

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

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

**PROTECTIVE ORDER**

Upon motion of plaintiff United States pursuant to Fed. R. Civ. P. 26(c)(7), and for good cause shown, the Court, in the interest of ensuring that confidential commercial information submitted pursuant to discovery in this action is not improperly disclosed, enters following Protective Order ("Order"):

1. As used herein, the following words shall have the following meanings:
  - a. "this action" means the civil action captioned above and pending in this Court;
  - b. "party" or "parties" means the plaintiff or one or more of the defendants in this action;
  - c. "non-party" means any natural person, partnership, corporation, association, or other legal entity not named in the action captioned above and pending in this Court;
  - d. "plaintiff" means the United States Department of Justice, its officials, employees or agents;
  - e. "defendants" means Northwest Airlines Corporation and/or Continental Airlines, Inc.;

f. "protected person" means any party or non-party that furnishes or has furnished any information or material to any party in connection with this action or to the Department of Justice in connection with any investigation;

g. "Court" means the United States District Court for the Eastern District of Michigan, Southern Division;

h. "disclosed" means shown, divulged, revealed, produced, described or transmitted, in whole or in part;

i. "discovery" means discovery in this action;

j. "outside counsel" means the attorneys specifically listed on this Order as well as (1) other attorneys or consultants employed or retained by the law firms listed on this Order; or (2) any attorney subsequently retained or designated by the defendants to appear in this action, PROVIDED that any attorney or consultant covered under subparagraphs j(1) or (2) is not involved in the business operations of the defendants.

k. "Confidential" means competitively sensitive business or financial information or any trade secret or other confidential research, development, or commercial information as such terms are used in Federal Rule of Civil Procedure 26(c)(7); and

l. "Highly Confidential" means confidential information of a party or protected person that if disclosed to its business competitors would materially affect the party's or protected person's business, commercial or financial interests;

m. "material" means documents or any other form of information submitted by any protected person.

2. Disclosure of Confidential or Highly Confidential material to any person pursuant to this Order shall be solely for the purposes of the preparation, hearing, trial, and any appeal of this action, and for no other purpose whatsoever, provided, however, that the Department of Justice, subject to taking appropriate steps to preserve the confidentiality of such material, may disclose

material designated as Confidential or Highly Confidential to employees of the Executive Branch outside the Department of Justice, and may use such information for any valid law enforcement purpose pursuant to 15 U.S.C. § 1 *et seq.*; 15 U.S.C. § 1311-14 *et seq.*; 15 U.S.C. § 12 *et seq.*; or any other applicable law. Unless otherwise prohibited by federal law or regulation, the Department of Justice will endeavor to promptly inform the party or protected person who designated the material as Confidential or Highly Confidential if disclosure pursuant to this paragraph is made.

3. Any defendant or any protected person may designate as Confidential or Highly Confidential material any material or portion of any material that it submitted to the Department of Justice in connection with an investigation, including but not limited to any document, interrogatory response, or deposition transcript of its employee. Such designation shall constitute a representation to the Court that counsel believes in good faith that the material so designated constitutes Confidential or Highly Confidential material, as defined in Paragraph 1 of this Order. Protected persons shall make confidentiality designations for material submitted to the Department of Justice prior to the Complaint in this action within 60 days of notice of the entry of this Order, and in the meantime all parties shall treat all such materials as Highly Confidential pursuant to this Order.

4. The parties or any protected person, in complying with discovery requests served upon them pursuant to the Federal Rules of Civil Procedure or with informal discovery requests, may designate any material submitted in response to such discovery requests as Confidential or Highly Confidential. Such designation shall constitute a representation to the Court that counsel believes in good faith that the information so designated constitutes Confidential or Highly Confidential information, as defined in Paragraph 1 of this Order.

5. A party or protected person designating a document as Confidential shall affix to each page of the document containing such material the legend “CONFIDENTIAL” and provide a specification of the portions of the document containing the Confidential information, unless the

entire document is designated as Confidential. A party or protected person designating a document as Highly Confidential shall affix to each page of the document containing such material the legend “HIGHLY CONFIDENTIAL” and provide a specification of the portions of the document containing the Highly Confidential information, unless the entire document is designated as Highly Confidential. The legends shall not interfere with the legibility of any such document.

6. A party or protected person designating material as Confidential or Highly Confidential that is in a form other than a document shall specify in writing the information that is Confidential or Highly Confidential at the time that such information is supplied.

7. A party, protected person, or deponent may, on the record of a deposition, designate portions of a deposition or exhibits used therein as Confidential or Highly Confidential pursuant to the criteria set forth in this Order. Within 20 days of the receipt of a deposition transcript, a party, protected person, or deponent may designate, by page and line, portions of the transcript or exhibits thereto as Confidential or Highly Confidential, and until such time, all parties shall treat the transcript and exhibits in their entirety as Highly Confidential. If, by the end of the 20-day period, a party, protected person, or deponent has designated any transcript portion or exhibits as Confidential or Highly Confidential, then thereafter such transcript portions or exhibits shall be disclosed only in accordance with this Order. If none of the material is designated as Confidential or Highly Confidential at the end of the 20-day period, then none of the transcript or exhibits shall be treated as Confidential or Highly Confidential.

