure if it's in an individual
17 contractual form or if it just is in the ARC contract
18 that we have.

19 Are you talking about the terms of -- and
20 conditions of ticketing? That would be covered by the
21 ARC regulations. I don't believe we have one
22 specifically for united, because they're one of the
23 companies that, when you get approved by ARC, they just
24 go along with it, as opposed to like an American, who
25 comes out and does their own approvals.

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1 Q. well, the question was do you have a contract
2 with united, and can we have it?

3 A. No, we don't have a contract, so you can't have
4 it.

5 Q. How about Luftansa?

6 A. No.

7 Q. Do you have a contract with any other airline?

8 A. Now, we're talking about a contract for sale of
9 tickets.

10 Q. Any kind of contract.

11 A. well, we do have contracts with united and
12 Luftansa for overrides. But that has nothing to do with
13 there.

14 Q. will you give us the contracts?

15 A. There are confidentiality clauses in each of the
16 contracts. I would have to check with both Luftansa and
17 united to ask.

18 Q. Will you just provide them to your counsel, and

K,J 19 then we'll discuss confidentiality?

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20 MR. : Why do you want them?

21 MR. ERICKSON: Well, we --

22 MR. : We can discuss this later, but I
23 don't see what the relevance is.

24 MR. ERICKSON: Well, I understand you're saying
25 they're irrelevant, but read like to determine that.

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1 THE WITNESS: But they're just override
2 contracts. They don't specify hidden cities or anything
3 like that because those hidden cities and back to backs
4 and all those good things are in the general contract
5 that is -- that we have to agree to and sign when we are
6 ARC approved.

7 Q. BY MR. ERICKSON: And, Harvey, that's our point,
8 is that, if you have a contract with united that does not
9 commit you to make sure that united Rule 100 is
10 implicated in all your ticket sales, we wanted to see
11 that to show that there's an absence of something.

12 A. well, it would be in the ARC manual, include we
13 had to agree to before we could be approved. So that's
14 available to you on-line, you can go to ARC.com and pull
15 it off.

16 Q. And are you going to rely on the ARC manual to
17 prove your case in this arbitration?

18 A. That's the only thing we can go by, because each
19 airline also specifies that they do have the right on an
20 individual basis to deny ticketing privileges to any
21 agency for any reason. And that's the way they put it,
22 for any reason.

23 Q. And that's in what, the ARC manual?

24 A. It's in the ARC manual, yeah.

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25 Q. If you could just provide that citation,

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16 Q. BY MR. ERICKSON: Exhibit 6 is a travel weekly
17 article dated December 27, . Are you familiar with
18 it?

19 A. No.

20 Q. Do you remember talking to a reporter about that
21 time about the information contained in this E letter?

22 A. oh, the recruitment?

23 Q. Yes.

24 A. Yes.

25 Q. operation annually?

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1 A. Yes.

2 Q. A thousand member agents?

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3 A. Yes.

4 Q. That's the case today?

5 A. Yes.

6 Q. How about in May of , was that the same --
7 same numbers?

8 A. Yes.

9 Q. what's the significance of referrals from ASTA?

10 A. ASTA is a worldwide recognized organization.
11 They are a phony company, but you have to be a member of
12 it because consumers expect you to be a member of ASTA,
13 American Society of Travel Agents.

14 Q. Have you made any inquiries of ASTA about
15 ?

16 A. No.

17 Q. How about NACTA, N-A-C-T-A?

18 A. No.

19 Q. Prior to contracting with in May of
20 2004, did you seek any information about from
21 either ASTA or NACTA?

22 A. No.

23 Q. Do you see at the bottom where they quote you as
24 saying, "Travel isn't rocket science"?

25 A. Yes.

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1 Q. Do you still believe that's true?

2 A. Yes.

3 Q. Taken that statement that you made, is it fair
4 that travelers, passengers, with some amount of savvy can
5 learn the ticketing policies to travel cheaper?

6 A. Yes.

7 Q. Because it's not rocket science. Fair?

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8 A. That was a question?

9 Q. Yes.

10 A. Yes. It sound like a statement.

11 Q. At the very end, you make the statement that,
12 when you're looking at an agent, you look for a caring
13 nature.

14 And my question is, when did you apply that
15 caring nature to at any time you were in contact
16 with them?

17 A. We really can't tell if someone is a caring
18 natured individual until they work with us. The people
19 that join us are people from all over the world. we have
20 agents in china. when we see how they work, if we get
21 complaints, we know they're not caring or they're not
22 careful. If we get complaints about an agent, we
23 terminate our agreement with them.

24 Q. That's not in your contract, though, what you
25 just said.

1 A. No. It is not in the contract.

2 Q. How are you able to keep track of the ticketing
3 accomplished by a **thousand different member** agents?

4 A. I don't understand the question.

5 Q. well, if you've got a thousand -- I assume that
6 a thousand member agents, you've got all these agents
7 that are **out there** booking travel. Fair?

8 A. Yes.

9 Q. How do you keep track of the ticketing that
10 these agents are selling?

11 A. **when each agent comes on board, we give them an**
12 accounting code. when they make their reservation in the

system, the accounting code goes in there. You can't do
14 a ticket without an accounting code. when the ticket is
15 run, it goes into a system called TRAMS, which is a back
16 office accounting system.

17 Q. Does this all apply to ticketing

18 A. Yes.

19 And based on that accounting code, each agent is
20 tracked, what they've done and how much commission
21 they're going to get.

22 Q. would you agree with me, though, that it's --
23 with a thousand -- I mean, with a thousand agents selling
24 travel every day, that it's very difficult to keep track
25 of the ticketing in a way that is going to satisfy the

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1 airlines?

2 A. Correct. Yes, I agree.

3 Q. Let's go to Exhibit 7.

4 (Deposition Exhibit 7 was marked for
5 identification.)

6 THE WITNESS: what in the world has this got to
7 do with it?

8 Go ahead.

9 Q. BY MR. ERICKSON: Exhibit 7. Are you familiar
10 with it?

2 us.

3 Q. So you terminated --

4 A. so we never had an issue with her, because if
5 there was a bad check that we got, she made good on it
6 immediately with certified funds. so we attributed
7 that -- and she'd been doing that for years. we just
8 attributed this to poor accounting, not being -- putting
9 enough money in her bank account for those checks. But
10 we never lost anything with her until this happened.

11 Q. And so you terminated her after you found out
12 about her bad check history.

13 A. well, we terminated her when we found out she
14 had closed her doors and would not answer her phone.

15 Q. And that was after you found out she had a
16 history of bad checks.

17 A. Well, what happened was, that Friday, we had
18 gotten \$50,000 in bad checks from her, five \$10,000
19 checks, I believe it was, that was returned to us from
20 the bank. And then we tried to get ahold of her over the
21 weekend. I did. And she said she would make good on
22 it. she gave me a whole sob story about this police
23 group that she had booked and they were threatening to
24 come to her house and drag her to jail. And I told her
25 don't worry about it, that that's not going to happen.

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1 That was on a Sunday night like about 10:30 my time, so
2 it must have been like probably 2 o'clock in the morning
3 in Pennsylvania.

4 That was the last time I spoke with her or
5 anybody spoke with her, although she did leave a
6 voicemail on our machine in the middle of the night that

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7 following wednesday saying that she's sorry, she didn't
8 mean to hurt anybody, and she's going to make good on all
9 of her bad debts.

10 Q. Early on in the article, you said you don't
11 consider a criminal. Do you still not think of her
12 as a criminal?

13 A. I don't.

14 Q. Do you think of anybody in this case as a
15 criminal?

16 A. In this case? Can I look at both of them?

17 Q. How about me? Am I criminal too?

18 A. Not at all.

19 Q. Anybody else in the case other than the people
20 in the room that you consider a criminal in this case?

21 A. only their associates.

22 Q. And Ms. stole from her customers and went
23 to jail. Right?

24 A. You know, that's the reason the article came
25 about and my statement, because intent, as far as I'm

1 concerned, makes a criminal. she did not intend to
2 defraud or hurt anybody. she had a history where, two
3 years prior, her husband died, and six months after that,
4 her 24-year-old daughter tied. I think she went
5 emotionally unstable. I also think that, having been in
6 business for 12 years as a travel agent, her husband
7 being a physician and very prominent, bailed her out of
8 her financial woes, and then suddenly, she had to do it
9 on her own. she didn't intend to hurt anybody. she
10 didn't intend to steal from me or her clients. she
11 intended to make good on everybody. These people

untitled

12 intended to defraud me and to defraud all the other host
13 agencies that they worked with prior to me.

14 Q. But the jury in Ms. case didn't buy all
15 that, did they?

16 A. No, they did not. They didn't know her as well
17 as I did.

18 Q. And you weren't on the jury.

19 A. NO.

20 But if I lost that kind of money and could say
21 she's not a criminal, it's got to be so.

22 Q. what did you mean in Exhibit 7 when you said
23 that -- and this is about, after the heading that says
24 4,000 -- 400,000 in losses, a couple paragraphs later,
25 you said, "state bills don't do a thing." what did you

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1 mean when you said that?

2 A. The state Travel -- the state seller of Travel
3 Laws [] that accredit a travel agency to do business in
4 that state. They have not worked. They've been a
5 failure in many states. Some have been rescind. some
6 are still there, just to make revenue for the state. But
7 they don't protect anybody for the small bond that an
8 agency would have to put up. They could defraud
9 \$400,000. In her case, a million and a half, I think,
10 was the total that she took from everybody.

11 Q. Including 400,000 from you.

12 A. well, that was an exaggeration on the reporter's
13 part. I said it might reach, and he said it did reach.
14 It's only been, what, about 250,000, I think.

15 Q. Are you exaggerating that number in this case?

16 A. 250,000?

) 20 THE WITNESS: I don't remember. But it was just
21 a slight discrepancy.

22 Q. BY MR. ERICKSON: Was it on a different date
23 other than May 11, 2004?

24 A. I don't remember.

25 Q. who -- and this is 's form contract?

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1 A. Yes, it is.

2 Q. who drafted this?

3 A. Alexander Anolik.

4 I know. It's terrible.

5 MR. ERICKSON: Exhibit 13.

6 (Deposition Exhibit 13 was marked for
7 identification.)

8 Q. BY MR. ERICKSON: Exhibit 13, is this a fair and
9 correct copy of your web site's cover page?

10 A. No, this is not the cover page. This is the
11 page that the agents will go to when they are seeking
12 more information about us.

13 Q. And on this page is where the agent would prompt
14 to the quick start manual?

15 A. Yes.

16 MR. ERICKSON: Exhibit 14.

17 (Deposition Exhibit 14 was marked for
18 identification.)

19 Q. BY MR. ERICKSON: And the question is, is
20 Exhibit 14, is that your quick start manual?

21 A. Yes, it is.

22 Q. All the way up to page 55?

23 A. Yes, it is.

24 well, it's changed now, because, of course,

25 EzAgent , isn't there?

1 Q. say that again.

2 A. There are some changes that aren't applicable in
3 there, because some of the things like EZAgent is no
4 longer something we advertise, which is on page 55.

5 Q. well, I mean, I'll represent to you that
6 printed this out the same day as the coverage page, which
7 is at the bottom right-hand corner of Exhibit 13.

8 A. Well, this is close enough. You know,
9 there's -- materially, this is it.

10 Q. Is this what you have posted on your site right
11 now, Exhibit 14?

12 A. Yes.

13 Q. Go to page 7 of Exhibit 14.

14 With the heading, on page 7, where it says, next
15 to "Airline," "All regularly scheduled airline
16 reservations are booked through the state of the Art,
17 sabre Reservation System."

18 That was true in May 2004 through July of 2004?

19 A. Yes.

20 Q. And we already established that didn't
21 use Amadeus. Right?

22 A. Correct.

23 Q. Page 7 of Exhibit 14, last -- second to last
24 paragraph, where it says, "Most domestic airlines, on
25 both systems, are booked as Electronic Tickets." was

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1 that the case when you had your contract with

2 A. Yes.

3 Q. At the very bottom, where it says, "Never use

1 credit card to pay for that travel.

2 Q. who is that person?

3 A. Trami Tran, I think his name is. Robert has
4 it. If you want it, I can just ask him -- you can ask
5 him tomorrow.

6 MR. : Those documents were produced.

7 Q. BY MR. ERICKSON: And this is a passenger who
8 provided this information to you?

9 A. This is a cardholder, I don't know that they've
10 ever traveled with . No, it wasn't provided by
11 the passenger. It was provided by the credit card
12 company, who sent it back to us for payment, because
13 there was a disputed credit card.

14 Q. Remember when we started and I asked you about
15 witnesses that are going to testify --

16 A. Yes.

17 Q. -- in the case?

18 Is this person going to come in and verify that
19 this occurred?

20 A. Didn't even think to ask that. But I guess we
21 could add him to the list. I don't know that we'll bring
22 him in. I don't think that will be necessary, because
23 it's proof enough that the credit card company says
24 that -- and it's signed by there credit card holder that
25 he never authorized the travel.

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1 Q. And you say you've turned over these credit card
2 records to us in this case.

3 A. Yes.

4 Q. Okay. so we got through the credit card

5 issues. what other acts were willful indications of
6 grounds that you could terminate ?

7 A. well, we're going to show that there are many
8 hidden ticket and throwaway ticket itineraries that were
9 produced by , again, in violation of airline
10 regulations.

