

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

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

**AMERICAN AIRLINES, INC.’S, TRAVELPORT LIMITED AND TRAVELPORT,  
L.P.’S, AND ORBITZ WORLDWIDE, LLC’S JOINT REPLY TO  
SABRE’S OPPOSITION TO THE JOINT MOTION TO STAY THE CASE AND  
EXTEND CURRENT DEADLINES PENDING MEDIATION**

Plaintiff American Airlines, Inc. (“American”) and Defendants Travelport Limited and Travelport, L.P. (collectively, “Travelport”) and Orbitz Worldwide, LLC (“Orbitz,” together with Travelport and American, the “Movants”) hereby file this Joint Reply to Defendants Sabre Inc., Sabre Holdings Corporation, and Sabre Travel Limited (collectively, “Sabre’s”) Opposition (Dkt. No. 399) (Sabre’s “Response”) to the Movants’ Joint Motion to Stay the Case and Extend Current Deadlines Pending Mediation (Dkt. No. 394) (the “Joint Motion”).

**I. ARGUMENT**

The Movants seek a stay of this litigation to provide a meaningful opportunity to mediate and focus on settlement over the next few months. The stay is sought because the parties want to avoid the substantial costs of taking and defending numerous key depositions (including those of their most senior executives), paying expert witnesses, and incurring attorney fees responding to outstanding written discovery requests, at a time when they are working to resolve this litigation. The upcoming mediation was difficult to schedule given the mediator’s busy schedule, but has now been set for December 12-13, 2012. In the meantime, the brief stay requested would serve all parties’ legitimate interests as well as judicial economy.

On the other hand, Sabre's opposition brief is meritless because (1) it is the one party not meaningfully participating in any of the discovery which the moving parties are trying to stay (it has not asked a single question of an American witness and is refusing to have any of its witnesses sit for deposition in this case if they have already been deposed), (2) there is a parallel state court proceeding between American and Sabre which will be tried shortly, and (3) Sabre's claimed "prejudice" is makeweight, given its course of conduct throughout this litigation. Sabre's efforts to force the Movants and the Court to waste resources continuing to litigate this case at a time when they are striving to resolve it should be denied.

First, the Movants here are not seeking an indefinite stay. The Movants only seek a stay pending the outcome of a scheduled mediation and while settlement efforts proceed. Based on the mediator's busy schedule, American and Travelport have not been able to schedule a mediation until December 12 and 13, but the mediation is *in fact* scheduled.<sup>1</sup> The stay will, therefore, only be in effect for a few months, and the Movants have no intention of letting this case languish on the Court's docket.<sup>2</sup>

Second, Sabre argues that the case should not be stayed because Sabre is not participating in the mediation. American attempted in good faith to mediate with Sabre and those efforts were fruitless. Accordingly, the state case with Sabre is scheduled for trial in October.<sup>3</sup>

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<sup>1</sup> The parties have also requested that the mediator inform them if, as sometimes happens, earlier dates become available on his calendar.

<sup>2</sup> Although not explicit, there is a suggestion in Sabre's response of an effort by American and Travelport and Orbitz to suspend this case in order to prejudice Sabre. This is preposterous. American and Travelport and Orbitz have aggressively litigated their disputes in this case. The only reason that they jointly move herein is to save unnecessary discovery expenses. As explained in the Joint Motion, since Sabre is not participating in deposition discovery in this case, the burden falls only on the Movants to conduct such discovery.

<sup>3</sup> American previously mediated with Sabre for three days and was not able to reach resolution. (*See* Dkt. No. 300.)

Third, Sabre's argument that American is using the litigation "to exert leverage over Sabre in the parties' commercial negotiations" is baseless. (*See Resp. at 2.*) There is a pending state court litigation between American and Sabre that is about to go to trial in October (the "Tarrant County Litigation"). And given Sabre's refusal to produce any witnesses for depositions in this case if they have already been deposed in the Tarrant County Litigation (a position American strongly disagrees with as stated in the Joint Motion), it is unclear how a stay of this second litigation provides any leverage in commercial discussions. To the contrary, it is Sabre's opposition to a brief stay that appears motivated to pressure American by requiring American to engage in significant discovery with Travelport and Orbitz (while Sabre continues to sit on the sidelines) at a time when American is simultaneously preparing for trial against Sabre in the Tarrant County Litigation.

