

**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 IN SUPPORT OF
UNITED STATES' OPPOSITION TO DEFENDANTS' MOTION TO COMPEL**

1. My name is Craig W. Conrath. I am the lead lawyer for the United States in the above-captioned litigation. I submit this declaration in support of the United States' Opposition to Defendants' Motion to Compel.

2. On or about September 3, 1999, I spoke with counsel for defendants about Interrogatory No. 2, which requires the United States to provide a recitation, on a witness-by-witness basis, of the facts supplied by each witness to Department of Justice ("DOJ") attorneys conducting law enforcement investigations in anticipation of litigation. I explained the United States' view that the interrogatory seeks material protected by the work product doctrine. I also indicated my awareness of the recent decision involving this issue, United States v. Dentsply, Int'l, Inc. At no time in this conversation, or any other conversation with defendants' counsel, did I indicate a willingness answer the interrogatory without objection.

3. During this conversation, and on at least two other occasions, I asked counsel for defendants if it was their position that interrogatories seeking witness-by-witness recitation of attorney interviews, such as Interrogatory No. 2, are standard practice in Kansas, and if so, whether they would send us copies of such interrogatories that American's local counsel had answered without a work-product objection or to which they had received an answer without a work-product objection. As of this date, I have not received a response.

4. On September 27, 1999, the United States served its Answer to defendants' First Set of Interrogatories. A true and correct copy is attached hereto as Exhibit 7.

5. During its investigations, DOJ's Antitrust Division gathers information by means of voluntary, informal interviews conducted by attorneys. The attorneys who conduct the interviews generally take notes, and frequently, an attorney, or a paralegal under the supervision of an attorney, prepares a memorandum after the interview. The notes and memoranda generated in connection with these interviews reflect the attorneys' choice of which questions to ask the interviewee and what answers to describe. Far from being verbatim statements, these notes and memoranda are summaries of the attorneys' understanding of selected information supplied during the interview. They highlight specific issues of interest to the attorneys' legal analysis, and may well summarize the reasons the interview was conducted; characterize the importance of the information learned; draw inferences based on that information; describe the lawyers' impressions concerning the cooperation, credibility or knowledge of the interviewee; and identify potential areas of further inquiry. In other words, the contents of the notes and memoranda provide a snapshot of the mental impressions and strategy of the DOJ's attorneys conducting and attending the interviews. The memoranda are not shown to the person(s) interviewed

nor to anyone else who is not an employee or agent of the DOJ.

6. On or about July 23, 1999, I, with several other DOJ attorneys working on this case, met with counsel for defendants to discuss case scheduling issues. In that meeting, American's counsel requested that documents and information from DOJ investigations of the airline industry (in addition to the Department's investigation that led to this litigation) be subject to discovery in this case. We explained to defendants' counsel that this could result in overbroad disclosure because the DOJ has obtained information from numerous types of people in the airline industry, including representatives of airlines and airports, and travel agents. Although some of the Department's investigations involved analysis of issues that are similar to those alleged in the United States' complaint because such issues are common to antitrust analysis (e.g., relevant market definition or barriers to entry), those investigations focused on very different types of conduct than American's pricing, capacity and yield management actions that the United States alleges are predatory.

7. At no time in this meeting with defendants' counsel nor in subsequent conversations, did I indicate that the United States would waive applicable privileges in order to bring this important matter to trial quickly.

8. In its Rule 26(a)(1) disclosure, as requested by American, the United States supplied the names, affiliations, addresses, and telephone numbers of 180 persons and entities who had supplied information (orally and/or in documents) not only in connection with the investigation of American that led to this case, but also in connection with a number of other, now closed, investigations. Defendants have attached copies of the United States' Disclosures to their Memorandum of Law in Support of their Motion to Compel. To help focus American's attention, the United States separately listed the 47

persons who supplied information in connection with the investigation of American's conduct.

9. A true and correct copy of the Complaint filed in this matter is attached as Exhibit 8.

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

_____/s/_____
Craig W. Conrath

Executed on December 8, 1999