11 Q. How are we going to know that it's a hidden city
12 ticket?

13 A. It will be explained to you by united, I guess,
14 or we can explain it to you. Not being in travel, I can
15 understand your frustration in understanding what we're
16 talking about.

17 Q. And that's why I need to learn from you and why
18 we're going through this. But, you know, a ticket
19 doesn't come back from united and have a big stamp on it
20 that says hidden city, do with it what you --

21 A. No. But when you start an itinerary, let's say
22 it's four legs, okay, you go from here to Chicago to
23 New York and so on. The airlines know when you board.
24 They know when you got off. They know if you've taken
25 the next leg. They know when you've gotten off. so if

1 you have a four leg segment and you only go three and the
2 fourth one is never used, or given back for refund, then
3 it is a hidden city, and the airlines know about it.
4 They have very sophisticated software that detects these
5 things.

6 Q. All of that conduct you just described is
7 conduct of a passenger. Right?

8 A. YOU know, passengers, we spoke about earlier,
9 are very savvy, and they do know about these things. we

n 10 do have -- I'm sure we do have it happen on occasion.
11 can't say that we have, but I'm sure that it has happened
12 where somebody has done that. But when somebody does it
13 on a regular basis and then goes on their web site and
14 offers fares far lower than anybody could get on a
15 regularly published manifest, it tells you and it tells
16 the airlines that there is a way that this company is
17 getting this lower fare, because they couldn't get it
18 from the airline, unless they intentionally decided to
19 engage in hidden cities, where that fare was lower to
20 that last leg where the people get off and they don't use
21 the last leg, if that fare would be lower, and that's the
22 only way they can get those tickets at that price.

23 so it's not rocket science to figure out that
24 they're able to sell a ticket at a lower price and make a
25 profit because they are intending that that passenger

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1 doesn't even necessarily have to know that there was a
2 fourth leg. All the passenger knows is he gets on here,
3 he gets off on third leg, fourth leg, they don't even
4 give him the ticket or they call the airline and they
5 cancel it. The price is lower. They make a profit. The
6 passenger gets a lower fare. It's no big mystery how
7 it's done, because there's no way they can get a
8 legitimate fare at that -- with that itinerary. They
9 can't get a lower fare than what is published, unless
10 they engage in this. so it's not going to be hard to
11 prove.

12 Q. Obviously, are going
13 to dispute having any intention to willfully do what you
14 just described.

15 A. Of course they will. But then we go to, why
16 were they thrown out of Planners?
17 Why was their united contract withdrawn? These are the
18 things we're going to show you and are going to prove
19 that they know what they were doing, it was willful.

20 Q. I would love to know too. I haven't seen
21 anybody from Planners in this case yet or any
22 documents saying what you're telling me.

23 A. You will.

24 Q. I've got a story from you that has no evidence
25 to corroborate what you're saying.

1 MR. : For the record, we've requested
2 those records from your clients for months. Your clients
3 are in possession of the records. And so we'll cross
4 that bridge at another time.

5 MR. ERICKSON: I think that's a dispute too.
6 But --

7 THE WITNESS: Well, we're getting all these
8 records from Sabre any way, so we'll be able to show it
9 to you. They're just making it more difficult. But it
10 will be shown.

11 Q. BY MR. ERICKSON: And the records from Sabre are
12 going to say, come back with an itinerary that says
13 booked this intentionally as a hidden city
14 ticket. Right?

15 A. No. No. It's going to show that these legs
16 were booked, only these legs were flown, and when you
17 have one and you have two and you have three, you're not
18 going to be able to prove the case that every one of
19 their clients is so savvy that they all intentionally

(---) 20 misled them. And again, the question is, how did that
21 lower price come into being? The airlines didn't offer
22 it.

23 Q. If you're a traveler?

24 MR. : Just a minute. Can we take a
25 quick break? Robert has a call and I have a call I have

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1 to make also.

2 MR. ERICKSON: Let me finish this line of
3 questioning, like two or three more, because I think it's
4 important before we take a break and forget where we're
5 at.

6 Q. BY MR. ERICKSON: If you're a customer and
7 you're traveling and united, like in this case, suspects
8 you of flying on a hidden city and you get pulled off an
9 airplane, I mean, that's going to make you mad, as a
10 passenger. Right?

11 A. Sure.

12 Q. And if it was, for that
13 matter, that caused you to go through this inconvenience,
14 you're probably going to scream about it, wouldn't you?

15 A. Certainly.

16 Q. So where are these people, is what I want to
17 know, these passengers that were on the hidden city
18 tickets, you know, I mean, what are their names? what
19 are they going to say, and --

20 A. Isn't it their case, that they're holding us
21 liable for damages because their passengers came back to
22 them screaming and yelling, wanting their money back
23 because united and these other airlines charged them the
24 extras? That's their case, not ours.

25 Q. well, on the same routine, couldn't the same

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1 theory that you're alleging against them be turned around
2 and be put on you? I mean, we could say you issued the
3 tickets. You must have known that they were hidden
4 cities.

5 A. why do you think united didn't pull our plates?
6 we didn't issue the tickets.

7
8 A. They issued the tickets, not us.

9 Q. They didn't pull your plates because you
10 terminated them, like they asked you to.

11 A. Yes. But they are the ones who issued the
12 tickets. All we do is take it off the machine. They're
13 electronic tickets, for the most part. so all we have is
14 a coupon that says, did this itinerary. we have
15 to pay ARC this amount of money. They're the ones who
16 pushed the button. They're the ones who ran the
17 tickets. They're the ones who canceled the segments that
18 weren't supposed to be used. whether they did it
19 electronically or telephonically makes no difference.
20 They're the ones who did it.

21 Q. That's one thing. You have evidence of that,
22 that they canceled their own passengers' tickets?

23 A. The airlines do.

24 Q. The airlines do.

25 A. Sure. Every time they call in or do anything on

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1 the reservation system, it is time-stamped who did it and
2 when. Everything is right there to put them in jail.

3 Q. so you're saying Incentive didn't cancel any of

4 their passengers' tickets?

5 A. we don't -- well, don't -- let's not do that.

6 We didn't cancel any of the reservations until we were
7 told to cancel what was left. During the period they
8 were with us, any cancellation of any part of the airline
9 ticket was done by. We don't even have the right
10 to do that. They are independent contractors. we cannot
11 interfere with the way they do business unless it's
12 illegal or against regulation. That's in our contract as
13 well.

14 Q. where is that in the contract?

15 A. oh, someplace in here, where they are
16 responsible to do everything, we cannot tell them how to
17 run their business. Duties -- let's see. "IC may choose
18 where work is to be performed, is not required to work on
19 the premises of agency and is not required to answer the
20 phones," blah, blah, blah. Let's see.

21 Q. What page are you on?

22 A. I'm on page 2.

23 well, actually you can start at "Compensation of
24 Independent Contractor," in general, and just go on from
25 there. Places of work, they can do anything they want,

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1 IC may work whatever hours, they can't be told what to do
2 or how to do it or anything.

3 MR. ERICKSON: Want to take a break?

4 MR. : Yeah. Thanks.

5 THE WITNESS: I was just getting on a roll.

6 MR. ERICKSON: That's all right.

7 (Recess at 1:42; resumed at 1:51.)

8 THE WITNESS: Can we go back so I can clarify.

9 something?

10 Q. BY MR. ERICKSON: No. You'll have all the time
11 in the world to do that.

12 A. Not a problem. It's not a big issue.

13

16 A. Essentially, we did, yes.

17

19 A. I have no idea.

20 Q. would Robert know that?

21 A. Yes, he would, after he looks it up.

22 Q. Do you know if paid all of its
23 commissions on travel that was used by passengers?

24 A. I'm told no, because we are holding those
25 commissions against debit memos that are coming in.

1 Q. EzAgent processed all these commissions.

2 Right?

3 A. what are you holding?

4 Q. well, let me be more specific.

5 The commissions that -- I know you'll dispute
6 earned -- the commissions that were arranged by
7 sales, were they handled by EzAgent?

8 A. I believe they were on EzAgent. I don't know
9 for sure.

10 Q. why aren't you using EzAgent anymore?

11 A. It was developed for us about five and a half
12 years ago and is a bit archaic. And we have a new system
13 in place that replaces it and is much more sophisticated.

14 Q. what's that system called?

15 A. It's called Agent Access.

16 Q. So Mr. -- Mr. isn't the reason you
17 stopped using EZAgent.

18 A. Not at all.

19 Q. Wasn't Mr. the one that was -- I'm
20 sorry.

21 The gentleman in your federal case --

22 A. Oh, Lesofski?

23 Q. Yeah. He developed EzAgent. Right?

24 A. No.

25 Q. He was working on developing EZAgent?

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1 A. No.

2 Q. what software was he developing?

3 A. I don't even know what he was going to call it.
4 It was something new and different.

5 Q. Different than EZAgent.

6 A. More sophisticated.

7 Q. But it wasn't agent access.

8 A. No.

9 Q. okay.

10 (Deposition Exhibit 16 was marked for
11 identification.)

12 Q. BY MR. ERICKSON: Exhibit 16, is that how the
13 EZAgent reports commissions?

14 A. I don't know. I've never seen it before. I
15 don't know EZAgent. But it looks like, since it says
16 EZAgent on the top, this must be what the reports look
17 like.

18 Q. So 16 is something you've never seen before?

19 A. No.

20 Q. If you look at it from pages 1 to 4, does it --
21 does it appear to show all the sales by from
22 May 13 to Rine 30?

23 A. I don't know how to read this thing.

24 Q. Okay. Is this something for Robert?

25 A. Yes.

1 Q. Are there any passengers -- I know you don't
2 know how to read this, but are there any passengers that
3 stand out on this list that you thought were hidden city
4 tickets?

5 A. I don't know the names of the passengers.
6 can't tell you.

7 Q. The last entry on page 4 of Exhibit 16, dated
8 September 17th, where it says "Lawyer Fees," is that an
9 attempt to bill for your lawyers' fees in this
10 case?

11 A. That's a Robert question.

12 Q. Okay.

13 MR. ERICKSON: Exhibit 17.

14 (Deposition Exhibit 17 was marked for
15 identification.)

16 Q. BY MR. ERICKSON: Are these the four passengers
17 that you talked about that united had concerns about on
18 June 30th?

19 A. I don't know.

20 Q. Is that a Robert question?

21 A. Yes, it is.

22 Boy, we can get out of here early.

23 Q. That means Robert's gonna go longer tomorrow,

n

24 though.

25 so you don't know whether any of those four at

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1 the bottom were -- well, let me ask you this.

2 when Jeff Gundlach comes in on June 30th, does

3 he talk to you or Robert?

4 A. Robert.

5 Q. were you there?

6 A. No.

7 Q. So everything you told me about what happened on

8 June 30th was based on what Robert told you occurred?

9 A. Yes. And Robert doesn't lie.

10 MR. ERICKSON: Exhibit 18.

11 (Deposition Exhibit 18 was marked for

12 identification.)

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13 Q. BY MR. ERICKSON: Do you recall receiving this

14 letter from Mr. zappia?

15 A. Yes.

16 Q. what did you do when you received this letter?

17 A. I called him.

18 Q. On July 7th?

19 A. If that was the date of the fax, then that's the

20 date I called him.

21 Q. what did you guys talk about on the phone?

22 A. That we were more than happy to reinstate all

23 the tickets as had been offered to if he would put

24 up a bond, letter of credit, anything that we could pull

25 upon if more debit memos came through, and that he could

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1 have it placed with any institution he wants, including

2 Zappia himself.

3 Q. Since July 7th, , do you require -- let me
4 ask you this.

5 Since July 7th, , you have contracted with
6 additional agents.

7 A. Yes.

8 Q. Have you required of them, these agents, since
9 , a bond for such security?

10 A. We've never had thieves before.

11 Q. Is the answer yes or no?

12 A. The answer is no. We do not require it of
13 anybody, because there's never been a reason to do so.

14 Q. what kind of -- since , what kind
15 of due diligence do you do in regard to new agents?

16 A. we don't.

17 Q. Still do contracts in a couple hours?

18 A. Two hours.

19 Q. Do you remember when you received Exhibit 18?
20 And I mean on the day -- on the day it's dated?

21 A. You mean whether it was morning or afternoon?

22 Q. Exactly.

23 A. I don't. In fact, I may even have called zappia
24 the following day, if it came in late. Again, my time
25 line might be off by a day or two.

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1 Q. Do you remember sending him an e-mail?

2 A. Yes.

3 Q. Did you send that e-mail before or after you
4 talked to him on the phone?

5 A. I think that was before, and this was -- this
6 came as a result of that conversation.

7 Q. So he sent the letter after you talked on
8 July 7th?

9 A. I believe I -- again, my timeline might be a day
10 or two off. I spoke with him -- he had called. I called
11 him back. And I think -- actually, I think I made that
12 offer prior to this letter. I think this was the final
13 communication that I had from him. I e-mailed him with
14 my offer, spoke with him about my offer, and then this.

