

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
FORT WORTH DIVISION**

American Airlines, Inc., a Delaware corporation,)
)
)
 Plaintiff,)
)
 vs.)
)
 Sabre, Inc., a Delaware corporation; Sabre Holdings Corporation, a Delaware corporation; and Sabre Travel International Ltd., a foreign corporation, d/b/a Sabre Travel Network;)
)
 Travelport Limited, a foreign corporation and Travelport, LP, a Delaware limited partnership, d/b/a Travelport;)
)
 and)
)
 Orbitz Worldwide, LLC, a Delaware limited liability company, d/b/a Orbitz;)
)
 Defendants.)

Civil Action No.: 4:11-cv-0244-Y

AMERICAN AIRLINES INC.’S MOTION TO EXTEND SCHEDULING ORDER DEADLINES AND MEMORANDUM OF LAW IN SUPPORT

Pursuant to Rules 6 and 16 of the Federal Rules of Civil Procedure, Plaintiff

American Airlines, Inc. (“American”) moves to extend deadlines in the Initial Scheduling Order.

PRELIMINARY STATEMENT

This lawsuit involves important antitrust claims; as discovery so far has revealed, there is significant evidence that Sabre and Travelport, among other things, orchestrated an illegal group boycott of American’s flights. To uncover the full extent of Defendants’ wrongdoing, American needs the time to focus on discovery in this case – including the hundreds of thousands (or more) pages of documents still to be produced by the parties, the numerous

depositions that need to occur, and important expert reports that are due in the next two months.

Unfortunately, discovery in this case has been delayed because of, among other things,

- the significant volume of documents being produced by American and Sabre which needs to be reviewed and analyzed by the parties and likely supplemented with further discovery;
- Travelport and Orbitz's failure to reach an agreement with American regarding custodians and parameters for discovery of electronically stored information;¹
- American's concerns regarding the privilege logs produced by Sabre and Travelport, which may need to be addressed by the Court; and
- certain technical difficulties that have resulted in the delay in the production of some documents.

Moreover, Sabre and Travelport have threatened to file counterclaims, which will require additional discovery for American to properly investigate and defend against the claims.

The timetable for this lawsuit was always aggressive for an antitrust case of this breadth and scope. To prepare for all of the discovery that will occur in this case, including the numerous depositions of American witnesses that defendants will seek to take, will take the dedicated efforts of American's executives and other senior leaders in the organization. But on November 29, 2011, American commenced a chapter 11 bankruptcy case. A successful reorganization will take the hard work and focused efforts of the entire organization. At the same time, American must prosecute this lawsuit, which is critical to its long-term success.

Because discovery has been delayed, the pleadings are not set, and the current deadlines in this case collide with the important work that American needs to do in the early days of its chapter 11 case, American seeks a five-month extension of the current deadlines in the

¹ Despite Travelport's failure to agree with American regarding custodians to be reviewed, Travelport also has produced a significant number of documents to American and Travelport's production is ongoing. To date, Orbitz has only produced 11 pages of documents to American.

Court's Scheduling Order. The current pretrial deadlines will force American's senior business leaders to dedicate their focus to this case at the same time when the success of the organization requires their focus to be on the reorganization. An extension of the current timetable by five months would greatly alleviate this problem and allow the parties to conduct full discovery on the claims that have been asserted and any counterclaims that will be asserted. Moreover, a five-month extension of deadlines will not cause the defendants any cognizable prejudice. Because this case is so important to American's future success, American is not seeking to stay this case or put off the deadlines indefinitely; it simply seeks a little breathing room in the middle of a monumental event for the company.

ARGUMENT AND AUTHORITIES

A. Standard for Extending Deadlines.

Rules 6(b)(1)(A) and 16(b)(4) both permit courts to extend deadlines that have not yet passed for "good cause." *See* Fed. R. Civ. P. 6(b)(1)(A), 16(b)(4). Indeed, Rule 6(b)(1)(A) grants district courts "wide discretion to enlarge the time for doing an act" *Woods v. Allied Concord Fin. Corp. (Del.)*, 373 F.2d 733, 734 (5th Cir. 1967); *see also* 4B Charles Alan Wright & Arthur R. Miller, *Federal Practice & Procedure* § 1165 (2d ed. 1986) (Rule 6(b)(1)(A) "gives the court wide discretion to grant a request for additional time that is made prior to the expiration of the period originally prescribed or prior to the expiration of the period as extended by a previous enlargement order."). Thus, "an application for the enlargement of time under Rule 6(b)(1)(A) normally will be granted in the absence of bad faith on the part of the party seeking relief or prejudice to the adverse party." *Federal Practice & Procedure* § 1165. Rule 6(b)(1)(A) does not even require a party seeking an extension to file a motion; instead, courts may *sua sponte* and without notice extend deadlines that have not yet expired. See Fed. R. Civ. P. 6(b)(1)(A) (deadlines may be extended "with or without motion or notice if the court acts, or if a

request is made, before the original time or its extension expires”); *Lujan v. Nat’l Wildlife Fed’n*, 497 U.S. 871, 896 n.5 (1990).