8. Material designated as Confidential pursuant to this Order may be disclosed only to:

- a. the Court and all persons assisting the Court in this action, in the manner set forth in Paragraph 13 below, and court reporters taking testimony involving such information, and necessary stenographic and clerical personnel thereof;
- b. Department of Justice attorneys, employees, and agents;

c. outside counsel working as an attorney for any defendant in connection with this action and the employees of such outside counsel, provided that they are not presently, and have no present plans to become, employees of any defendant;

d. persons retained to assist counsel for any party for the purpose of this action and employees of such persons, provided that such persons and their employees are not presently, and have no present plans to become, employees of any defendant;

e. in-house counsel for each of the defendants and their secretaries or paralegals assisting in this litigation;

f. employees of or counsel for the party or protected person that designated such materials as Confidential;

g. authors, addressees, or copyees of a document designated as Confidential;

h. persons with prior knowledge of the Confidential information, including any person who was, or whom counsel for any party in good faith believes to have been, a participant in a communication or other act and from whom verification of that communication or other act is sought, subject to the terms of Paragraph 10; and

i. any person who may testify as a witness, either at a deposition or court proceeding in this action, for the purpose of assisting in the preparation or examination of the witness, subject to the terms of Paragraph 10.

9. Material designated as Highly Confidential pursuant to this Order may be disclosed only to:

a. the Court and all persons assisting the Court in this action, in the manner set forth in Paragraph 13 below, and court reporters taking testimony involving such information, and necessary stenographic and clerical personnel thereof;

b. Department of Justice attorneys, employees, and agents;

c. outside counsel working as an attorney for any defendant in connection with this action and the employees of such outside counsel, provided that they are not presently, and have no present plans to become, employees of any defendant;

d. persons retained to assist counsel for any party for the purpose of this action and employees of such persons, provided that such persons and their employees are not presently, and have no present plans to become, employees of any defendant;

e. employees of or counsel for the party of protected person that designated such materials as Highly Confidential;

f. authors, addressees, or copyees of a document designated as Highly Confidential;

g. persons with prior knowledge of the Highly Confidential information, including any person who was, or whom counsel for any party in good faith believes to have been, a participant in a communication or other act and from whom verification of that communication or other act is sought, subject to the terms of Paragraph 10;

h. any person who may testify as a witness, either at a deposition or court proceeding in this action, for the purpose of assisting in the preparation or examination of the witness, subject to the terms of Paragraph 10.

10. Any party or any counsel for any party proposing (a) to disclose Confidential or Highly Confidential material at the deposition of any person, other than an employee of the party or protected person designating such information as Confidential or Highly Confidential, or (b) to disclose Confidential or Highly Confidential material pursuant to Paragraphs 8(h-i), or 9(g-h) herein, shall provide, at least 10 days in advance of any such disclosure, written notice to the counsel for the designating party or protected person stating the name(s) and address(es) of the person(s) to whom the disclosure will be made, identifying with particularity the material to be disclosed and stating the purpose of the disclosure, except that such notification is not necessary if (a) the person is an author or recipient of the Confidential or Highly Confidential material, or

(b) the person is a former employee of the designating party or protected person and is known with certainty to have prior knowledge of the specific Confidential or Highly Confidential material to be disclosed. If within 5 days after the receipt of such notice, an objection is made, the party seeking to disclose the material may seek relief from this Order from the Court. The material shall not be disclosed unless the Court has granted the motion to allow disclosure. The failure of counsel for the party or protected person designating the material as Confidential or Highly Confidential to object to the use of the material in connection with a particular witness shall not constitute a waiver with respect to other witnesses.

11. Each person to whom Confidential or Highly Confidential material is disclosed pursuant to Paragraphs 8(b)-(I) and 9(b)-(h) of this Order, other than employees of the party or protected person designating the material as Confidential or Highly Confidential, shall execute an Acknowledgment in the form attached hereto as Exhibit A, and shall agree to be bound by this Order. The original of such executed Acknowledgment shall be retained by the counsel disclosing Confidential or Highly Confidential material to such persons for a period of one year following the final resolution of this action.

12. The parties shall confer and attempt to agree before any trial or other evidentiary hearing on the procedures under which Confidential and Highly Confidential material may be introduced into evidence or otherwise used at such trial or hearing. Upon reaching agreement, the parties shall give notice of the terms of such agreement to each non-party producing any Confidential or Highly Confidential material that may be used or introduced at such trial or hearing. Absent agreement, the Court shall be asked to issue an order governing the use of such Confidential and Highly Confidential material at trial or evidentiary hearing upon reasonable notice to all parties and non-parties who have produced such information. The parties shall provide non-parties with notice of potential use at trial of any Confidential or Highly Confidential material produced by them if and when such material is listed as a potential exhibit or exhibits in the required filings prior to commencement of trial. The parties shall give notice

as soon as practicable after Confidential or Highly Confidential material that is not listed on the exhibit list is determined to be used by counsel for a party in the course of examination or cross-examination at trial.