15 Q. But before -- before terminating, you
16 received Mr. Zappia's communication that
17 passengers were stranded?

18 A. No, we terminated them, I believe it was on
19 the 30th of June.

20 Q. How did you do that?

21 A. E-mail.

22 Q. And that's the e-mail you said you're going to
23 get for me?

24 A. You should have it. But if you don't, we'll get
25 you another copy. United has a copy of it as well.

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1 Q. Who sent the termination letter, or --

2 A. Robert.

3 Q. Sent it to who?

4 A. I guess it was Gundlach, Carras, myself, and
5 Laney.

6 Q. So, in your mind, the date of termination was
7 June 30th, 2004?

8 A. Yes.

9 Q. So July 7, Mr. Zappia's letter on July 7th,
10 2004, that was the first time you were aware that their
11 passengers were stranded?

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12 A. No. called me and she called Robert
13 in between that time on several occasions asking us to
14 reconsider. And that's when we heard that conversation
15 about how they came to us.

16 Q. Did you take any notes of these conversations
17 with Mr. ?

18 A. and never
19 thought there was a need, so, no, i did not.

20 Q. when you cancel a ticket and issue a refund, how
21 do you then get a debit memo from the airline?

22 A. well, if -- again, I explained earlier, I'm not
23 involved in the ticketing end of it, so I don't know the
24 true mechanics, and that's what I wanted to correct
25 before when you said I can't, but that's okay. If you

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1 refund a ticket, if it's refundable, not all tickets are
2 refundable, the refund goes to either the credit card
3 holder, if it was paid by credit card, or back to the
4 agency if it was paid by check. You don't get a debit
5 memo for that, unless there's a penalty, of course. If
6 it's a nonrefundable and you cancel a ticket, then a
7 penalty will ensue.

8 Q. Did any of the passengers who had their tickets
9 canceled call and complain?

10 A. I don't think we've had any communication from
11 any of their clients.

12 Q. when you got this letter from Mr. zappia, did
13 you look at the attachments that he sent and the lists
14 that are pages 3 and 4 of Exhibit 18?

15 A. I probably looked at it, because it was a fax
16 that came in for me.

17 Q. Fair to say that as of, when you
18 got this letter, you were aware that was paying
19 to reticket the passengers that you canceled?

20 A. No, I wasn't aware that they were. we expected
21 they would. But I was not in their loop as to what they
22 have done.

23 Q. why would you expect that they would pay to
24 reticket these passengers?

25 A. well, if I had a client and I did something

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1 illegal and you were being penalized for it, I would try
2 to make good to keep you as a client.

3 Q. But nothing in this letter talks about doing
4 illegal things, from Mr. Zappia.

5 A. No, because they didn't tell Zappia the
6 truth. zappia had only been working for them for a few
7 months and knew very little about them. He thought they
8 were honest people.

9 Q. Do you have some information that he's not
10 working for them anymore?

11 A. No, I don't know that, except for the fact that
12 somebody told him at the -- he claims that somebody at
13 the Attorney General's office said that there's no grand
14 jury investigation, which was then transmitted to you,
15 which obviously turned out to be a lie by somebody,
16 because you have my subpoena that there is a grand jury
17 investigation which has been going on, hopefully because
18 of my letter to the Attorney General insisting that the
19 grand jury investigation that was begun several years ago
20 be continued and brought to fruition. I'd like to think
21 I was instrumental in that.

22 Q. Back to Mr. zappia. You said that -- at least
23 you inferred that he didn't know that was bad
24 people, I think as you said --

25 A. I said thieves, I think. But bad people. okay.

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1 Q. And so if he's still working for them, it must
2 mean that they're not thieves. Right?

3 A. No, because attorneys will defend most anybody
4 for billable hours. You know that as well as I do. My
5 .

6

. You

8 know, you're defending these people. You know they're
9 bad.

10 Q. But you said earlier that I wasn't a criminal.

11 A. No, you're not. You're just trying to earn a
12 living, like anybody else.

13 MR. ERICKSON: why don't we mark Exhibit 19.
14 (Deposition Exhibit 19 was marked for
15 identification.)

16 Q. BY MR. ERICKSON: Does this e-mail look familiar
17 to you?

18 A. Yes. This is what I sent in response to the fax
19 of the 7th.

20 Q. so this e-mail, Exhibit 19, is in response to
21 Exhibit 18.

22 A. Yes.

23 I think it tells the story pretty well.

24 Q. why did you forward, or I should say copy, why
25 did you copy Exhibit 19 to Jim Carras?

(--

1 A. He was instrumental in getting this whole thing
2 started. He is the united fraud agent.

3 Q. Is he going to testify for you in this case?

4 A. Yes.

5 Q. Are you going to put him on your witness list?

6 A. Isn't he on it? I thought he was.

7 Q. That was Exhibit 1.

8 Let me just -- you're going to add him to your
9 list.

10 A. I thought he was on there.

11 Q. You're right.

12 Same reason you just described for copying Jim
13 Carras, same reason apply to Jeff Gundlach?

14 A. Yes.

15 Q. who is Gary Fee?

16 A. Gary Fee is the founder and president of the
17 outside sales Support Network, a very large organization
18 supporting independent contractors.

19 Q. what's the reason for copying him with this
20 e-mail?

21 A. In conversation with, he said that Gary
22 Fee, who I guess he didn't know I know, was telling
23 everybody that we are a card mill. A card mill is
24 defamation. A card mill is the scourge [] of the host
25 agency community. It is the scourge of all travel

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1 agencies that are legitimate. And to be called a card
2 mill, especially to his members, because he has a very
3 large organization of independents that go from host
4 agency to host agency, I was very upset. And I told
5 Laney that I was going to be calling Gary right away to

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6 find out why he is spreading this information.

7 Then at the same time, tells me that he is
8 a chapter president for Gary Fee's organization up in the
9 Rochester area.

10 so I called Gary. Gary calls me back. we have
11 a nice conversation. I also have an e-mail from him,
12 saying that, no, he has never thought of us as a card
13 mill, because he's known us probably the last 15, 20
14 years. In fact, we're a member of OSSN.

15 Q. so you're saying that Robert told you that
16 Gary Fee said that was a card mill.

17 A. Correct. slandering us.

18 Q. And that's what upset you.

19 A. Yes. And then when I spoke with Gary, Gary
20 asked me, "well, what is the reason that you're having
21 any conversation with ?" And I explained what was
22 happening and that he should know that his chapter
23 president is engaged in operations such as this, and I
24 thought he should be aware of who he has as a chapter
25 president. That was it.

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1 Q. when you told Gary Fee that, what if it turns
2 out that you're wrong?

3 A. I'm not.

4 Q. what if you are?

5 A. what damage?

6 Q. Does that make it okay, then? Are you saying
7 because -- what damage to --

8 A. I said what I believe is true. If I was wrong,
9 an apology is needed. I'm not wrong. These people are

—) 10 going to go to jail. And I'm going to do my best to help

11 them.

12 Q. Will you recant what you said to Gary Fee if
13 you're proven wrong in this arbitration?

14 A. Absolutely. He recanted what said he had
15 been spreading about us being a card mill. So lied
16 about that or Gary Fee is lying that he never said it.
17 tend to believe Gary Fee.

18 Q. Look at your e-mail, Exhibit 19. I'm going to
19 go through point by point. YOU were kind enough to
20 number each part of your e-mail, so we'll follow those
21 numbers.

22 A. I wanted to be helpful.

23 Q. And, you know, we talked about this, and you
24 made this comment earlier, that nowhere in the contract
25 is the name Robert . Later in point 4, if you want

1 to look on the last page, you say that you wouldn't deal
2 with him, because he was not on the contract.

3 why did you sue him in this case if he has
4 nothing to do with this?

5 A. well, he wasn't on the contract, but he
6 certainly became part of the suit when he engaged in all
7 of negotiations, dealing with us as though he were.
8 think law allows that to happen, doesn't it.

9 Q. You'll have to take my deposition another day.

10 A. Tomorrow?

11 Q. But you agree he's not part of the contract.

12 A. He is not a signatory to it. But we do have
13 agents who sign with us, and then they have subagents who
14 they don't report to us. But because they don't sign
15 does not mean they're not part of the organization,

16 especially when they do the dealings as far as arrange
17 the travel, do the computer, work as though they were
18 part of the organization. Not being a lawyer, but
19 think that makes him an accomplice.

20 Q. Let's go to point 2.

21 Now, you quote that section from the general
22 provisions part of the contract. Right?

23 A. Yes.

24 Q. In point 2 of Exhibit 19?

25 what exactly -- at that point in time, what

1 regulations were you thinking of, when you said that?

2 A. same regulation's that had united come to our
3 office and threaten to take away our plates unless we
4 cooperated.

5 Q. So that would be United Rule 100?

6 A. Whatever the number was at the time. i didn't
7 know.

8 Q. Did Jeff specifically give you that rule?

9 A. I wasn't there. I don't know if he mentioned it.

10 Q. Another Robert question?

11 A. Yes.

12 Q. United is not a party to Exhibit 12, is it?

13 A. what's Exhibit 12?

14 Q. The contract between

15 A. No.

16 Q. Okay. Still under point 2, where you say,
17 "Engaged in Hidden City ticketing," and the important
18 sentence that you use is, "Hence, our right to terminate
19 her agreement."

20 At that point in time, you -- your belief is

21 that you terminated because of hidden city ticketing.

22 Right?

23 A. Hidden city, throwaways, and bad credit cards,

24 yes.

25 Q. But you don't say bad credit cards in this --

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1 A. I just itemized one item there, which is

2 sufficient.

3 Q. so on July 7th, when you send this e-mail, in

4 your mind, it's the hidden city ticketing that supported

5 your right to terminate the agreement.

6 A. I wrote this quickly. You know, I didn't think

7 it was going to go this far, because every other place

8 they've sued has bent over and just agreed to whatever

9 they wanted to make it go away. I don't think they

10 realized we were going to hit them hard.

11 Q. On July 7th, 2004, you don't have information on

12 this fraudulent credit card issue, do you?

13 A. I don't know when that came in. It was around

14 that time, it came in.

15 Q. You probably would have said something about

16 it.

17 A. Probably, you're right. It probably hadn't come

18 in yet.

19 Q. what's the difference between hidden city

20 ticketing and throwaway segments?

21 A. A hidden city is, for example, you want to go to

22 Hong Kong, which is a very expensive route. It's much

23 less expensive if you go from New York city to Hong Kong

24 to, let's say, Bangkok so you write a ticket from

25 New York to Hong Kong. People get off at Hong Kong

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1 because they've got -- they arrange for a two-day stay,
2 and then they're supposed to continue on to Bangkok. But
3 they really stay in Hong Kong for a week. so they stay
4 in Hong Kong, don't go to Bangkok, come back -- plane
5 comes back. They leave a week later from Hong Kong, so
6 it's a round-trip Hong Kong rather than round-trip
7 Bangkok. That's a hidden city.

8 Q. what do these people do with -- if they start at
9 point A, they're going to get off at point B, but their
10 travel is for point C --

11 A. Not for two days later. so they take their
12 luggage. They just never get back on the plane. It's
13 very clever. This is the first time that I've
14 encountered that cleverness, because usually it's a
15 throwaway at the end, where people don't have carry-on,
16 they just get off in Hong Kong, have a lower fare,
17 because the airline thinks they're continuing on to
18 someplace else.

19 Q. But hidden city ticketing doesn't require an
20 overnight stay.

21 A. uh-uh. That's a no.

22 Q. Now, differentiate hidden city from a throwaway
23 segment.

24 A. A throwaway is if you're going on to -- you're
25 going to Hong Kong, just like we were before, but it's a

1 one-way, and the last segment is never used. so you
2 throw away the last segment, or you start at a
3 destination that is -- for example, Toronto to Hong Kong

4 is less expensive than San Francisco to Hong Kong. So
5 you start in Toronto -- the ticket starts at Toronto, but
6 your passenger really is in San Francisco.

7 Now, I'm not sure that's exactly what they've
8 done, because I don't have the tickets in front of me,
9 probably couldn't read them anyway, but that's the way
10 the hidden city or the throwaway usually is. So you
11 don't take the first segment, you get on in San
12 Francisco, and you go on to Hong Kong, and it costs you
13 less because the airline thinks you're starting in
14 Toronto.

15

16 how do you know that they even know what a hidden city
17 ticket is?

18 A. How they know? well, they were thrown out of
19 how many host agencies for this very same reason? why
20 did united come over to us and say, "They're doing hidden
21 cities, like they've done with everybody else, and if you
22 don't stop them, we'll take away your plates."

23 Q. But you didn't know this history that you keep
24 talking about on June 30th, 2004. Right?

25 A. Yes, we did, because united told us about it.

1 Q. They told you at that moment.

2 A. Yes.

3 Q. You didn't do any investigation as to whether
4 united was corrects or incorrect.

5 A. Except for the tickets they showed us where it
6 was shown that there were hidden cities.

7 Q. Harvey, you took United at its word because --

8 A. of course I did. It's their ball. They take

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9 away their ball and I can go home without a game.

10 Q. And they send a lot of money your way every
11 year.

12 A. Absolutely.

13 Q. And under Exhibit 12, the contract, has
14 no obligation whatsoever to united.

15 A. No. They have obligation to us.

16 Q. Did you give us any debit memos from united?

17 A. I think you have it all.

18 Q. so if what you gave us doesn't include united
19 debit memos, then there aren't any?

20 A. I said I think you have it all. If you don't
21 have it all, we'll be happy to supply whatever you
22 haven't gotten.

23 Q. well, let me ask you this way.

24 A. see, we're so agreeable. But they won't supply
25 anything. That's something you should consider.

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1 Q. Do you recall receiving debit memos from united?