B. Extensions Are Also Warranted Based on the Status of the Case and Discovery Delays.

American has good cause to extend the deadlines in the Scheduling Order because the pleadings are not yet set and there is a significant amount of discovery left to be done, which has been hindered by delays from certain parties. As the Court is aware, this lawsuit involves complicated antitrust issues. The pretrial schedule for similar cases often includes much more time for discovery, working with experts, and other trial-preparation tasks than the schedule set in this case. Here, the schedule included little or no time for delays. Under the original Scheduling Order, the parties had less than eight months to complete written discovery, American must designate its experts by February 15, 2012 (just seven months after discovery began), and the parties must complete and depositions by May 15, 2012 (ten months after the discovery period opened). This was an ambitious schedule, and unfortunately, the case has not proceeded as quickly as American hoped it would. Indeed, American filed its Second Amended Complaint in this case on December 5, 2011, and the defendants have indicated that they will file new motions to dismiss. Moreover, because they previously filed motions to dismiss, the defendants have not yet had to file answers or plead their counterclaims against American. Accordingly, American cannot propound discovery to investigate those counterclaims, consult with experts regarding the claims, or otherwise prepare a defense to the claims. Thus, the aggressive pretrial schedule does not account for American’s need to defend against claims that have not yet been asserted.

Moreover, extensions are warranted in this case because of the status of discovery. Antitrust suits almost always involve complex and protracted discovery. *See Turner*

Broad. Sys., Inc. v. Fed. Commc'ns Comm'n, 520 U.S. 180, 222-23 (1997) (“considerable expense and delay [are] inherent in . . . complex antitrust litigation, which involves extensive discovery, significant motions practice, appeals, and the payment of high legal fees throughout.”) This case is no different. Indeed, the parties have propounded hundreds of discovery requests since the discovery period opened on July 5, 2011:

- American has served a total of 165 requests for production and 9 interrogatories, on Sabre, Travelport, and Orbitz;²
- Sabre has served 96 requests for production and 21 interrogatories on American;
- Travelport has served 69 requests for production, 2 interrogatories, and 185 requests for admission on American; and
- Orbitz has served 16 requests for production on American.

The parties have also served numerous discovery requests on nonparties. Indeed, within the past few weeks, Sabre served approximately 100 additional document requests on third parties.

In cases involving extensive discovery, some delay is unavoidable. For example, since the case was filed, both American and Sabre have experienced document-production delays because of technical difficulties. Moreover, American’s antitrust claims involve complex technology issues, which increases the importance that electronically stored information – an important part of discovery in every large case – plays in this case. Because the issue is so important, American and Sabre have been negotiating custodians and search terms for identifying potentially relevant electronically stored information and have reached agreements on numerous issues. However, both parties served additional discovery requests, thus necessitating

² Some of American’s discovery requests to Sabre, Sabre’s requests to American, and the parties’ requests to nonparties were served in American’s state court lawsuit against Sabre. Such requests are included in the count here because the parties have stipulated that documents produced in the state case must also be produced in this lawsuit. (*See generally* Stipulation [Dkt. #136].)

continued negotiations as documents are being gathered, reviewed, and produced in response to the additional requests.

Discovery has also been delayed with Travelport. American served Travelport with document requests on July 5, 2011, and Travelport's responses were due August 4, 2011. Travelport, however, did not produce a single document in this case until September 15, 2011, and that production was limited to documents Travelport had previously produced either to the U.S. Department of Justice or in the litigation between American and Travelport in Illinois state court. And even now, American and Travelport have not agreed on parameters for Travelport's search and identification of documents responsive to American's requests, nor has Travelport provided a date certain by which its production of documents will be complete.

Travelport has also been slow in providing parameters for American's search of documents responsive to Travelport's discovery requests. Travelport served its first requests for production on American on September 1, 2011. American timely responded to the requests on October 3 and began producing tens of thousands of documents to Travelport the following day. Then, on October 11, American and Travelport had a discovery conference at which American asked Travelport to provide search terms for gathering electronically stored information and a list of American custodians from whom Travelport wanted documents. Travelport declined to do so and asked American to propose a list of custodians and search terms. The next day, American sent Travelport an initial list of custodians and search terms that it was intending to use and requested that Travelport identify any additional custodians or search terms it believed were necessary. Travelport failed to identify any additional custodians or search terms for more than six weeks. Then, on November 23, Travelport sent a letter proposing 60 additional custodians

and 76 additional search terms.³ Although American hopes it will be able to reach an agreement regarding custodians and search terms, Travelport's late demand will cause further delay.

Discovery between American and Orbitz has also been delayed. To date, Orbitz has produced *only 11 pages* of documents in response to American's requests for production served on July 5, 2011. American has conferred with Orbitz several times in an attempt to reach an agreement regarding discovery, and on November 18, Orbitz finally agreed to produce documents from certain custodians. But after the Court's November 21, 2011 order on motions to dismiss, Orbitz revoked its agreement to produce documents. Orbitz did so, even though the documents sought related to, among other things, American's monopoly claims and its claims of a boycott between the GDSs and travel agents, and Orbitz would be required to produce those documents whether it was a party or was a non-party that was subpoenaed to produce documents relevant to this case. Important discovery from Orbitz, therefore, will be further delayed until Orbitz agrees to produce documents or American files a motion to compel such production.