13. In the event that any Confidential or Highly Confidential material is contained in any pleading, motion, exhibit, or other paper (collectively “papers”) filed or to be filed with the Clerk of the Court, the Clerk shall be so informed by the party filing such papers, and the Clerk shall keep such papers under seal until further order of the Court; provided, however, that such papers shall be furnished to the Court, the Department of Justice, and defendants’ outside counsel. As soon as possible after the filing of any paper containing Confidential or Highly Confidential information, the filing party shall file on the public record a duplicate copy of the paper with the Confidential or Highly Confidential information deleted.

14. The inadvertent production of material without the appropriate designation of confidentiality shall not be deemed a waiver or impairment of any claim of protection of the confidential nature of any such material. Upon receiving notice from a producing party or protected person that Confidential or Highly Confidential material has not been appropriately so designated, all such material shall be redesignated and treated appropriately. The party receiving such undesignated Confidential or Highly Confidential material shall make a reasonable good faith effort to ensure that any analyses, memoranda or notes that were generated based upon such material shall immediately be treated in conformity with any such redesignation.

15. This Order shall not apply to information in the public domain or obtained from other sources not in violation of this Order regardless of whether such information is also contained in materials designated as Confidential or Highly Confidential pursuant to this Order.

16. Nothing in this Order shall prevent disclosure of Confidential or Highly Confidential material with the consent of counsel for the designating party or protected person.

17. This Order shall be without prejudice to the right of any party to bring before the Court the question of whether any particular material is or is not Confidential or Highly



Confidential pursuant to this Order, provided that the party has complied with the procedures set forth herein. No party concedes by entering into this stipulated Protective Order that any material designated by any party or protected person as Confidential or Highly Confidential does in fact contain or reflect trade secrets or other confidential research, development or commercial information, as those terms are used in Federal Rule of Civil Procedure 26(c)(7), or that disclosure of any material designated by any party or protected person as Highly Confidential to its business competitors would materially affect such party's or protected person's business, financial or commercial interests. In the event that a party believes that another party or protected person has designated material as Confidential or Highly Confidential that is not entitled to such protection, the parties and any affected protected person shall discuss this contention and attempt to resolve the disagreement over the classification of the material. If the parties and protected person cannot resolve the matter, it will be submitted to the Court for resolution. In the case of material provided by a non-party, the party that contests the confidentiality designation shall provide reasonable notice to the non-party that the matter has been referred to the Court. In the event that a confidentiality designation by a party is contested, the party designating the material shall have the burden of showing that the material is entitled to protection.

18. The parties hereto reserve all rights to apply to the Court for any order:

- a. modifying this Order;
- b. seeking further protection against discovery or other use of Confidential or Highly Confidential material or information, documents, transcripts, or other material reflecting claimed Confidential or Highly Confidential material.

19. Any protected person requiring further confidentiality protection may petition the Court for a separate order governing disclosure of its confidential information.

20. The parties shall serve a copy of this Order simultaneously with any discovery request made to a non-party.

21. Within 60 days after the final resolution of this action, each defendant in possession of Confidential or Highly Confidential materials, and any person to whom disclosure of such materials has been made pursuant to the provisions of this Order, shall return such materials to the party or protected person that designated them, or alternatively, confirm in writing that the materials have been destroyed.

22. After the final resolution of this action, the Department of Justice may, as provided by Paragraph 2 of this Order, retain any material designated by any party or protected person as Confidential or Highly Confidential for valid law enforcement purposes.

23. Within 60 days after the final resolution of this action, the Department of Justice shall return Confidential or Highly Confidential material not subject to the provisions of Paragraph 22 of this Order to the party or protected person that designated them, or alternatively, confirm in writing that the materials have been destroyed.

SO ORDERED this \_\_\_\_day of \_\_\_\_\_, 1999.

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UNITED STATES DISTRICT JUDGE

Exhibit A

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

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

--ACKNOWLEDGMENT--

**PROTECTIVE ORDER**

I, \_\_\_\_\_, who am employed by \_\_\_\_\_,  
hereby acknowledge that:

(1) I have read the Protective Order, dated \_\_\_\_\_, entered in the action captioned above, understand the terms thereof, and agree to be bound by such terms;

(2) I will make only such copies or notes as are required to enable me to render assistance in connection with this action;

(3) I will not disclose Confidential or Highly Confidential materials to any person not expressly entitled to receive it under the terms of the Protective Order;

(4) I will not use Confidential or Highly Confidential material for any purpose other than that authorized by the Protective Order; and

(5) I agree to submit to the jurisdiction of the Court for the sole purpose of having the terms of the Protective Order enforced.

Dated:\_\_\_\_\_

Signature:\_\_\_\_\_

Address:\_\_\_\_\_

\_\_\_\_\_