2 A. Actually, they came from Luftansa on united
3 flights.

4 Q. Explain that.

5 A. Well, I did earlier. They are prohibited from
6 booking anybody on united.

7 Q. who is "they"?

8 A. The bad dudes, you know who I mean
9 so in order to get around that, Luftansa is a
10 co-chair with united. so you can book any airline,
11 actually, on any other airline's plates. so they book
12 united, but they plate them or the ticket shows that it
13 is a Luftansa responsible ticket even though the flights

0 14 are united. so Luftansa gets the money, gives united its
15 share, because it's a co-chair. But the debit memo for
16 those united flights came from Luftansa. It's very
17 clever.

18 Q. But nobody came into your office from Luftansa
19 on June 30th --

20 A. No. In fact, when they did come in, they didn't
21 even realize it was plated on Luftansa. All they knew,
22 it was united flights where the fraud took place. It was
23 later that we found out that indeed it was plated on
24 Luftansa, and that's where we got the debit memos from.

25 Q. so how is -- assuming all of this took place the

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1 way you say it did, how is United even harmed?

2 A. well, united gets paid by Luftansa Luftansa
3 takes a small portion for plating -- for them handling
4 the transaction. But united gets the bulk of the money.

5 Q. so you assume that if you pay the debit memo to
6 Luftansa, they're going to turn around and pay a share
7 over to united?

8 A. They have to. well, for example, let's say you
9 go someplace and you're on three different airlines. one
10 airline, the originating airline, or the airline that
11 goes over the water, depending if it's international,
12 they're the ones who are supposed to get all of the
13 money. And then they put -- they give the share for the
14 other carriers, like u.s. Air or Northwest, if they were
15 part of the itinerary, their share. It gets a little
16 complicated. But one gets all the money and then shares
17 it with the rest.

18 Q. In addition to united, the united tickets that

n 19 Jeff comes in, he says, "Bad stuff going on with these
20 four people," you in turn, in addition to canceling those
21 four, which we'll figure out what they are, you cancel
22 everything else that's pending for. Right?

23 A. uh-huh. Yes.

24 Q. where in the contract are you allowed to do
25 that?

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1 A. under the regulation where all operations, all
2 procedures should be followed according to the
3 regulations of the industry.

4 Q. But it doesn't say -- I mean, does it fairly
5 advise that if some passenger, on their own
6 accord, books a hidden city ticket, that before any
7 investigation or anything is done, you're going to
8 terminate that travel, terminate, and cancel
9 everything they've got reserved through you? Do you
10 think that's in the contract?

11 A. It's implied in the contract that if you don't
12 follow the regulations, we can terminate you. Based on
13 what united did and the sharing of information among the
14 airlines, it was the recommendation that everything be
15 canceled.

16 Q. Do you think your agents, your thousand agents
17 out there, are aware that this could occur to them?

18 A. No, because they're not thieves. They don't
19 think that way. They follow the rules, and nothing ever
20 happens.

21 Q. well, but they all have the same contract with
22 you.

23 A. Yes. But they don't break the rules.

n 24 Q. And you're saying if you do break the rules,
25 you're sufficiently advised by Exhibit 12 that all those

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1 things are going to happen to you.

2 A. I think so.

3 Q. under point 4, Exhibit 19, you say -- you
4 explain -- now, when you say you explained, do you
5 mean -- okay. "In conversation."

6 When you say "protect our business," you mean
7 protect your business with united?

8 A. No. Our entire business, because, as
9 explained, if we can't book one of the major airlines of
10 the world, credibility is lost, and agents leave.

11 Q. so that's at least a motive behind the
12 , protecting your business.

13 A. Preservation, self-preservation.

14 Q. And another means or another reason for
15 terminating is that you say you can't afford to
16 lose your ticketing with any airline.

17 A. Correct.

18 Q. And, really, they're -- that in a nutshell is
19 the basis of your termination of those guys.

20 A. To protect our business. But if you notice in
21 there, in that same paragraph, they could have avoided
22 all this by just putting up an escrow account. They
23 claim they do \$27 million a year in business. If they
24 were to go to the bank and get a \$100,000 letter of
25 credit, it would cost them a \$100 documentation fee,

1 because I've done it.

2 Q. How much were you going to put up?

3 A. Not a penny. we were getting the debit memos.
4 we're the ones that are responsible. That's why the
5 airlines and the ARC aren't going after them, because
6 their contract is with us. **They are immune of any**
7 **possible liability because we are the agency of record.**
8 No matter what they do, we have to pay. **They could walk**
9 **away.** Then we have to go to court, like this, to try to
10 get our money back.

11 Q. But isn't that the point, that it could have
12 been -- since you issued the tickets, it could have been
13 somebody at that issued the hidden cities.

14 A. oh, but we didn't. That, again, is stretching.
15 we don't make reservations. we don't change
16 reservations. All we do is, they put it in the computer,
17 we hit the button, say, ticket. That's it.

18 Q. SO, z mean, you could literally have a blind man
19 sitting at a computer issuing these tickets.

20 A. Absolutely.

21 Q. And you don't do anything -- you're not
22 responsible --

23 A. we are responsible.

24 Q. -- if -- well, you're saying that you have,
25 under the contract, Exhibit 12, an unequivocal right to

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1 go back on the agent in the contract and collect whatever
2 damages you suffer as a result of a hidden city.

3 A. As a result of any damages that are caused by an
4 agent. That is correct. They make a mistake, they do
5 something fraudulent, they have to pay us, because we
6 have to pay the airlines. Regardless of what they do,
7 regardless of what damage they do, ultimately, the

8 financial burden is on us.

9 Q. what if, for example, bad dudes puts up this
10 \$100,000 and they prove you to be wrong, that this is
11 entirely a passenger generated ticketing violation, that
12 these were passenger generated, that had nothing to do
13 with them?

14 A. I agree.

15 Q. Are you going to give it back to them?

16 A. we weren't going to take it. It says right
17 here, \$100,000 in any form, letter of credit, bond,
18 escrow, of their choice. -- okay, let's see.
19 okay. when speaking with zappia, I told him, and I told
20 Anolik, and I told him that they could even put it up
21 with their own attorney or the bank or any escrow
22 company. It would not be touched unless a debit memo
23 came in. And then they could fight it with the airlines,
24 and they get their money back. so if they were on the up
25 and up and everything was as they said, not one penny of

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1 that letter of credit would be touched. Their attorney
2 would control it.

3 Q. And that 100,000 isn't going to get them
4 reinstated as an agent. Right?

5 A. No. we wouldn't take them back.

6 Q. You were just going to use that to pay the debit
7 memos that at that time you determined were going to be
8 coming from the airlines.

9 A. Anything that would be coming from the airlines
10 would be taken out of that. They would have the right to
11 fight it, because they give us 30 days to fight any debit
12 memos. If it is in their favor, then the airline

13 reverses it and nothing is touched.

14 Q. Have any of your agents ever put up that kind of
15 bond?

16 A. Nobody. No. You asked that already. No.

17 Q. well, I asked, before you contract with them, do
18 they put up a bond. And I should have been more
19 specific. You're right. I mean, have you ever run --
20 have you ever had an agent where you suspect some kind of
21 ticketing issue and you ask them to put up a bond, like
22 you did with BAD DUDES?

23 A. No. We've never had this problem except with
24 , and he was terminated well before all the debit
25 memos came in.

1 Q. Did you ask to put up a bond?

2 A. No, because as soon as we found out what he was
3 doing, we terminated him immediately. we had no
4 chargebacks. we had just found out what he was doing.
5 And when we found that out, before the debit memos came
6 in, we got rid of him.

7 Q. So you just took a \$64,000 hit on ?

8 A. No. I told you we did not. He negotiated it
9 down because we were going to go after him for it, he
10 negotiated it down for \$16,000, and then we took that
11 hit, but he did have a credit card on file with us, which
12 we charged for it, and he never fought it.

13 Q. under point 4, you say, about three or four
14 sentences down, "E Tickets and non refundables would not
15 be touched."

16 That's -- E tickets and nonrefundables are
17 exactly the tickets that you canceled. Right?

18 A. Nonrefundables weren't canceled. They were
19 left. E tickets -- well, the reason for that, if
20 remember correctly, was -- see, an E ticket can be
21 converted into a paper ticket. And I believe that's the
22 reason we didn't touch them, because once the paper
23 ticket is issued, it's almost impossible for the airline
24 to stop a passenger. Only British Air has that
25 capability right now.

1 Q. Point 5, where you talk about the statement that
2 you say was made over the phone --

3 A. uh-huh. Yes.

4 Q. -- what led you to believe that relied
5 exclusively on you to sell travel?

6 A. I didn't know for sure that we were the only
7 ticketing agency. And if these people were as devious as
8 we suspected now, they would probably be working with
9 other agencies as well. I don't know that for a fact.
10 But during this conversation, these tickets needed to be
11 reinstated, and I needed some information from Robert, so

21 Q. This is something that your wife overheard when
22 she was on the phone. Right?

23 A. That's correct. And like my son, my wife
24 doesn't lie.

25 Q. She's not a witness on your list. Are you going
1 to add her?

2 A. If you want.

3 MR. : She's a party. You added her as
4 a party.

5 Q. BY MR. ERICKSON: Well, I guess my question is,
6 you're not going to establish -- the information that you
7 talk about in number 5, you're not going to purport to
8 testify about that without her.

9 A. Well, if we need that testimony, we'll bring her
10 in, sure. She'll be more than happy to fry them as well.

11 Q. Number 6, point 6 in your e-mail that's
12 Exhibit 19.

13 We've talked about, when you say "quite a
14 history" -- this is the same comment that you made
15 regarding Ms. Spoil in that article, right? Having a
16 history?

17 A. No, she didn't. She had no history.

18 Q. Well, you said she had a history of bad checks.

19 A. oh, yeah, to us, which she always made good, but
20 we've had a lot of agents who have had a history of bad
21 checks. They've been with us for many years, and they
22 make good all the time. There was no reason to suspect
23 that -- she's been with us for about four years.

24 Q. I mean, the history term is something we see a
25 lot of in the pleadings and the words that you use. And

1 this is a history that at the point in time you sent this
2 letter, you weren't even aware of, or this e-mail.

3 A. well, we found out about this starting on the
4 30th of June.

5 Q. And that's just the hidden city stuff, though.

6 A. No. No, no, no. we were told about their
7 history, , --

8 Q. By united?

9 A. By united.

10 Q. And there was no documents. This was just what
11 they told you by word of mouth.

12 A. Yes.

13 Q. And you just believed united, what they told
14 you.

15 A. Absolutely. so maybe you should bring them in
16 for slander.

17 Q. Let's -- number 6. Let's go through this in
18 detail.

19 You talk about, is under
20 investigation by many airlines.

21 Now, when you sent this on, who
22 were these many airlines?

23 A. I believe they were Singapore Asiana, Luftansa,
24 and united at the time.

25 Q. And there was based on what united told you on

1 the 30th?

2 A. Yes.

3 Q. Had you seen any such investigations by any of
4 these airlines, other than what united told you?

5 A. No.

6 Q. You say, they're also under investigation by

7 ARC. where did you get that information?

8 A. From Ken Gilbart at ARC.

9 Q. And when did you talk to Ken?

10 A. sometime in between the 30th and the time of
11 this letter.

12 Q. Did you call him?

13 A. Yes.

14 Q. To report?

15 A. To inquire about and why they hadn't
16 notified us of this company, since they knew all about
17 it. united had told us that ARC knew about them for
18 many, many years. And the answer that they gave us was
19 very unsatisfactory.

20 Q. Issues with other host agencies. which host
21 agencies, other than the ones -- well, just tell me
22 again, I know you've mentioned a couple, but tell me
23 again --

24 A. well, at the time, it was Planners
25 International. And there was one other one in the

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1 Midwest, and again, I -- or was it Arkansas? I think it
2 was Arkansas, that ARC had told me about.

3 Q. Do you believe that -- well, I mean, do you have
4 any evidence of an ARC investigation?

5 A. No. There is none. It's all internal. well,
6 don't ever any evidence. It's an internal
7 investigation. But they're not going to do anything.

8 Q. Why not?

9 A. ARC doesn't hold the independent agent
10 responsible, as I explained earlier. They hold the host

n 11 agency responsible, and that's how they can get away with
12 this, by hopping from host agency to host agency.

13 Q. They still get sued. Right?

14 A. who gets sued?

15 Q. ARC.

16 A. For what?

17 Q. They got sued by the class action plaintiffs in
18 California.

19 A. oh, that. That's, you know, a one-time deal.
20 most agencies don't go that far. I don't know the
21 agency, but it must be a very large one.

22 Q. I mean, if they settled and issued that
23 statement, it apparently got their attention. Right?

24 A. I don't know what the facts are. You know,
25 just, I read what you read, and you really don't know

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1 what the underlying problems were.

2 Q. I mean, ARC is not going to take a position one
3 way or the other in this case, are they?

4 A. In this one? I don't think. They'll testify if
5 we establish them. But they're not going to go after the

6

7 Q. who at -- you don't recall who you talked to at
8 Penny . Is that right?

9 A. I never spoke with anybody at Penny .

10 Q. How do you know that they were one of the host
11 agencies?

12 A. I didn't say they were a host agency. This is
13 an agency that bad dude had purchased a couple years ago and
14 left the owner holding the bag after the debit memos
15 started coming in and then united pulled the plates.

n

16 believe that was the order.

