

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

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

**OPPOSITION OF THE UNITED STATES OF AMERICA  
TO NORTHWEST AIRLINES CORPORATION'S MOTION  
FOR AN EXTENSION TO RESPOND TO PLAINTIFF'S DISCOVERY**

Defendant Northwest Airlines Corporation's ("Northwest's") motion for an extension of time is not the product of a genuine dispute over the substance of plaintiff's discovery requests, but simply the result of Northwest's apparent strategy to obstruct any attempt to resolve discovery issues before rushing to the Court. While the government does not oppose the notion of a thirty-day extension for Northwest to produce documents and information in response to plaintiff's discovery requests, Northwest's basic position -- refusing to make any commitments on their response to plaintiff's requests despite the government's commitment to significant limitations and modifications to those requests -- is flatly inconsistent with the type of cooperative discovery that would allow this case to proceed expeditiously. Indeed, the government was able to reach precisely this type of agreement with the other defendant,

Continental Airlines, Inc., thereby eliminating the necessity for the type of senseless motions practice exemplified by Northwest's instant motion. In short, the government's opposition is not to the 30-day extension itself, but rather to the unreasonable stance taken by Northwest in discussions pertaining to their request, and the effect this type of noncooperative strategy has on the government's primary objective of bringing this case to trial as quickly as possible.

Although the government is hesitant to expand the record needlessly with regard to Northwest's motion, three points need to be made about the factual precursor to this motion:

- The United States served its written discovery requests on defendants on March 11, 1999. On March 26, 1999, Northwest sent a two-page letter complaining about the scope of the United States' request and suggesting that it would not comply with the requests.<sup>1</sup> Northwest did not ask at that time if the request could be narrowed or if the United States would grant an extension to allow it to comply. Northwest instead remained silent for two additional weeks, until counsel for the United States repeatedly sought to engage in negotiations and finally wrote Northwest on April 7, 1999 and specifically invited them to discuss their concerns about the scope of the requests.<sup>2</sup>
- On April 8, 1999, with only 3 business days remaining in the 30-day response period, Northwest finally met with government counsel to discuss the scope of the requests with the United States. During those discussions, the United States agreed to substantially narrow many of the discovery requests to avoid imposition of any undue burden. Counsel for Northwest, however, indicated that the United States' modifications did not satisfy all of its concerns (without identifying any

---

<sup>1</sup>See March 26, 1999 letter attached as Exhibit 4 to the declaration accompanying Northwest's motion (stating Northwest's position that "the 30-day time frame for completing document production is no longer reasonable" even though Northwest had the government's discovery requests in hand prior to filing the proposed case management schedule containing that 30-day commitment).

<sup>2</sup>See April 7, 1999 letter from James R. Wade to Alexandre de Gramont and Paul L. Yde attached as Exhibit 1 hereto.

additional burdens or objections to particular requests) and that their client would not in any event permit them to commit to produce documents responsive to any of the requests even subject to the agreed modifications. Nonetheless, Northwest sought plaintiff's agreement to a blanket 30-day extension of time to respond to discovery.

- On April 9, 1999, the government again met with counsel for Northwest in a further attempt to resolve these matters. At that time, the government offered to grant Northwest a one-week extension on their response date so that Northwest and the United States could continue negotiations.<sup>3</sup> Northwest, however, preferred to file the instant motion with the Court rather than accept the one-week extension and to try and work out the remaining differences.

In stark contrast to Northwest's actions, Continental, after receiving the United States' discovery requests, asked for a meeting to try and work out mutually satisfactory agreements with regard to plaintiff's discovery requests. The government and Continental were able to resolve most of their differences and, when asked, plaintiff quickly granted Continental's request for an extension of time on the condition that Continental would provide the responsive documents as negotiated.<sup>4</sup>

In summary, this is a dispute of Northwest's own design. Northwest's strategy places the government in an untenable position -- agree to a "no strings attached" extension, wait an additional thirty days, and then face the prospect of blanket objections to plaintiff's discovery requests. At best, this results in meaningful discovery negotiations being delayed for a month,

---

<sup>3</sup>See April 9, 1999 letter attached as Exhibit 6 to the declaration accompanying Northwest's motion.

<sup>4</sup>Similarly, the United States, after receiving defendants' discovery requests on April 2, promptly reviewed the requests, assessed the burdens of responding, and arranged to meet with defendants' counsel on April 9 to discuss possible modifications.

and production of responsive materials for an even lengthier period; at worst it delays by a month plaintiff's ability to move to compel discovery if that becomes necessary based on Northwest's refusal to comply. The filing of this motion thus makes even more clear the need for the Court to impose a rigorous pretrial schedule in this case and require all parties to abide by it. In particular, the establishment of a firm trial date now should help to prevent these kinds of disputes and encourage efficient pretrial discovery proceedings in the future. With regard to the instant motion, the Court should deny the requested extension unless Northwest is willing to state its specific objections to the requests and agree to produce documents in accordance with the limitations and modifications already negotiated with the government.

Respectfully submitted,

\_\_\_\_\_  
"/s/"

James R. Wade  
Trial Attorney  
Department of Justice  
Antitrust Division  
325 Seventh Street, N.W.  
Suite 500  
Washington, D.C. 20530  
(202) 353-8730

Julia C. Pidgeon  
Assistant United States Attorney  
Pa. Atty. Lic. 37949  
211 W. Fort Street, Suite 2001  
Detroit, Michigan 48226  
(313) 226-9772

FOR PLAINTIFF UNITED STATES

DATED: April 16, 1999

## CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing **Opposition of the United States of America To Northwest Airlines Corporation's Motion For An Extension To Respond To Plaintiff's Discovery** were served by hand and/or first-class U.S. mail, postage prepaid, this 16th day of April, 1999 upon each of the parties listed below:

Donald L. Flexner (By Hand)  
James P. Denvir  
Alexandre de Gramont  
CROWELL & MORING LLP  
1001 Pennsylvania Avenue, N.W.  
Washington, D.C. 20004  
(202) 624-2500

Lawrence G. Campbell (By U.S. Mail)  
Mary Beth Kelly  
DICKENSON, WRIGHT, MOON  
VAN DUSEN & FREEMAN  
500 Woodward Avenue  
Suite 4000  
Detroit, MI 48226  
(313) 223-3500

John L. Murchison, Jr. (By U.S. Mail)  
VINSON & ELKINS, LLP  
2300 First City Tower  
Houston, TX 77002-6720  
(713) 758-2338

Paul L. Yde (By Hand)  
VINSON & ELKINS  
1455 Pennsylvania Avenue, N.W.  
Washington, D.C. 20004-1008  
(202) 639-6685

Eugene Driker (By U.S. Mail)  
BARRIS, SOTT, DENN & DRIKER, PLLC  
211 West Fort Street, 15<sup>th</sup> Floor  
Detroit, MI 48226-3281  
(313) 965-9725

\_\_\_\_\_  
"/s/"  
James R. Wade  
Counsel for Plaintiff