Moreover, Sabre criticizes Travelport and Orbitz for taking a "wait and see" approach to the pending Tarrant County case. (*See Resp. at 3.*) While this stay request is motivated by a desire to focus resources on mediation and potential settlement, the Movants recognize that there also are efficiencies in staying this case pending the Tarrant County Litigation trial in October, as a decision in that case could be directly relevant to the parties' respective assessments of this case and the desirability of a consensual resolution. Contrary to Sabre's argument, these efficiencies are a reason to *grant* a brief stay, not deny one. Indeed, in Sabre's parallel lawsuit against U.S. Airways in the United States District Court for the Southern District of New York, *it was Sabre* that asked the court there to stay that lawsuit pending the outcome of the trial in the Tarrant County Litigation. (*See Docket from U.S. Airways case (Minute Entry from 7/16/2012), (Ex. 1, App. 1).*) Sabre asked the Southern District of New York to stay its case there so that it did not need to take and defend depositions at the same time it was preparing for trial. Yet,

Sabre now opposes a stay when the Movants—the only parties conducting depositions—think their time is better spent mediating.

Fourth, Sabre’s argument that the Joint Motion should be denied because it wishes to proceed urgently with its newly-filed counterclaim against American is unsupported. (*See Resp.* at 1-2.) Sabre cannot credibly claim prejudice when it filed its counterclaim *just one week ago after waiting almost a year* after being given permission by the Bankruptcy Court to do so on December 23, 2011. Sabre’s decision to file a counterclaim nearly a year and a half after the case was filed, does not qualify as “prejudice” sufficient to oppose the motion. Awaiting a brief stay so that each of the parties can try and resolve the remaining claims will cause it no prejudice.<sup>4</sup>

Finally, none of the cases cited by Sabre support a denial of the Motion. None of those cases involved a request, as here, supported by three of the four parties for a brief stay pending mediation and settlement efforts. Nor did they involve situations where the one party opposing the stay is not bearing the cost of continued discovery by claiming that it is not required to put its witnesses up for depositions requested by the opposing party. This Court has broad discretion to stay proceedings as a matter of docket control and should exercise that discretion in favor of a brief stay. *See Clinton v. Jones*, 520 U.S. 681, 706-07 (1997) (“The District Court has broad discretion to stay proceedings as an incident to its power to control its own docket.”) (citing *Landis v. N. Am. Co.*, 299 U.S. 248, 254 (1936)).

In short, the Movants seek a brief stay to facilitate settlement discussions without having to prepare and depose each other’s senior executives and other key witnesses, continue with

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<sup>4</sup> American contends that since the deadline to serve written discovery and complainants’ expert reports has long ago passed, American would be unable to defend against such belated counterclaims at this stage in the litigation (regardless of a stay). Thus, American contends that Sabre’s counterclaim is untimely and should be dismissed for this among other reasons.

costly expert discovery, or respond to outstanding written discovery requests.<sup>5</sup> The requested stay will serve the legitimate interests of all parties—including Sabre—as well as the interest of judicial economy. Sabre has not and cannot show that it will suffer any genuine prejudice from a brief stay, and its opposition to this motion is merely an unfortunate tactical ploy.

## **II. CONCLUSION AND REQUESTED RELIEF**

The Movants respectfully request that the Court stay the case and extend all existing pretrial deadlines per the schedule requested in the Joint Motion. The Movants further respectfully request any such additional relief to which they are entitled.

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<sup>5</sup> Sabre argues that fact discovery is “nearing the finish line.” That is not the reality with respect to depositions – both sides have a significant number of depositions left to take. Each deposition obviously necessitates the expenditure of tens of thousands of dollars in this complex antitrust lawsuit.

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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) this 31st day of August, 2012.

/s/ Victoria Neave \_\_\_\_\_

Victoria Neave