

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

IN RE DOMESTIC AIRLINE TRAVEL ANTITRUST LITIGATION
This Document Relates To: ALL CASES

**MDL Docket No. 2656
Misc. No. 15-1404 (CKK)**

EXPERT STIPULATION AND ORDER

Pursuant to the Court’s Order Regarding Initial Scheduling and Case Management Conference (ECF No. 125) and Scheduling Order Regarding Discovery and Briefing on Motion for Class Certification (ECF No. 152), the parties stipulate that expert disclosures and discovery shall be governed by Federal Rule of Civil Procedure 26 as supplemented and modified below:

1. Discovery of an expert required to provide a report under Rule 26(a)(2)(B) shall not extend to:¹

(a) preliminary work and analysis (*e.g.*, notes, worksheets, outlines, non-final calculations and modeling) created by the expert or persons working with the expert or under the expert’s direction or control, regardless of the form in which they are created, except to the extent the expert relied on facts, data, or assumptions obtained only from such materials in forming an opinion; and

(b) communications between the expert (including persons working with the expert or under the expert’s direction or control), regardless of the form of the communications, and (i) counsel, (ii) other experts (testifying or otherwise), (iii) consultants, (iv) parties, and (v) persons working with the expert or under his or her direction or control, except to the extent the

¹ None of the excluded items shall be required to be maintained or listed on any privilege log.

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expert relied on facts, data, or assumptions obtained only from those communications in forming an opinion.

2. Rule 26(a)(2)(B)(ii) is modified to read: “the facts or data relied on by the witness in forming them” (“Expert Reliance Materials”).

3. Rule 26(b)(4)(C)(ii) is modified to read: “identify facts or data that the party’s attorney provided and that the expert relied on in forming the opinions to be expressed.”

4. The party proffering the expert shall produce Expert Reliance Materials within three business days of service of the expert’s report (initial or otherwise) in the format prescribed in the agreed-upon protocol for production of electronically stored information and hard-copy documents (or in such other format as agreed by the parties). Expert Reliance Materials should include, but not be limited to, any empirical investigations, statistical analyses, regression analyses, programs, input, output, and electronic data sets and compilations in the same manipulable form or format used by the expert (or other underlying materials sufficient to reconstruct the expert’s calculations). Any demonstratives to be offered in connection with an expert's trial or hearing testimony will be produced in advance of that testimony as agreed upon by the parties or ordered by the Court in a pretrial or prehearing order.

5. A party need not produce Expert Reliance Materials that (a) previously have been disclosed or produced or (b) constitute a treatise or other readily accessible public source material; provided that, the party sufficiently identifies the materials so they may be easily located by, for example, reference to control number, deposition exhibit number, or internet website. Upon reasonable request, however, a party shall produce any treatise or other public source material or the relevant part thereof for inspection or, to the extent permissible, copying.

6. No party shall serve a subpoena directed to an expert. As a condition of presenting expert testimony, the parties shall disclose testifying experts, produce expert reports, make experts available for deposition (at agreed-upon places and times), and produce Expert Reliance Materials, all in accordance with the Federal Rules of Civil Procedure and this stipulation.

7. Nothing in this stipulation shall be construed to:

(a) prevent or prohibit any party from asking an expert questions at deposition or trial concerning Expert Reliance Materials or testimony given in the action, any publicly available documents or information, or the substance of the expert's opinions, including, but not limited to, any alternative theories, methodologies, variables, or assumptions that the expert may or may not have considered in forming his or her opinion or preparing a report;

(b) prevent or prohibit any party from asserting the attorney-client privilege, work-product protection, or any other applicable privilege, doctrine, or rule of law;

(c) prevent or prohibit any party from challenging an expert's qualifications or the admissibility of his or her opinion or report; or

(d) expand any party's discovery obligations beyond what is required by the Federal Rules of Civil Procedure.

8. This stipulation shall apply retroactively and prospectively.

Dated: March 10, 2017

Respectfully submitted:

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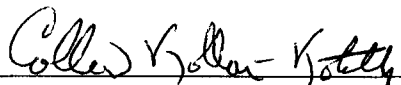
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IT IS SO ORDERED.


COLLEEN KOLLAR-KOTELLY
UNITED STATES DISTRICT JUDGE

March 13, 2017