

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF GEORGIA  
ATLANTA DIVISION**

IN RE: DELTA/AIRTRAN BAGGAGE  
FEE ANTITRUST LITIGATION

CIVIL ACTION FILE NUMBER  
1:09-md-2089-TCB

ALL CASES

**PLAINTIFFS' DAUBERT MOTION TO EXCLUDE THE OPINIONS AND  
TESTIMONY OF DANIEL M. KASPER**

Pursuant to Federal Rule of Evidence 702 and *Daubert v. Merrell Dow Pharmaceuticals, Inc.*, 509 U.S. 579 (1993), Plaintiffs hereby file this *Daubert* Motion to Exclude the Opinions and Testimony of Dr. Daniel Kasper. Because the Court does not need to rely on Delta economist Dr. Kasper's testimony to resolve any class certification issues, it is unnecessary for the Court to consider this Motion prior to ruling on class certification. *Local 703 v. Regions Fin. Corp.*, 762 F.3d 1248, 1258 n.7 (11th Cir. 2014).

However, at trial (and if deemed relevant, at class certification), the Court should exclude testimony offered by Dr. Kasper about base fare offsets and about the identity of Delta's key competitor.

First, Dr. Kasper's core opinion in this case is that, theoretically, imposing a first bag fee could cause Delta to lower base fares because the imposition of a bag fee could lower demand. But base fare offsets are irrelevant as a matter of law in

determining impact or damages, and Dr. Kasper's testimony about offsets should be excluded because it will not "help the trier of fact . . . to determine a fact in issue." Fed. R. Evid. 702. In addition, Dr. Kasper purports to base his opinions on a review of a subset of documents and articles, and his own "knowledge and experience." Kasper Report ¶ 5 (Dkt. #224-1). A core defect in his opinions, however, is that Dr. Kasper overlooks facts and key evidence about collusive conduct between AirTran and Delta in this case, rendering his methodology flawed and the opinions derived from that methodology properly subject to exclusion under *Daubert*. Moreover, the empirical evidence demonstrates that bag fees did not lead Defendants to lower base fares, meaning that his theoretical opinion does not fit the facts of this case.

Second, Dr. Kasper offers the opinion that AirTran was not Delta's main competitor, but in reaching that opinion, he ignores contemporaneous documents and deposition testimony identifying AirTran as Delta's main competitor, and ignores that AirTran was economically the most important variable in Delta's decision to charge a first bag fee.

For the reasons set forth in Plaintiffs' supporting memorandum, Plaintiffs respectfully request that the Court strike the testimony of Defendant Delta's proffered expert, Daniel Kasper.

This 23rd day of October 2015.

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**CERTIFICATION UNDER L.R. 7.1D**

Pursuant to Northern District of Georgia Local Rule 7.1D, the undersigned counsel hereby certifies that the above and foregoing is a computer document prepared in Times New Roman (14 point) font in accordance with Local Rule 5.1B.

So certified, this 23rd day of October, 2015.

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**CERTIFICATE OF SERVICE**

The undersigned counsel certifies that on this day he filed the foregoing, under seal, with the Clerk of Court and caused the same to be delivered via e-mail to the following attorneys of record:

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