

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

AMERICAN AIRLINES, INC.	§	
	§	
VS.	§	CIVIL ACTION NO. 4:11 -CV-244-Y
	§	
TRAVELPORT LIMITED, et al.	§	

**SABRE DEFENDANTS’ OPPOSITION TO THE JOINT MOTION TO STAY THE
CASE AND EXTEND CURRENT DEADLINES PENDING MEDIATION**

American, Travelport, and Orbitz ask the Court to stay this case indefinitely. As a justification for its request, American claims it wants to avoid “being forced to continue spending [its] resources on discovery.” (Mot. at 3) Nobody, especially Sabre, is forcing American to spend resources on discovery. *American* sued Sabre. *American* brought substantively identical claims against Sabre in both federal court and state court in June and July, 2011. And while *American* may now want to avoid the cost of prosecuting both claims in different courts at the same time, granting the requested stay would severely prejudice Sabre by (1) prolonging Sabre’s ability to put an end to this litigation entirely, and (2) eliminating Sabre’s ability to have its own claims against American resolved by the Court.

American’s claimed reason for a stay does not survive scrutiny. American contends that the entire case should be delayed while American, Travelport, and Orbitz—but not Sabre—pursue mediation at some unspecified point in the future. Following this as-yet-unscheduled mediation, American, Travelport, and Orbitz—but not Sabre—would advise the Court whether the case should proceed, or whether those parties should receive even more time to avoid litigating this case while Sabre is forced to wait. Such an approach is plainly unfair to Sabre.

Notably, the moving parties fail to tell the Court when their proposed mediation will take place. Nor do they explain why they cannot conduct discovery and prepare for mediation at the

same time. If the moving parties really had scheduled a mediation that would interfere with the fact discovery cutoff of September 14 and the expert disclosure deadline of September 26, then they surely would have advised the Court of the conflict. The reality, however, is that American is using the mediation as an excuse to avoid the expense of prosecuting claims in different jurisdictions at the same time. American chose this strategic course, and it should live with the consequences of its decision, including the cost. Sabre already has to litigate the same case twice as a result of American's procedural games.¹ It should not have to do so on American's preferred timeline.

American's real motivation is clear. American has used its dual-track antitrust lawsuits to exert leverage over Sabre in the parties' commercial negotiations. The longer this litigation lasts, the longer American can use the threat of an antitrust lawsuit to force Sabre to accept contract terms and implement a product that Sabre's customers have overwhelmingly rejected. American should not be permitted to start and stop its two lawsuits to suit its own needs at the expense of Sabre's right to have the case resolved in an expeditious manner.

American's request for a stay prejudices Sabre in another way. Sabre recently filed antitrust counterclaims against American in this Court. The proposed stay would delay resolution of Sabre's claims against American. Sabre is entitled to proceed with its counterclaims, and Sabre should not be forced to accept a stay of its affirmative claims simply because American now wants to push its state court action while putting this case on ice.

Finally, it is easy to see why Travelport and Orbitz favor the stay. They would prefer to watch the state court litigation between Sabre and American—based on identical claims and allegations—run its course first. By doing so, Sabre's co-defendants could avoid the expense of

¹ Jury selection in American's state court case against Sabre is scheduled to begin on October 9. American disregarded several Court-imposed deadlines in that case and, as a result, Sabre asked for a 90-day continuance of all pre-trial deadlines. American opposed, and the state Court denied Sabre's motion.

defending against American's sweeping claims. Sabre understands the significant resources needed to defend this lawsuit, but it is unfair to Sabre to delay resolution of this case to facilitate the other defendants' preference to take a "wait and see" approach.²

Fact discovery is nearing the finish line. While American contends that whatever remains is too expensive to interfere with its potential mediation, such self-serving assertions are insufficient to demonstrate the "good cause" required to stay discovery. *See Moreno v. Marvin Windows, Inc.*, EP-07-CA-091-PRM, 2007 U.S. Dist. LEXIS 51957, at *2-3 (W.D. Tex. Jun. 14, 2007) (moving party failed "to show why all discovery should be stayed because some discovery may be difficult or expensive for the parties"); *M.D. v. Perry*, Civil Action No. C-11-84, 2011 U.S. Dist. LEXIS 152121, at *6-7 (S.D. Tex. Jul. 21, 2011) (the "prospect of burdensome or expensive discovery alone is not sufficient to" warrant a stay when doing so "would appear to be at least equally injurious to [opposing parties], who seek a timely resolution to their" claims); *United States ex rel. Gonzalez v. Fresenius Med. Care N. America*, 571 F. Supp. 2d 766, 768 (W.D. Tex. 2008) ("the Court finds that [the moving parties] have failed to satisfy their burden to show that 'good cause' exists to stay discovery"). In this case, American's, Travelport's, and Orbitz's self-serving assertion that discovery is too expensive is insufficient to establish the "good cause" needed to stay discovery.

CONCLUSION

For each of the foregoing reasons, Sabre respectfully requests that the Court deny the moving parties' request to stay this case indefinitely.

² American claims that Sabre is not spending resources in this case because it has attended depositions without asking questions. But American fails to tell the Court that it and Sabre have conducted *more than 70 depositions* in the state case on identical issues. By not questioning American's witnesses a second time in their depositions in this case, Sabre is trying to respect its long-standing position that the parties should not conduct duplicative and unnecessary discovery. The fact that American is now trying to create unnecessary expense by re-deposing Sabre's witnesses (an effort Sabre opposes) does not support American's request for a stay.

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Respectfully submitted,

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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) on August 29, 2012.

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