

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

IN RE: AIR CRASH NEAR CLARENCE CENTER,
NEW YORK, ON FEBRUARY 12, 2009

ORDER

09-md-2085

This Document Relates To:
09-cv-00174, 09-cv-00266;
09-cv-00267; 09-cv-00294;
09-cv-00378; 09-cv-00379;
09-cv-00424; 09-cv-00440;
09-cv-00487; 09-cv-00488;
09-cv-00514; 09-cv-00727
09-cv-00769; 09-cv-00825;
09-cv-00929; 09-cv-00981
10-cv-00034; 10-cv-00140
10-cv-00194

1. On March 18, 2010, Defendants Bombardier, Inc. and Bombardier Aerospace Corp. moved for an amendment to paragraph 4 this Court's January 4, 2010 ADR Order regarding alternative dispute resolution permitting them to submit their own confidential mediation memorandum to the mediators. They contend that they are named in just 19 of the 38 pending cases, and by their participation in a Joint Memorandum will lose their ability to submit information on a confidential basis to the mediator.

2. The Court disagrees with the Bombardier Defendants' reading of its Order and the motion is denied. Paragraph 4 of the January 4, 2010 Order provides that "Defendants in all cases shall jointly prepare a Confidential Mediation Memorandum setting forth the events, facts, defenses, and other information listed in Section 5.6(C) of the ADR Plan that

are common to **all** cases” that are part of this Multidistrict Litigation. (emphasis supplied). The obvious corollary is that Defendants need include **only** those facts that are common to **all** cases. This language allows for the possibility that a particular defendant may have few or no common facts to offer.

3. I further note that paragraph 6 of the January 4, 2010 Order provides that “each party shall provide their selected or designated mediator with a supplemental memorandum, in accordance with Section 5.6(C) of the ADR Plan, setting forth any additional events, facts, claims, defenses, and other information that are **specific to their case** and may be pertinent to resolution.” This is intended to include all relevant information not common to **all** cases. Because memoranda submitted under Section 5.6(C) are presented to the mediator only, these submissions do not compromise the confidentiality of the process.

4. Accordingly, I find there is no reason to amend the January 4, 2010 ADR Order and the Bombardier Defendants’ Motion to Amend (Docket No. 275) is DENIED.

SO ORDERED.

Dated: March 21, 2010
Buffalo, New York

/s/William M. Skretny
WILLIAM M. SKRETNY
Chief Judge
United States District Court