American also has served subpoenas on numerous third parties who are in possession of critical information relating to American's antitrust claims. Many of these third parties are refusing to comply with their discovery obligations. Thus, it appears likely that American will be forced to engage in possibly extensive motion practice in courts throughout the country to force compliance with the subpoenas.

In a case as large and complex as this one, discovery often takes years. Although American is working to streamline discovery in this case and complete the process as quickly as

³ Requiring American to gather documents from such a large number of new custodians and apply so many new search terms is unduly burdensome with respect to time and money, and it is unreasonable for Travelport to be making such a demand. Nonetheless, because Travelport made this request just four weeks ago, American and Travelport are in the early stages of conferring on this issue, and American hopes the parties can reach an agreement without the need for court intervention.

possible, the parties will not be able to complete discovery by the deadline in the Scheduling Order. Thus, good cause exists for extending the Scheduling Order deadlines.

C. The Court Should Grant Extensions in Light of the Recent Filing of American's Bankruptcy.

American also has good cause to extend the deadlines in the Scheduling Order because it needs to dedicate significant resources to successfully prosecute this important antitrust case. But it also needs to focus significant resources to the early days of its bankruptcy case to successfully reorganize. American should not be forced to choose between the two.

As would be expected, American's employees have been spending a significant amount of time involved in issues arising from its chapter 11 case. Given the aggressive timetable that this case is on – including the production of hundreds of thousands (or more) pages of documents followed by numerous depositions over the next five months, along with preparation of significant expert reports over the next two months – American's resources already were taxed. But now that American also has filed for bankruptcy and has a plethora of new and complicated issues to deal with, it simply does not make sense to push forward on such an aggressive timetable when American is focused on other matters critical to American's successful reorganization. A five-month extension of the current timetable would allow American's executives and other key employees to have the time necessary to focus on the essential tasks of reorganization.

Moreover, this extension will not cause the defendants any prejudice. Instead, their refusal to agree to a short extension appears to be nothing more than a hardball litigation strategy designed to exploit the additional burdens American is facing during its bankruptcy case. The Court should, therefore, grant the extensions requested.

CONCLUSION AND REQUESTED RELIEF

For these reasons, American respectfully requests that the Court extend the time to comply with all unexpired deadlines in the Scheduling Order by five months. American also requests any further relief to which it is justly entitled.

DATED: December 22, 2011

Respectfully submitted,

s/ Yolanda C. Garcia

Yolanda C. Garcia

R. Paul Yetter
State Bar No. 22154200
pyetter@yettercoleman.com
Anna Rotman
State Bar No. 24046761
arotman@yettercoleman.com
YETTER COLEMAN LLP
909 Fannin, Suite 3600
Houston, Texas 77010
713.632.8000
713.632.8002 (fax)

Yolanda Cornejo Garcia
State Bar No. 24012457
yolanda.garcia@weil.com
Michelle Hartmann
State Bar No. 24032401
michelle.hartmann@weil.com
WEIL, GOTSHAL & MANGES LLP
200 Crescent Court, Suite 300
Dallas, Texas 75201-6950
214.746.7700
214.746.7777 (fax)

Bill Bogle
State Bar No. 025661000
bbogle@hfblaw.com
Roland K. Johnson
State Bar No. 00000084
rolandjohnson@hfblaw.com
HARRIS, FINLEY & BOGLE, P.C.
777 Main Street, Suite 3600
Fort Worth, Texas 76102
817.870.8700
817.332.6121 (fax)

Attorneys for Plaintiff American Airlines, Inc.

Of Counsel to Plaintiff:

Richard A. Rothman
Richard.rothman@weil.com
James W. Quinn
james.quinn@weil.com
WEIL, GOTSHAL & MANGES LLP
767 Fifth Avenue
New York, New York 10153
212.310.8426
212.310.8285 (fax)

M.J. Moltenbrey
mmoltenbrey@dl.com
DEWEY & LEBOEUF LLP
1101 New York Avenue, N.W.
Washington, D.C. 20005
202.346.8738
202.346.8102 (fax)

CERTIFICATE OF SERVICE

I hereby certify that all counsel of record who are deemed to have consented to electronic service are being served with a copy of the foregoing document via the Court's CM/ECF system pursuant to the Court's Local Rule 5.1(d) this 22nd day of December, 2011.

s/ Yolanda C. Garcia _____
Yolanda Cornejo Garcia

CERTIFICATE OF CONFERENCE

As reflected in the above motion, counsel for American conferred with counsel for Sabre, Travelport, and Orbitz in good faith to resolve the issues in this Motion, but such conferences were not successful in resolving these issues, thus, necessitating this Motion.

s/ Yolanda C. Garcia

Yolanda Cornejo Garcia