17 Q. okay. I think I meant Planners. who did
18 you talk to at Planners?

19 A. Tony G

20 Q. okay. Any other host agencies, other than
21 Planners? And I'm talking about your e-mail,
22 Exhibit 19, number 6.

23 A. No.

24 Q. okay. You then write, "we are this day filing a
25 complaint with ARC'S fraud department."

1 Do you have a copy of that complaint that you
2 filed?

3 A. i think I still have that letter. I will be
4 happy to supply it to you.

5 Q. So when you say "complaint," you just mean you
6 sent a letter complaining about bad dude ?

7 A. Yes. Either that or it was by telephone.
8 Again, I can look it up and I can tell you. But that's
9 how I got in contact with Gilbert.

10 Q. How about, notification to each airline's
11 security department. Do you have --

12 A. No, we didn't do that.

13 Q. So that wasn't true when you said that in the
14 e-mail?

15 A. Well, we were going to, but we figured it wasn't
16 going to help the matter any.

17 Q. okay. Go to point 7.

18 The only way that bad dude is going to get
19 their -- well, by this time, , when you
20 sent this e-mail, you'd already canceled all reservations

21 pending with.

22 A. Yes.

23 Q. so if they put up this \$100,000 bond, how were
24 you going to resolve all those canceled tickets?

25 A. Could reticket them. They were mostly business

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1 and first class. so they could have been done the day
2 before travel.

3 Q. At additional expense.

4 A. No. Business and first class is the same. It's
5 not a discount where if you buy it in advance.

6 Q. And you know that to be the case for every
7 passenger you canceled.

8 A. I can't swear to that, no. But most of their
9 tickets were business and first.

10 Q. And you didn't see it unfair at all for you
11 to -- in order to get that bond from, to cancel
12 all these tickets and say, the only way you'd reinstate
13 them is for them to pay up that money.

14 A. They didn't have to pay a penny. well,
15 shouldn't say that. \$100, and they could have had
16 \$100,000 letter of credit with their bank. \$27 million
17 in volume a year, and they can't get a letter of credit
18 for a \$100 documentation fee? You could do it. I could
19 do it.

20 Q. where do you say that in this e-mail, that it's
21 going to cost them \$100?

22 A. Well, I told zappia on the phone. I told Him
23 on the phone, go do it. He says, no, I can't do it.
24 won't do it. And he said maybe ,000. \$20,000 wasn't
25 about to cover it. At least not according to what united

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1 had told us.

2 Q. I guess the question was, the \$100 issue is not
3 part of this e-mail.

4 A. well, it could have been \$99. It could have
5 been \$101. Banks charge different fees.

6 MR. : Actually, it is. It's the second
7 paragraph, paragraph 4.

8 THE WITNESS: Oh, is it?

9 MR. : Yeah.

10 oh, yeah. For a \$100 documentation fee. Yes.
11 You're right. I should read my letters better.

12 Q. BY MR. ERICKSON: I think your attorney just
13 became a material witness in the case.

14 A. But he's a good guy.

15 Q. okay. Point 8, where you say you're ready to do
16 battle what did you mean by that?

17 A. Well, **zappia** was very, very aggressive with me.

18 Q. Why wouldn't he be?

19 A. Well, there's a way of being aggressive, and
20 there's a way of being professional. He was aggressive,
21 not professional. I didn't appreciate the way he spoke
22 with me. I didn't appreciate the way he tried to
23 intimidate me. And so that's the reason I did that,
24 because he said that, "If you don't come around, we're
25 going to go after you for everything you've got,"

1 something like that. I'm paraphrasing, of course. And
2 that is the reason for my doing battle.

3 Q. So if Mr. **zappia** truly believes in his clients
4 and that they've been wronged by you, he has no reason to
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5 be aggressive?

6 A. well, you know, I tried to explain to Tony
7 exactly what the situation was. Now, your people have
8 lied to you. You found that out. They've lied to him
9 too. He didn't know. I tried to explain to him that we
10 are trying to protect ourselves. we don't want to hurt
11 anybody, but at the same time, we need some -- some
12 cushion. But he believed every word that these people
13 told him. And I think you found out for yourself,
14 although you can't admit it, that there have been a few
15 mistellings. And so he became very aggressive.

16 Q. why in point 8 on Exhibit 19 you finish by
17 saying "time is of the essence? what do you mean by
18 that?

19 A. Because these people are ready to travel. If
20 they're going to travel and these things are going to be
21 reinstated, we have to get it done now. I was trying to
22 be accommodating.

23 Q. But, I mean, aren't you pretty much holding
24 those passengers over their heads unless they pay up this
25 \$100,000?

1 A. NO. A 27 million dollar business, those few
2 passengers, and there really weren't that many, they
3 could have taken care of them.

4 Q. well, you knew when you sent -- you thought that
5

7 A. 27 they told me.

8 Q. They told you. And you thought that on
9 July 7th, 2004, on or after?

10 A. well, whenever I sent the letter, because that's
11 when they -- they had told me that in conversation
12 between the 30th and the time I sent the letter, that
13 they do \$27 million.

14 Q. well, if you're dealing with an agent that only
15 makes \$10,000, you're not going to require a bond from
16 them, then.

17 A. **I don't require a bond from anybody, unless they**
18 **do something illegal** that's going to cost me money if
19 they are wrong. If they are right, it costs them
20 nothing, it costs them the \$100 documentation fee, which
21 I even told Tony that I would reimburse if we were wrong.

22 Q. It just sounds like you're qualifying the
23 \$100,000 bond on the fact that you believed the bad dudes had
24 \$27 million and therefore --

25 A. No, because I never -- I would never have gotten

1 that money if everything was good. I told them that it
2 could be held by their own attorney. I'd have no access
3 to it. The only agreement would be that if any debit
4 memos came through, it would be drawn from that. And
5 through their attorney, I didn't ask to put it in my
6 pocket, I wouldn't have seen a penny in it if everything
7 was as they said it was, if they had taken care of it at
8 the airline level that they said they did. And they
9 didn't. They lied.

10 MR. ERICKSON: Exhibit 20.

11 (Deposition Exhibit 20 was marked for
12 identification.)

13 Q. BY MR. ERICKSON: Did you see this letter from
14 Ms. Benson at ARC? That's Exhibit 20.

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15 A. No. I think this was sent to Phil.

16 Q. Phil didn't share this with you?

17 A. I probably have it.

18 Q. Does ARC keep -- well, let me ask you this.

19 Do you have access to auditor coupons through
20 their Compass system?

21 A. we get auditor coupons whenever a ticket is
22 generated. we produce them ourselves.

23 Q. so they would have record of every ticket that
24 you issued for Bad dudes ?

25 A. Yeah. As soon as a ticket is issued, it is

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1 recorded each night, it downloads to their system, so
2 that they can get their pound of flesh.

3 MR. ERICKSON: Exhibit 21.

4 (Deposition Exhibit 21 was marked for
5 identification.)

6 Q. BY MR. ERICKSON: Are these -- Exhibit 21, are
7 these the debit memos that you've disclosed in the case?

8 A. As far as I know, they are. Again, I don't even
9 really know how to read a ticket.

10 Q. Well, have you received any other debit memos in
11 addition to the ones that are in Exhibit 21?

12 A. I'd have to ask Robert. I don't know.

13 I do recognize the fraudulent charge debit memo
14 over here from Asiana Airlines.

15 Q. How do you -- walk me through that. How is that
16 a fraudulent charge? And we're talking about page --
17 tell me where you're at. Page 3 of Exhibit 21?

18 A. It's page 3. Because it says "Chargeback:
19 fraudulent charge."

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20 Q. who wrote that?

21 A. Asiana, their audit department.

22 Q. That's their handwriting on "Other"?

23 A. Yeah.

24 Q. Did you talk to them about that?

25 A. I don't get involved in this. we have a

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1 bookkeeper that does it, or Robert spoke with them.

2 don't know.

3 And then there's another fraudulent one on the
4 next page. And the guy's name that you asked for was
5 Trami Tran.

6 Q. Wait a minute. on page 3 of Exhibit 21, is
7 there any writing on that page from anyone at Incentive,
8 as far as you know?

9 A. I don't recognize any handwriting from our
10 office, so everything on this came from Asiana.

11 Q. who is going to talk about this, page 3 of
12 Exhibit 21, at the arbitration?

13 A. I think it speaks for itself.

14 Q. well, are you going to call somebody from Asiana
15 to talk about its authenticity?

16 A. No, because this is directly from them, it's
17 authentic, and it speaks for itself.

18 Q. so you won't call anybody from Asiana.

19 A. I don't see any reason to.

20 Q. How about page 4 of Exhibit 21?

21 A. same thing, same credit card being used
22 fraudulently, yes. same credit card number.

23 Q. Have you talked with anybody at Asiana about
24 these documents?

25 A. I think you asked that a few minutes ago. No, I

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1 didn't talk to anybody. I don't handle that.

2 Q. None of these debit memos are from united, in

3 Exhibit 21?

4 A. No. That's Asiana. But if you go on to the
5 next page, you've got the American Express statement that
6 the claim is valid, that this was a fraudulent credit
7 card, and the money is going back to Trami Tran. And
8 guess who's got to pay for it?

9 Q. My question was, none of the debit memos in
10 Exhibit 21 are debit memos from united Airlines.

11 A. Correct. Just goes to show you the trend. They
12 do all the airlines.

13 And then there's Luftansa on the next page,
14 after the American Express.

15 Q. Do you have any record from Incentive that you
16 paid any of these debit memos?

17 A. Not yet. Because of the pending investigation,
18 they've allowed us not to pay it just yet.

19 Q. Pending investigation of what?

20 A. well, this litigation, because they're also
21 helping us along with giving us documentation to win this
22 case.

23 Q. Is there some written agreement to that effect?

24 A. No. It's all verbal. But they've held off on
25 collection, which tells us all that they are working with

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1 us.

2 Q. But who's going to confirm that that is the

3 agreement other than you?

4 A. If we had to, we could subpoena people.

5 Q. who?

6 A. well, I guess the gal at auditing in Luftansa
7 and Asiana who wrote these. we have the -- let's see.
8 Robert has been in contact with the audit lady in -- at
9 Luftansa. And I guess it would be possible to depose
10 them, if you wish, or bring her in.

11 Q. ARC doesn't require -- as part of your
12 accreditation with ARC, they don't require that you pay
13 any of these debit memos in Exhibit 21.

14 A. No, because we've paid them what they've asked.
15 These are airline debit memos. **ARC does not get involved**
16 in airline debit memos.

17 Q. where are the records of what you paid ARC for
18 these tickets?

19 A. In our ARC report, which we get every week, you
20 can have a copy of it.

21 Q. Thank you.

22 (Deposition Exhibit 22 was marked for
23 identification.)

24 Q. BY MR. ERICKSON: Is Exhibit 22 familiar to you?

25 A. You know, I've got a briefcase filled with this

1 stuff. I'm sure I've seen it.

2 Q. on page 2, paragraph numbered by number 1, have
3 you provided an accounting of all amounts that
4 refunded to their customers?

5 A. I don't know.

6 Q. Will you do so?

7 MR. : Objection. I've raised

(hT 8 objections to doing this.

9 THE WITNESS: And I think we really ought to
10 have them produce what we've asked for if you want us to
11 produce what you've asked for. I'm not trying to be
12 difficult, but they've done nothing, because they're
13 hiding the world. But we're going to get them.

14 Q. BY MR. ERICKSON: So the answer to number 1 is
15 no, you're not giving it up.

16 MR. : No.

17 Q. BY MR. ERICKSON: Okay. Number 2. Have we
18 talked about all refunds to passengers, and if you want,
19 we can go back, but I think it's -- Mr. zappia asked for
20 them on July 13th, and I guess the question is, have you
21 provided information on the status of all refunds to
22 passengers that you provided since --

23 A. I think Robert did.

24 MR. : I already put in my writing to
25 you, Rick, that we weren't going to do that.

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1 Q. BY MR. ERICKSON: Have you given us all
2 communications with the FBI concerning You know who ?

3 A. I don't know.

4 Q. Do you have those? DO you have communications
5 with the FBI concerning You Know who ?

6 A. Let's see. The FBI came to the office. Robert
7 took notes. If we didn't send that, I can certainly send
8 that to you.

9 Boy, everybody is after these people. It's
10 great. FBI, Attorney General.

12 Q. Any -- and you have -- you're going to give me

13 all your communications to ARC about Bad dudes ?

14 A. Anything I have, you're welcome to.

15 Q. Any other governmental agencies that you've
16 communicated with about?

17 A. The Attorney General. I'll find that letter
18 where I insist that they reopen the case, and I'll be
19 happy to send that to you.

20 Q. And that's Arizona Attorney General?

21 A. No. Rochester. Actually, Buffalo and
22 Rochester. I had to send them to both. And this was at
23 the urging of ARC.

24 Q. who at ARC urged you to do that?

25 A. Ken Gilbert told me who to send it to, gave me

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1 the addresses, and everything. was great. was very
2 helpful.

3 Q. Any other -- and I include ARC in this --
4 private, nongovernmental agency that you've communicated
5 with about bad dudes?

