

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION**

)	
UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	
)	
v.)	
)	
NORTHWEST AIRLINES CORP.,)	Civil Action No.: 98-74611
)	Judge Denise Page Hood
and)	Magistrate Judge Scheer
)	
CONTINENTAL AIRLINES, INC.,)	
)	
Defendants.)	
)	

**PLAINTIFF’S MOTION FOR ENTRY OF
A REVISED SCHEDULING ORDER**

Plaintiff United States of America, by its attorneys, hereby respectfully requests that the Court enter a revised scheduling order modifying the pretrial schedule governing this litigation. As explained in more detail in the attached Memorandum in Support of Plaintiff’s Motion, this revision is necessary in order to allow all parties adequate time to complete factual discovery. It does not affect the trial date previously entered by the Court and the government affirms its commitment to be prepared to present its case at that time. A proposed order accompanies this motion.

MEMORANDUM IN SUPPORT OF PLAINTIFF'S MOTION

I. Issue

Should the Court enter a revised scheduling order providing additional time for the parties to complete factual discovery where all parties agree that such an extension is warranted, and if so, does this necessitate upsetting the Court's original trial setting, or can the schedule be revised to provide the requisite time for the orderly completion of factual discovery while maintaining the Court's existing trial date?

II. Authority

Scheduling Order entered 4/28/99, ¶ 7
Fed. R. Civ. P. 16

III. Discussion

On April 28, 1999, this Court entered a scheduling order controlling the progress of this case. That order calls for the parties to complete factual discovery by September 3, 1999. The parties have engaged in extensive discovery efforts since entry of the Court's original scheduling order, but now agree they need a limited amount of additional time to complete factual discovery. In particular, both sides are in the process of completing substantial document productions. To facilitate further discovery efforts, the parties have agreed to share the costs of imaging a large number of these documents and have begun the process of scanning those documents. This process has inevitably resulted in some delay in exchanging the documents, but should ultimately prove beneficial to all parties. Once this imaging process is completed (currently anticipated to be by mid-September), the parties will need to review the scanned documents and conduct fact depositions.

All parties agree that a two month extension of the deadline for completion of all fact discovery, from September 3, 1999 to November 3, 1999, is appropriate; all other subsequent pretrial deadlines (including dates for expert reports, dispositive motions, and the pretrial conference) would likewise be moved back two months. The only dispute relates to whether or not these changes necessitate moving the trial date originally set by the Court.

The Court's existing scheduling order provides for a two month period between the final pretrial conference and the commencement of trial.¹ This two month period was not requested by either side, but rather was the result of the Court's reluctance to schedule a trial of this nature to begin in late July or August; there was no specific purpose to be served this two month delay between the pretrial conference and trial. The government's proposed order provides the additional time all parties agree is needed to complete factual discovery by drawing upon this two month period, thus maintaining the Court's original trial date.

In discussions among the parties pertaining to this motion, defendants have argued that the Court's original trial date should also be moved back two months. The only justification advanced by defendants for moving the trial date relates to the provision in the Court's order that authorizes either party to depose any fact witness designated as a trial witness who has not previously been deposed. Scheduling Order, ¶ 6. Defendants maintain that there may be a need to allow time to conduct of depositions close to trial because of this provision. While the government agrees that these depositions may occur, there is no reason to move the trial date to accommodate this possibility. Rather, we have proposed that the parties agree (and this Court

¹Pursuant to the Court's scheduling order, the final pretrial conference is set for July 17, 2000, with trial beginning on September 19, 2000.

require) both sides to exchange preliminary trial witness lists sufficiently in advance of the trial date to allow time for any depositions that might be necessary.² This solution addresses the only concern raised by defendants and preserves this Court's original trial date.

In short, all parties are requesting that this Court order a relatively brief extension on the time allotted for the completion of the factual discovery phase of this litigation. The only disagreement is whether or not such an extension by necessity requires the Court to move the trial date as well. Plaintiff contends that there is no sound basis for upsetting this Court's original trial setting, and accordingly requests that the Court enter its proposed revised scheduling order.

FOR PLAINTIFF UNITED STATES

"/s/"

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²The government's proposed revised scheduling order provides that the parties exchange preliminary witness lists one month prior to commencement of trial. Plaintiff's Revised Scheduling Order, ¶ 6.

Local Rule 7.1(a) Certification

The undersigned attorney for plaintiff United States of America states that she has conferred with defendants Northwest Airlines Corporation and Continental Airlines Inc. regarding this motion. While the parties agree that the Court's existing scheduling order needs to be revised to provide additional time for the completion of factual discovery, plaintiffs maintain that this revision can be accomplished without changing the Court's original trial setting. Defendants disagree and insist that the trial date be moved back two months to correspond with the requested extension to the Court's deadlines for the completion of factual discovery and other pretrial proceedings.

“/s/”
Jill A. Ptacek