

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS**

UNITED STATES OF AMERICA,)	
)	
<i>Plaintiff,</i>)	
)	Civil Action No.: 99-1180-JTM
v.)	
)	
AMR CORPORATION,)	
AMERICAN AIRLINES, INC., and)	
AMR EAGLE HOLDING)	
CORPORATION,)	
)	
<i>Defendants.</i>)	
_____)	

**DECLARATION OF BURTON J. RUBIN IN SUPPORT OF
THE UNITED STATES' MOTION FOR CLARIFICATION OF
THE COURT'S MAY 9, 2000, MEMORANDUM AND ORDER**

1. I am General Counsel for the American Society of Travel Agents ("ASTA"). I have held that position since 1989. I was employed as General Counsel by ASTA in April of 1995, when ASTA responded to Civil Investigative Demand ("CID") No. 12482, and I assisted in preparing ASTA's response to that CID.

2. ASTA was established in 1931. Its corporate purposes include promoting and representing the views and interests of travel agents to all levels of government and industry, promoting professional and ethical conduct in the travel agency industry and promoting consumer protection. It has provided testimony to numerous legislative committees and fact finding bodies and has appeared in various legal proceedings. It has

a long history of cooperation with the Federal Trade Commission and other governmental agencies. See e.g. FTC publication, "Renting a Car," Revision to Car Rental Guide. It is widely recognized as responsibly representing the interests of its members and the travel agency industry. See e.g. *Investigation into the Competitive Marketing of Air Transportation*, C.A.B. Docket 36595, aff'd; *Republic Airlines, Inc. v. C.A.B.*, 756 F.2d 1304 (8th Cir. 1985); *In re Domestic Air Transportation Antitrust Litigation*, 148 F.R.D. 297, 61 USLW 2610, 1993-1 Trade Case. (CCH) ¶70,165 (N.D. Ga., 1993); *U.S. v. Airline Tariff Publishing Co.*, 1993-1 Trade Cas. (CCH) ¶70, 191 (D.D.C., 1993); *Spiro v. Delmar Travel Bureau, Inc.*, 591 N.Y.S.2d 237 (A.D. 3 Dept. 1992); and *Crowder v. Kitagawa*, 81 F.3d 1480 (9th Cir. 1996).

3. The statements made in this declaration are based upon my personal knowledge, upon information made available to me in my official capacity, and upon conclusions and determinations reached and made in accordance therewith.

4. On March 24, 1995, the Antitrust Division of the United States Department of Justice ("Division") issued CID No. 12482 to ASTA. The CID contained two interrogatories and two document requests.

5. In letters accompanying its production of documents in response to CID No. 12482, ASTA noted that "[s]ome of the documents produced may contain confidential, proprietary information," and asked that "the Department of Justice protect the

confidentiality of the information produced in response to the Demand to the extent permitted by law.”

6. ASTA relied on the confidentiality provisions of the Antitrust Civil Process Act, 15 U.S.C. §§1311 - 1314, when it produced documents containing confidential and proprietary information in responding to CID No. 12482. ASTA understood those confidentiality provisions to limit disclosure of CID materials to persons outside the Justice Department without the consent of the producing party to certain narrowly-defined situations as set forth in 15 U.S.C. § 1313(c).

7. On May 22, 2000, ASTA received a letter from the Antitrust Division notifying ASTA of a Memorandum and Order issued by Magistrate Judge Humphreys of the United States District Court for the District of Kansas on May 9, 2000, in *United States v. AMR Corp. et al.*, Case No. 99-1180-JTM. The letter was accompanied by the following enclosures:

- a. A copy of the May 9, 2000, Memorandum and Order;
- b. A copy of the Court’s September 14, 1999, Stipulated Protective Order Governing Confidential Information (“Protective Order”); and
- c. Documents found in the Division’s files that were copies of documents produced by ASTA in response to CID No. 12482 (“ASTA CID materials”).