6 A. Let's see. FBI. Attorney General. No, I think
7 that covers who I've spoken to.

8 Q. E-mails with --

9 A. oh, Alexander Anolik. I don't know if you care
10 about him.

11 Q. Yeah, I'd like to see those too.

12 A. Those were all telephonic. He called me.

13 Q. okay. Let's just cut to the chase with this.

14 Anything that you have, e-mail, written or otherwise,
15 that's not to your counsel, we would like to take a look
16 at, if it includes, anytime between July of 2004
17 and the present date.

(hT 18 A. Everything that I've sent to anybody, Phil has
19 always been copied in on, so he's probably provided
20 everything to you that we have.

21 Q. I? Have you given
22 us --

23 A. I've never spoken with him. I understand he
24 knows me from somewhere. But I have never communicated
25 with him.

1 MR. ERICKSON: 23.

2 (Deposition Exhibit 23 was marked for
3 identification.)

4 Q. BY MR. ERICKSON: Are you familiar with Exhibit
5 23?

6 A. Yes. Yes, this one, I did remember reading,
7 yes.

8 Q. And we talked about all the communications we'd
9 like to have with U.S. 1, and you're going to give those
10 to us, right, if they exist?

11 A. Anything you need.

12 Q. was it -- you said you've never spoken to
13 Mr. Phillips. Is that a Robert question?

14 A. Yes, it is.

15 Q. okay.

16 MR. ERICKSON: 24.

17 (Deposition Exhibit 24 was marked for
18 identification.)

19 Q. BY MR. ERICKSON: Are you familiar with 24?

20 A. Yes.

21 Q. Go to Exhibit 1 to -- and Exhibit 24 is the
22 Sabre subpoena. Right?

23 A. Yes.

24 Q. From to Sabre.

25 A. Yes.

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1 Q. Exhibit 1 to the subpoena, the -- what is it?

2 A. All the names and ticket numbers, you're
3 referring to?

4 Q. You know, for sake of time, if you want to defer
5 to Robert on this stuff, just tell me, and we'll move on,
6 but if you know what this is, tell me what it is.

7 A. This is a record of all the tickets that we need
8 the names, addresses, contact, credit card numbers of for
9 all these passengers that were ticketed by the bad dudes
10 through their system bridging over to ours.

11 Q. And is this -- this is information that you need
12 or your attorney needs?

13 A. Well, if my attorney needs it, it means I need
14 it, for our case.

15 Q. why do you want to talk to these people?

16 A. To find out just how they contacted them
17 what they were promised, what they were told, were they
18 aware that there were hidden cities, did the client
19 instruct them to do a hidden city ticket, did THEY?
20 acquiesce to it, how did they get as low a fare as they
21 did that was unpublished.

22 Q. Because that's the only way you're going to be
23 able to prove a hidden city ticket. Right?

24 MR. : Objection.

25 THE WITNESS: No. Not true at all.

L) 1 Q. BY MR. ERICKSON: Then why do you need to talk

2 to them?

3 A. Helpful.

4 Q. Just helpful.

5 A. It will help the case, yes.

6 Don't forget, we're going in front of an
7 arbitrator that knows nothing about trial, as you don't,
8 and I don't mean that to be demeaning, but to started
9 instructing during an arbitration, as we are instructing
10 here, you're learning a lot about travel. And it's a
11 difficult field to comprehend when we're talking about
12 these back end items. So if we can make it as simple as
13 possible for the arbitrator, he will then agree that
14 there is some problem here.

15 Q. Are all these -- in Exhibit 1 to -- that's
16 attached to Exhibit 24, where did you get this list?

17 A. This is from our back office accounting system.

18 Q. And are you purporting that all of these
19 passengers are hidden city tickets?

20 A. No. That's why we need to get these records, to
21 see which ones were and which ones were not. we do know
22 that they did some legitimate tickets, very few.

23 Q. THAT DATE, you have information that
24 United gave you that there were ticket violations.
25 Right?

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1 A. Correct.

2 Q. But you hadn't spoke with any of these
3 passengers identified in Exhibit 1 to Exhibit 24.

4 A. No. we had no contact information.

5 Q. And you want to do that now, you want to talk to
6 these folks, what is it, nearly, over six months after

7 terminating 1st-Air?

8 A. what is the bearing on the time frame on that?

9 They'll remember.

10 Q. well, you didn't -- but you didn't know -- you
11 didn't know the reason behind the tickets that these
12 people were flying on.

13 A. No.

14 You're down to the bottom of the barrel? That's
15 great.

16 Q. We've got another file to go.

17 MR. ERICKSON: This is 25.

18 (Deposition Exhibit 25 was marked for
19 identification.)

20 Q. BY MR. ERICKSON: Is Exhibit 25 familiar to you?

21 A. I believe I did see this. They all start
22 looking alike.

23 Q. I guess the question is, you're going to give us
24 all the communications you had with investigators of any
25 kind. Right?

1 A. Yes.

2 Q. How about evidence of your damages? what have
3 you given us that shows that you sustained damages?

4 A. Whatever has come in has come across to you.
5 The only problem is that airlines are notorious for being
6 very late in their auditing. We have gotten debit memos
7 in the past two years after the fact. so we really don't
8 know what the damages are in total.

9 Q. And you just told me that you can't -- you can't
10 give us debit memos that you haven't paid to say you've
11 been . Right?

12 A. Well --

13 MR. : Objection. I object to that.

14 Q. BY MR. ERICKSON: Well, what if you prevail in
15 this arbitration? Are you going to have to pay those
16 debit memos?

17 A. Of course.

18 Q. Says who?

19 A. Says the airlines, if I want to keep in business.

20 Q. And who told you that?

21 A. The airlines.

22 Q. Over the phone.

23 A. No. we've been in business for 25 years. A
24 debit memo comes in. You pay it. You don't pay it, they
25 take away your plates.

1 Q. Are you going to bring in a representative from
2 each airline to say at the arbitration that "we will in
3 fact come after them for these debit memos if they
4 don't pay us?

5 A. If you insist.

6 Q. I may not insist. I think the arbitrator might,
7 to see that you've actually lost mething?

8 A. Then if he -- we didn't institute this suit.

9 Q. You've got a counterclaim.

10 A. Only because they instituted a suit. We would
11 have let them walk away and we would have eaten the
12 damage. we've gone it in the past.

13 Q. That would be contrary to your e-mail where you
14 said you were ready to do battle.

15 A. Only because **Zappia threatened to sue the pants**
16 **off me.**

17 Q. well, we've got five lawsuits out there
18 involving you guys. Do you think that's a good
19 indication that you're going to walk away?

20 A. Five lawsuits?

21 Q. We had four we went over in superior Court
22 locally here. Right?

23 A. I'm losing you. I'm sorry.

24 Q. It doesn't matter.

25 Do we have -- well, you may have answered this,

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1 and I'm going to ask you again.

2 Do we have all the evidence of your damages in
3 this case?

4 A. Up to this point.

5 Q. And you'll continue to provide that to us if you
6 get it.

7 A. Sure, because we're going to get it off these
8 guys.

9 Q. what do you mean by that?

10 A. when we win.

11 Q. And those are your damages?

12 A. whatever damages we have. whatever comes
13 through, they'll have to pay.

14 Q. well, that's -- my question is, what's the
15 evidence of the damages you're going to present to the
16 arbitrator about what your losses are in the case?

17 A. The debit memos that come in from the airlines.

18 Q. okay. Anything else?

19 A. Yeah. Legal fees, of course.

20 Q. And you're going to claim those as your damages?

21 A. I don't know what category that goes in legally,

22 but, yes, we're going to claim it.

23 **I hope they're paying you, because I don't know**
24 **if they're going to pay me.**

25 MR. ERICKSON: Exhibit 26.

1 (Deposition Exhibit 26 was marked for
2 identification.)

3 Q. BY MR. ERICKSON: What is -- well, other than
4 the cover page, what is Exhibit 26?

5 A. Well, it looks like a list of tickets, and
6 probably the tickets that were generated by the bad dudes while
7 they were with us.

8 Love to have a client like this. Lots of
9 business. If they were legitimate.

10 Q. which of these passengers are hidden city
11 tickets?

12 A. I have no idea. There's no way to tell from
13 this.

14 MR. ERICKSON: 27.

15 (Deposition Exhibit 27 was marked for
16 identification.)

17 Q. BY MR. ERICKSON: Exhibit 27. What is it?

18 A. This looks like copies of tickets.

19 Q. And why did you give them to us?

20 A. I don't know.

21 oh, these are refunded tickets, it looks like.

22 At least the first section is.

23 Q. which of these tickets are hidden city tickets?

24 A. I don't know. I can't read a ticket. Besides
25 that, there's no way of telling. The airline can tell

1 you. All we do is see a ticket, it's got a number of
2 segments, we don't know who flew what. The airlines can
3 tell you that.

4 MR. ERICKSON: 28.

5 (Deposition Exhibit 28 was marked for
6 identification.)

7 Q. BY MR. ERICKSON: And I'll preface 28 with that
8 we spoke to Mr. **Resnick** this morning, and he gave us the
9 most we've been able to get on this subpoena.

10 A. Yeah. Rick is not too forthcoming with
11 information.

12 Q. Did you ask him to send you this subpoena?

13 A. Actually, we spoke, a conference call between
14 Resnick and Hawkins, FBI, and myself, last Wednesday.
15 Yeah, I believe it was Wednesday, because originally
16 was supposed to be called at the end of November, and
17 they --

18 Q. why weren't you called then?

19 A. They said that they had to go stage by stage.
20 so that's when Tony G testified. He was brought
21 up there, and in fact, I was hoping to meet him, because
22 I'd never met him. And they said that I would be called
23 at a later date. So since I'm going away on a cruise in
24 February, I called to find out when I was scheduled for,
25 and that's when they set up the conference call with

1 Resnick and Hawkins, and they said, "we'd like you to
2 come up and testify on the 8th of February."

3 Q. since July 7th, 2004, how many times have you
4 talked to Paul Hawkins?

5 A. Probably about five.

6 Q. How many times, same time frame, have you talked
7 to Rick Resni

8 A. Actually, I'd never spoken with him before.
9 This was the first time.

10 Q. Do you communications to Mr. Resnick in writing?

11 A. No.

12 Q. Spoken with him once over the phone.

13 A. Yes. The only communication I might have, and I
14 don't know that it went to him, was when I sent my letter
15 demanding that the grand jury investigation continue that
16 was postponed back in 2000, or 2002, I forget, and
17 don't know if it went to him, because it was just
18 addressed to the Assistant Attorney General.

19 Q. Talk about that. YOU -- in the year 2000, you
20 filed a complaint with the U.S. Attorney's office?

21 A. No, I did not. we had no business with them
22 other than they joined us and never did any work, so we
23 had no reason to do anything. Somebody else had filed an
24 original complaint, or the airlines filed a complaint, a
25 grand jury was supposed to be convened, and things got in

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1 the way, it was postponed.

2 Q. Against who?

3 A. , I don't know if they
4 had the name at the time, but it was against them

6 Q. And how do you know that?

7 A. Conversation with ARC and Jim Carras, United.

8 Q. And it's you and ARC that are really pushing
9 this grand jury.

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10 A. Yeah. **They want to see these guys fried**, so
11 they pushed me to send those letters, because they said
12 they can't do anything but they can only recommend what
13 should do.

14 Q. so you're saying you did not ask Resnick to send
15 you the subpoena that's Exhibit 28.

16 A. well, he said I was going to be subpoenaed, so
17 he said you would get a subpoena the following day for
18 you to appear as well as a subpoena for records. well,
19 the records subpoena didn't come in yet, but the subpoena
20 to appear did.

21 Q. How long did you talk with Rick Resnick the one
22 time you talked with him?

23 A. Wednesday? Let's see. It must have been about
24 a half an hour.

25 Q. why does he want you to come out there and

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1 testify?

2 A. To help his case against them.

3 Q. what is the case about?

4 A. He wouldn't say. But he did not know about the
5 credit card fraud. He sort of had a little gleeful sound
6 in his voice when I told him about that. All he was
7 talking about was wire fraud and mail fraud.

8 Q. what are you going to testify about on
9 February 8th?

10 A. our dealings with them and what they've done
11 with us, to us, and what we know about their, I know you
12 don't like the word "history," but the things that we
13 have found out about them through united fraud and ARC
14 fraud.

19 A. Okay. Right.

20 Q. Let me put it this way. Your first and last
21 contact with them, were there misrepresentations made
22 to you during that time frame?

23 A. In that time frame, I've never spoken to either
24 of them, nor had any communication from either of them.
25 Can you define what you mean by misrepresentations"?

1 Q. Lies?

2 A. The only lies that -- misrepresentations, are
3 that they were travel agents, after reading our manual
4 that says that we expect that you know travel, they
5 signed our agreement, they misrepresented that they would
6 indeed follow the regulations of the industry. i guess
7 that would be considered a misrepresentation, because
8 they then went about and did things their own way, making
9 a lot of money from a lot of people illegally.

10 Q. And you can't show that -- I mean -- we're
11 talking about the ticketing -- the tickets that they
12 issued.

13 A. Yes.

14 Q. And you said about Exhibit -- you can't tell
15 from Exhibit 26 which passengers flew on hidden city
16 tickets. Right?

17 A. No. That's what we're getting from Sabre and
18 from united. That will show which passengers got off at
19 destinations that they weren't supposed to get off at to

(Th 20 save the -- or to get the lower fare.

21 Q. okay. How do you then draw the arrow to
22 them, once you get that information?

23 A. They put the reservation in the system, gave
24 them to their client, probably instructed their client,
25 get off at Hong Kong. Don't go on the plane to Bangkok.

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1 A week later, come back. You know, if it was just one
2 incident, if it was two incidents, I don't think anything
3 could be proven. But that's why there's an arbitrator or
4 a judge, because certain things cannot be shown as black
5 and white. But when you show a pattern that this is the
6 way they've operated and this is why they were thrown out
7 of host agency after host agency after host agency,
8 someone has to say, hey, there's a little smoke here,
9 there's a fire there as well.

10 Q. SIR , you've called my clients criminals.

11 A. They are.

12 Q. And you just used a word "probably" to describe
13 all of these actions. And --

14 A. Could you read back the probably thing? I don't
15 remember that.

16 (The requested portion was read by the court
17 reporter.)

18 THE WITNESS: That's the "probably" you're
19 talking about?

20 Q. BY MR. ERICKSON: Yeah.

21 A. The probably may have been a poor choice of
22 words, if it happened once, if it happened twice, again.
23 But if it is a consistent pattern that you have several
24 dozen clients who are doing the same thing, there's no

n 25 probably. They instructed them how to do it.

1 Q. You'd agree with me, though, that probably
2 aren't probably criminals.

3 A. If they knowingly did this, if the client
4 knowingly did this, they broke the law. They cheated the
5 airline out of revenue.

6 Q. And you just said another key word, and that is
7

8 A. If they knew, yes.

9 Q. And you've said repeated that--

10 A. No. You asked if they're criminals. And I'm
11 saying if they knew it, yes.

12 Q. And you've still got to prove that to an
13 arbitrator.

C, 14 A. uh-huh. I hear he's a very fair person.

15 Q. And you're going to have to sell that when you
16 get in front of these folks on February 8th.

17 A. My testimony, along with, I think there's like
18 about seven others who have testified before me. All
19 that testimony is going to lead the grand jury to say,
20 "Yeah, these guys are guilty. **Let's ind.**"

21 Q. You don't know that anybody from bad dudes was
22 waiting at, in a hidden city scenario, point A to point B
23 to point C. You're not going to say that someone from
24 them was standing at the gate at point B telling these
25 people to get off the plane.

1 A. That would be silly. No.

2 Q. okay. That's -- you're making another point for
3 me.

4 A. All they have to do is let these people know
5 that "This is the way it's done, and I could save you
6 \$1000," \$2000, and in some cases even more.

7 Q. okay. Tell me the evidence that you have that
8 that's the way it was done.

9 A. Pattern. consistency. I don't know for sure
10 that they instructed each one individually. They most --
11 can't use those words.

12 Q. well, yeah, you don't know for sure, but you
13 call them criminals.

14 A. Yeah, because they are, and, you know, again,
15 the other host agencies have had the same problem. The
16 airlines have known about them, and they're willing to
17 testify that this is what's going on. so any reasonable
18 arbitrator is going to say guilty.

19 Q. Have you told -- other than the FBI or
20 Mr. Resnick, have you called -- have you used that term,
21 calling them criminals, to other third parties?

22 A. NO. I only use it here because they're here.

23 Q. And so you're just -- are you just trying to get
24 a rise out of them?

25 A. I'm trying to get at them, yeah, because they're

1 no good.

2 Q. And you'll do that at the arbitration, too.
3 Right?

4 A. NO, I won't do it there. No. No. No, I'll be
5 very gentlemanly.

6 Q. Let's go to your response and counterclaim,
7 which I think we marked Exhibit 15.

8 Paragraph 2 of your response. It's page 2. You

9 say that they're required to use host agencies
10 because, among other reasons, united Airlines terminated
11 its sales Agreement with them."

12 The question is, who told you that they had a
13 sales agreement with United?

14 A. united.

15 Q. Did they give you that agreement?

16 A. No.

17 Q. Have you ever seen it?

18 A. No.

19 Q. You just presumed it existed?

20 A. You're assuming everybody lies to us.

21 Q. I just want evidence.

22 A. I'm sure they'll testify to that fact, or
23 produce a subpoena, we'll get it for you, if you'd like.

24 Q. I mean, there are rules of evidence that require
25 you to produce the best evidence of a document.

1 A. Well, I'm sure Phil is taking notes and that can
2 be subpoenaed as well.

3 Q. okay. But you're taking issue with the question
4 I'm asking you, and I'm trying to explain where I'm
5 going. It relates to a rule of evidence.

6 A. I'm not angry at you. Don't take this personal.

7 Q. okay. And I just want the best evidence that
8 this contract exists. so that's what I'm asking you. If
9 you have it, I'd like to see it.

10 A. we don't have it.

11 Q. Okay.

12 okay. Paragraph 11.

13 You're not saying, and I don't -- without

14 reference to that paragraph, this is just a general
15 question. You're not saying my client is subject to
16 the carriage contract between the airline and the
17 passenger.

18 A. NO. At least I don't think the agent involved,
19 being an agent of the airline, is involved in that
20 contract.

21 Q. The passenger, by that contract of carriage, has
22 to follow the ticketing regulations. Right?

23 A. Yes.

24 Q. okay. Paragraph 11 now. That's page 4. You
25 say that "bad dudes charges its customers an amount in

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1 excess of the fare reported to the airlines, and pockets
2 the difference."

3 what evidence do you have of my client pocketing
4 the difference?

5 A. well, if you go on their -- well, now they don't
6 have it on their web site, but if you did go on the web
7 site and asked for a fare to a given area, the fare is
8 much lower than if you went to the airline and got that
9 same fare. So the way these operators work is they will
10 charge a lower amount, which goes to the airline -- I'm
11 sorry. They will charge a lower amount than the ticket
12 is actually worth, and they charge their client someplace
13 in between what the real fare should be and the fare that
14 they are actually paying because of those hidden cities.
15 The difference then is their profit.

16 Q. SO --

17 A. For example

18 Q. -- that profit represents the difference that

19 you say they pocket.

20 A. Yes. That is their profit.

21 Q. Are the passengers that -- and I'm talking about
22 paragraph 14 on page 5. Sorry. Paragraph 12 of page 4.

23 MR. ERICKSON: And Phil, I need to do this at
24 this point, because I'm not -- are there -- do I have the
25 right version of your --

1 MR. : You have the September one.

2 e-mailed you the December 1.

3 MR. ERICKSON: Okay. That's why I'm getting
4 screwed up. She copied the wrong one.

5 Q. BY MR. ERICKSON: Well, I think we can stir',
6 cover the allegations.

7 The fraudulent credit cards that you talk about
8 in your counterclaim, are you going to call -- these were
9 two passengers, credit cards that you say were used
10 fraudulently?

11 A. One credit card for two passengers.

12 Q. Are these passengers going to be witnesses at
13 the arbitration?

14 A. I don't think we need it, because we have
15 American Express showing that the credit card holder says
16 that he never authorized the sale. we have the debit
17 memo from the airline saying that the credit card was
18 disputed as not being the passengers, nor authorized. I
19 don't think we need anybody to testify further.

20 Q. How does that -- how does that get put on
21 my client?

22 A. They used the credit card. They ran -- they put
23 the ticket and credit card number in the system. When

24 they did the reservation, they put in a credit card
25 number.

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1 Q. That's given to them by a passenger who wants to
2 travel. Right?

3 A. That's the way it's supposed to work. But you
4 can put in anybody's credit card number. I, for example,
5 could put in my credit card number for my Aunt Tilly.
6 But if I dispute my Aunt Tilly's travel, I get my money
7 back. Now, they used somebody else's credit card for
8 passenger B to go travel someplace. A, the credit card
9 holder, says, "Hey, whoa, wait a second. I never
10 authorized this travel, and I'm not going to pay it." so
11 American Express then comes back and says to the airline,
12 we're not going to pay you. The airline comes back to me
13 and says, you're going to pay us. And we have to.

14 Q. why have you ruled out the scenario where a
15 passenger, you know -- take, for example, somebody who
16 steals a credit card, an individual person, takes a
17 stolen credit card to Target and charges up a wish list
18 and uses that number. why have you ruled out that
19 scenario where an individual person calls with a
20 number and tries to arrange a ticket so that they can
21 travel on that credit card?

22 A. Because, when confronted, she said she
23 already took care of this with the airline. when Robert
24 asked, show me proof that this is taken care of, because
25 the airline says it wasn't, she hang up on him. If in

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1 fact your scenario is true, then they'd say, "whoa. we

2 have a problem. we're going to have to take care of
3 this." she wouldn't lie and say it was done when in fact
4 it wasn't done.

5 Q. But, I mean, that's a pretty one-sided
6 interpretation of what taken care of means, don't you
7 think, when she tells you that?

8 A. well, she said the problem was taken -- the
9 debit memo was taken care of. How else would you put it
10 if you were confronted with a credit card that you used
11 and then you said, well, I've taken care of it. what
12 does that mean to you? Now, I don't know if those were
13 the exact words, but when Robert said it wasn't taken
14 care of, show me proof, she hangs up on him. If it was
15 taken care of, why would she hang up on him? okay.
16 These -- you know, this is a scenario that you could say,
17 well, it doesn't prove very much. But in the grand
18 scheme of this whole operation, she lied.

19 Q. And at that point in time, when you talked to
20 her about that, you had already presumed that they had
21 booked many hidden city tickets with willful conduct
22 behind every reservation.

23 A. Correct.

24 Q. so that had to fuel, in a lot of ways, the fact
25 that it couldn't have occurred the way I described it, it

1 had to be their doing.

2 A. she wouldn't have hung up. She would have
3 explained. she would have said, "well, if the airline
4 says it wasn't taken care of, let me call them. Let me
5 make sure it's done." But she didn't. she just hung up
6 on him.

7 Q. You've heard the term "judge, jury, and
8 executioner"?

9 A. I know, I'm being it. I know. And I'm enjoying
10 it, too.

11 Q. Go to -- when you say throughout your
12 counterclaim, in your third-party claim against
13 Sir, when you say "contract between the parties,"
14 you're talking exclusively about the contract that is
15 Exhibit 12 -- the contract between Incentive and
16 1st-Air. Right?

17 A. I'm sorry. what number are you on?

18 Q. well -- I'm going to have to look here a second.
19 Paragraph 10, page 8. And the reason I ask you
20 about this is bec..use you reference two different
21 contracts in that paragraph. Right? I mean, you
22 reference a contract between the parties -- let me ask
23 you in separate questions.

24 Contract between the parties means the contract
25 the parties. Right?

1 A. In what context? Are you looking at number 10?

2 Q. Yes.

3 A. Yes. That's correct.

4 Q. And then at the end of that paragraph, you say
5 the carriage contracts with the airlines. That's a
6 different contract.

7 A. That is correct.

8 Q. And that contract, we already talked about, is
9 between the passenger and the airline.

10 A. Yes.

11 Q. So is not bound to follow the contract

12 of carriage. It's not

13 A. It's not saying they're not bound to it.

14 Q. They're not parties to the contract of
15 carriage.

16 A. I don't understand that question. I might be
17 answering it wrong if I do.

18 Q. Paragraph 19 on page 10 of Exhibit 15.

19 What do you mean when you allege that you have
20 evidence of a secret intention? Do you see where that's
21 used twice?

22 A. Based on the word you don't like, history, with
23 other agencies, doing the same thing, they came to us
24 with the intent to do the same type of irregular bookings
25 to continue their business. I think it's reasonable to

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1 assume that, having been thrown out of so many agencies,
2 and then it happening to us, that they did come to us not
3 to change their ways and become legitimate.

4 Q. But you're not -- you're not saying that you
5 have evidence of what anybody at was thinking
6 when they booked these tickets.

7 A. How could I possibly know what they were
8 thinking? Their actions speak for their thoughts.

9 Q. Is hidden city ticketing illegal?

10 A. No. It's against regulations.

11 Q. How about throw away segments? Are they illegal?

12 A. Against regulations.

13 Q. Count 3 of your counterclaim, page 10 to page
14 11, are you saying that the issuance of -- well -- the
15 hidden city ticketing fits within the unlawful acts that
16 you allege against ?

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17 A. The hidden city and throwaways in themselves are
18 not illegal. Defrauding the airline of the full revenue
19 that they should have gotten, that is illegal.

20 Q. You're not the airline, though.

21 A. No. But they're holding me responsible.

22 (Deposition Exhibit 29 was marked for
23 identification.)

24 Q. BY MR. ERICKSON: Do you recognize this article
25 from Travel Trade?

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1 A. I think I saw this.

2 No, actually, I didn't. This is a good one.

3 Q. Have you ever spoke to Robin urbanski at united
4 Airlines?

5 A. I have not, no.

6 Q. Her name doesn't ring a bell to you?

7 A. The name rings a bell, but I never spoke with
8 her, that I know of.

9 Q. Do you see where it talks about the Lesofski
10 case and how he alleged that you violated several federal
11 criminal statutes, including the RICO law?

12 A. Yeah. I'm not part of the mafia, though.

13 Q. well, I mean, the fact that he accused you of
14 that, did that upset you?

15 A. of course. But if you knew Ed, you'd understand.

16 Q. And he basically called you a criminal, didn't
17 he?

18 A. Yes, he did. But he's also dropped the case.

19 Q. What claims are still pending against you in
20 that lawsuit?

21 A. Isn't it the ADA?

n 22 MR. : Yeah. That's all.