8. After reviewing the Court's May 9, 2000, Memorandum and Order, the Court's Protective Order, and the ASTA CID materials, I determined that ASTA would rely on the prohibitions against disclosure of CID materials contained in the Antitrust Civil Process Act and would not consent to the disclosure of the ASTA CID materials to American. I informed Rebekah French of the Antitrust Division of this decision by letter dated June 6, 2000.

9. I have since discussed the ASTA CID materials with Ms. French. To the extent that ASTA or its members have already made public certain documents included in the ASTA CID materials, ASTA agrees that those documents (bearing the bates labels USDOJ-0001965 PTAJ through USDOJ-0002000.8 PTAJ) may be produced to American. ASTA also has no objection to the production to American of ASTA correspondence relating to its response to CID No. 12482, which includes its certificates of compliance and lists identifying to which document requests the various documents respond (bearing the bates labels USDOJ-0001913 PTAJ through USDOJ-0001939 PTAJ and USDOJ-0001905 BILM through USDOJ-0001920 BILM).

10. I understand that the documents identified in the preceding paragraph have in fact been produced to American consistent with ASTA's consent to their disclosure.

11. ASTA does not consent to the release of the privilege log it prepared in connection with its response to CID No. 12482 (bearing the bates labels USDOJ-0001940 PTAJ through USDOJ-0001962 PTAJ). ASTA prepared this log for use and review solely by

Department of Justice attorneys and never anticipated that it would someday be revealed to counsel for a major air carrier.

12. ASTA further does not consent to release of its interrogatory responses (bates labeled USDOJ-0000001 ASTA through USDOJ-0000002 ASTA) and its internal drafts and analyses relating to a 1994 survey of commission overrides and incentives conducted by ASTA (bates labeled USDOJ-0001500 PTAJ through USDOJ-0001912 PTAJ).

13. On information and belief, disclosure of the final survey document was limited to ASTA's retail travel agency members. On information and belief, the documents produced to the Division contain analyses never shared with ASTA's members and never intended for disclosure to counsel for major airlines.

14. By Complaint dated October 14, 1999 ASTA initiated a proceeding, Docket No. OSJ-99-6401, before the United States Department of Transportation against American Airlines, Inc. and other airlines. The Complaint alleges that Respondent airlines have engaged in unfair practices and unfair methods of competition in air transportation and the sale of air transportation, in violation of 49 U.S.C. §41712, and requests the Secretary of Transportation to order such unlawful practices and methods of competition stopped. In Public Law 106-69, Congress directed the Department of Transportation's Inspector General to report to it by July 15, 2000 concerning possible unfair practices by airlines. ASTA has been publicly recognized for its support for this investigation. By a letter dated February 16, 2000, ASTA's Senior Vice President for Legal & Industry Affairs,

Paul Ruden, wrote Assistant Attorney General Joel I. Klein, requesting that the Antitrust Division investigate and undertake enforcement action with respect to a joint internet Web-site being developed by major airlines, in which American Airlines is a "Charter Associate." On May 18, 2000 *USA Today* reported that the Web-site venture is being investigated by the Antitrust Division.

15. ASTA's management has instructed me to request the Justice Department to continue to protect the material provided by ASTA in response to CID 12482 to the fullest extent permitted by law. It is concerned that the Government's production of such materials to American Airlines, Inc. may provide American, and possibly other airlines, with access to ASTA's operational, consultative, deliberative, and decision-making processes to an extent otherwise unavailable to them, notwithstanding American is a non-voting or Allied member of ASTA. Such knowledge could be used adversely to ASTA in one or more proceedings or investigations in which ASTA's position and that of American Airlines are antagonistic. Moreover, ASTA's management desires to vindicate its reliance upon assurances of confidentiality it received in complying with the CID.

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct to the best of my knowledge, information and belief.

Executed this 16th day of June, 2000.

/s/

Burton J. Rubin