23 THE WITNESS: ADA.

24 Q. BY MR. ERICKSON: Do you know what the basis of
25 that claim is?

1 A. I have a pretty good idea.

2 He was going to launch this software we spoke
3 about --

4 MR. : No. The ADA claim.

5 THE WITNESS: Yeah. This is what it comes from.

6 He -- well, okay. He claims that he has a
7 disability where he needs a dog to be with him at all
8 times to stop him from passing out. And he was going
9 to -- well, we traveled with him, many times, and he
10 traipsed through Europe with his mother on trains and
11 then picked up a 14-day Renaissance cruise out of Dover,
12 England, with us and sailed with us, no dog. No dog.

13 He was going to launch the software, and we put
14 on -- we arranged to have a seminar at sea for all of our
15 agents to go on, a Royal Caribbean cruise, and he
16 insisted that he bring his dog with him. And that was
17 before I found out that the software wasn't finished.

18 when I found out that the software wasn't
19 finished, I said, "Ed, this is not a good idea."

20 He says, "It will be finished."

21 I said, but, look, Jackson, his dog, always goes
22 with him. He'd been arrested in Dallas several times and
23 thrown off Delta Airline planes because of getting out of
24 hand, a pilot just tossed him off the plane. And he
25 wanted to bring this dog along on the cruise.

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1 Now, we were on one cruise with him with the
2 dog, and it was just very distracting. I said, "Look,
3 you want to go on a cruise by yourself with the dog, go
4 for it, but if you're going to come on a seminar at sea
5 with us, you've got to leave Jackson at home. And I've
6 never seen that you've ever needed him."

7 So, the --

8 Q. You know, I'm going to cut you off, because I
9 think you've sufficiently explained that it's not
10 relevant.

11 A. I didn't think it was. I wondered why you
12 brought it up.

13 Q. So let's move on.

14 Let's go back to Exhibit 29, but not
15 Mr. Lesofski.

16 Page 2 of the article, second column over, where
17 it talks about, the general warning letter from United
18 Airlines.

19 A. I'm sorry.

20 Q. Go down about -- it talks about the National
21 Commission to Ensure Consumer Information and Choice in
22 the Airline Industry. This gentleman said that he
23 received a --

24 A. oh, yeah. okay.

25 Q. -- a general warning letter from united

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1 Airlines.

2 Have you ever received one of those?

3 A. we get them all the time.

4 Q. For what purpose?

5 A. Just to remind us that certain things are not

6 going to be tolerated.

7 Q. Did you receive -- do you have a copy of one of
8 those now?

9 A. No, because as they come in, they come in by
10 e-mail, and we send them out to our agents all the time.
11 That's what I explained to you earlier, that they should
12 have known about all of these regulations, because we
13 send them out, we put them on our web site, so there's
14 lots of places to find out what you can do and what you
15 can't do.

16 Q. Do you have a copy of any such warning letter
17 sent to between May and July ?

18 A. when i send out an e-mail, it goes to a thousand
19 agents with one click. And they were a part of our
20 e-mail system system.

21 Q. Do you keep in your e-mails in your send back?

22 A. only for 30 days. otherwise, I'd have thousands
23 upon thousands.

24 Q. so if there were an e-mail to in the
25 time frame I mentioned, it would be destroyed?

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1 A. It would be destroyed, but they would have seen
2 it in all the trade journals, because it's written up all
3 the time, and if they're in the business they get trade
4 journals, they have to keep abreast of things. They have
5 no excuse for not knowing this.

6 Q. Do you have in your possession right now a
7 sample of that warning e-mail that you get from united.

8 A. No. We haven't gotten one probably in about
9 three or four months.

L.) 10 Q. what do they tell you in this e-mail?

11 A. They warn you about things like hidden cities
12 and about the software they're putting in and how they
13 will not tolerate any infractions and so on. Just
14 general warning.

15 Q. About the second or third to last paragraph,
16 where it talks about said," is that you or
17 Robert?

18 A. That's probably me. I'm the one who -- i do the
19 interviews all the time.

20 Q. where did he get this information that you
21 received chargebacks totalling \$100,000?

22 A. well, see, again, these are reporters. They
23 take information and they just run with it. we told
24 them -- because united said that we have a possibility of
25 having chargebacks totalling \$100,000, then the reporter

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1 goes and says that is fact. It's not fact. It's the
2 same thing as the reporter that said we lost \$400,000
3 with Spoll. I said we could lose as much as, and they
4 just change it. You know you can't believe these
5 reports.

6 Q. what did you tell him when he asked you what
7 happened in this case, as far as your damages?

8 A. I said it could total as much as \$100,000, which
9 is what we were told.

10 Q. so you didn't use chargebacks in the same
11 sentence when you told him that?

12 A. YOU know, this guy -- stone, I think is his
13 name, who did this thing, he -- I have e-mails from him,
14 which will supply to you, because never mentioned
15 . And he comes back to me -- because he had

16 called me about Ronni Spoll. And then he asked me about
17 the traveler sellers law. And I said it's not going to
18 work. And that's when he asked me why I have that
19 feeling. And I said we are working now against an agency
20 in Rochester, who -- and I explained what happened.
21 did not mention the name.

22 He e-mails me, and I have the e-mail, and he
23 said, "It's the bad dudes, isn't it?"

24 I e-mailed back and I said, "How did you know?"

25 And I get an e-mail back from him saying, "I've

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1 got my sources, and I'm going to get as much information
2 for you as I possibly can. And as I do, I will send it
3 to you."

4 Q. what is -- going to urbanski, she says, -- well,
5 he says somewhere that 1st-Air was operating without a
6 sales agreement and -- here we go. Second to last
7 column, all the way down to the bottom, "The united
8 spokeswoman," referring back up to Robin urbanski, "said
9 was selling united's product without a sales
10 agreement." what does she mean?

11 A. well, from what I'm told from united, he
12 has been prohibited from selling tickets in any manner,
13 shape, or form on united, whether through a host agency,
14 and certainly not directly, because they revoked their
15 plates and would not deal with them, and they prohibited
16 them from doing it.

17 Q. since when?

18 A. I believe it was 2000 or 2002. Again, I get
19 those two dates mixed up. That's the reason why they had
20 to plate on Luftansa, because united would have a fit and

21 come after them again. Not that they're not part of it
22 now.

23 I hope you have a good evening. I will.

24 (Deposition Exhibit 30 was marked for
25 identification.)

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1 Q. BY MR. ERICKSON: Are you familiar with this
2 article, Exhibit 30?

3 A. No. I've never read it.

4 Q. Are you familiar with the story about Justice
5 Scalia flying on a hidden city ticket?

6 A. No.

7 Q. Do you know a Jason Schechter at united?

8 A. No.

9 oh, I see Scalia at the back. But, see, it
10 doesn't make a difference who does it. If the airlines
11 say, "If you do this, you're going to lose your plates,"
12 you follow their rules, whether you believe in it or
13 not. Not everybody believes they're correct. And maybe
14 it will be changed one day. But until it is changed, you
15 must do what the airlines tell you to do. It's their
16 ball.

17 Q. Page 2 of Exhibit 30, where it says -- it talks
18 about -- I mean, you kind of get the gist that Justice
19 Scalia flew on a hidden city ticket.

20 A. uh-huh.

21 Q. And where it says travel experts say you can,
22 for one thing, it's not illegal.

23 what about the agent that booked his ticket?

24 Did they do something illegal by booking his ticket?

U 25 A. only if they knew what he was going to do. If

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1 they had no knowledge of what he was going to do, no.
2 But a ticket done once in a while for a savvy traveler,
3 well, you can't help it. It happens. If they get
4 caught, they still have to pay. But when you have a
5 pattern of doing it on a constant basis and advertising
6 prices that there is no way that you could get unless you
7 do hidden cities, then that is intent. That is not a
8 once in a while happenstance.

9 Q. well, I guess the -- I won't make you read this
10 whole thing, but on page?

11 A. I'm not going to take this home for a test
12 tomorrow?

13 Q. You can do whatever you'd like with it.
14 on page 1, he talks about a 21-page memo that
15 Scalia wrote, where he acknowledges having done this,
16 having traveled knowingly on a hidden city agenda. And I
17 guess -- I mean, there's -- there's nothing in that
18 scenario that suggests that whoever booked the travel
19 must have done it to further his intent to travel on a
20 hidden city ticket.

21 A. You don't know. You asked me if I knew what
22 they were thinking. You don't know what the thoughts
23 were of the agent. Did the agent know Scalia was going
24 to do this? If you see that he -- that the agent wrote
25 tickets for Scalia on a constant basis using these hidden

1 cities, well, then you have to question the agent. "Did
2 you know that Scalia was going to do this?" I can't get
3 into his head, and neither can you.

4 Q. Did you -- those questions that you just said
5 you should ask the agent, did you ask those questions of
6 before you terminated them?

7 A. NO, because they had a history of doing it.
8 Again, it wasn't without intent. They joined us with the
9 intent of doing just this. otherwise, they couldn't
10 offer the fares that they did. That's the key to the
11 whole thing. How did they offer for sale tickets that
12 there's no way you could get from an airline or anybody
13 else? They had lower fares than anybody else because
14 they used these schemes. It was intent. There was no
15 honest way they can do this. And it wasn't that somebody
16 came in and said, "Hey, I want to go from here to
17 there." They advertised prices that were lower than you
18 could possibly get. Intent was there.

19 Q. Page 3 of Exhibit 30, third paragraph down.
20 where it says, "Airlines" -- and this is dated April 26,
21 2004. "Airlines say ticketing tricks are actually less
22 frequent these days."

23 Do you agree or disagree with that?

24 A. I don't know. The airlines are catching a lot
25 of people because they're putting in a lot of software to

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1 catch these things. I don't know.

2 It is more difficult these days, because, with
3 paper tickets, it was easier to throw away a ticket.
4 with an electronic ticket, there's a trail. I really,
5 can't say.

6 Q. Are you aware in your 25 years of travel
7 industry experience any instance re you've heard of an
8 airline suing a passenger for violating the contract of

9 carriage?

10 A. Are you talking about hidden cities and things?

11 Q. Anything that would constitute a violation of
12 the contract of carriage.

13 A. well, I know that there have been many, many
14 instances where an airline went after a passenger for the
15 difference in fare, yes. Whether it was a suit or just a
16 threat to the client or a charge to the credit card for
17 the difference, I don't know how they handled it. But
18 there have been many instances where people have been
19 charged the difference.

20 Q. Has united in this case given any indication
21 that it intends to take action against any of the
22 passengers that booked?

23 A. Well, they already have. They've stopped
24 passengers at the gate and charged them the difference or
25 denied them boarding, or they have voided tickets

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1 entirely and made the passengers buy brand new tickets.

2 Q. As of -- have you spoken with Jim Carras from
3 United since July 7th, ?

4 A. Yes.

5 Q. For what purpose?

6 A. It was only one or two occasions, because Robert
7 has been dealing with him.

8 I don't really remember what the reason for it
9 was. It was just a continuing thing with this. Most of
10 the Carras communications have been by e-mail. And you
11 should have copies of them.

12 Q. And the ones that you've had with them since
13 July 7, ?

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14 A. I think it was just like once, maybe twice.
15 I've spoken more with Hawkins from FBI than with united.
16 Robert has been taking care of United.

17 Q. why don't we go ahead and take our last break,
18 about five minutes.

19 (Recess at 3:53; resumed at 4:06.)

20 Q. BY MR. ERICKSON: We have just a few more
21 questions.

22 A. I believe you because I'm putting away my pen,
23 which I haven't used anyway.

24 Q. In July, what was your title with
25 then?

1 A. July?

2 Q. Yeah.

3 A. I've been treasurer since the company started.

4 Q. Is it your duties as treasurer to terminate
5 agents?

6 A. It's a family operation, five of us, we make
7 decisions collectively.

8 Q. YOU and Robert discussed termination before you
9 notified ?

10 A. oh, absolutely, of course.

11 Q. Anybody else included in that discussion?

12 A. For these people? No. It was just the two of
13 us. It was cut and dried.

14 Q. The -- again, it's been a while, so I may have
15 already asked you this. You're going to give us the --
16 because, obviously, I can't get on to your extranet,
17 right, without a password and a log in?

18 A. Correct.

19 Q. will you either provide for us the regulations
20 that you say are referenced on there or --

21 A. On the back to backs?

22 Q. -- or give us access?

23 A. I'll send you the references that are there.

24 Q. okay. In addition, I need you to explain how
25 you get there, because we're not going to be able to

1 follow the steps --

2 A. oh, no, no, no. I'll just print out the pages
3 for you that are appropriate to what we're talking about.

4 Q. okay. But I need you to kind of explain to your
5 counsel how you get there. You type in your log in, you
6 type in your password, you come to this page --

7 A. oh, I see. sure.

8 Q. -- tab 1, then you can access regulations this
9 way and that way, so that we have a way of knowing how to
10 drive to that spot, as opposed to just getting pages and
11 figuring it out on your own. Is that fair?

12 A. certainly.

13 MR. ERICKSON: That's all I have. And you have
14 a right to read and sign your deposition.

15 A. That wasn't 20 minutes? The break was longer
16 than that.

17 MR. : we'll read and sign.

18 MR. ERICKSON: I can come up with some more, if
19 you want.

20 THE WITNESS: I'm sure you would.

21

