

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA, et al.,

Plaintiffs,

v.

AMERICAN EXPRESS COMPANY, et al.,

Defendants.

Civil Action No.:  
10-cv-4496 (NGG)(RER)

**JOINT PRETRIAL SUBMISSION REGARDING TRIAL**

As the Court instructed at the March 19, 2014 hearing, the parties have met and conferred regarding trial. The parties have come to agreement on several issues, subject to the Court's approval. There also are a few disputes that we hereby submit to the Court. The parties respectfully request that the Court schedule a conference to discuss these issues.

I. THE PARTIES' AGREEMENTS

A. Notice of Order of Trial Witnesses. The parties will make a good faith effort to provide notice of the particular witnesses the party intends to call on a particular day at least 72 hours in advance. In addition, the Government Plaintiffs will provide American Express with as much advance notice as is practical regarding their intention to call a particular American Express employee on particular trial days, and American Express will bring those employees to testify on those days, unless American Express demonstrates that it is not reasonably possible. If American Express identifies in advance certain dates that it would not be reasonably possible for a particular American Express employee to testify (including the specific reason), the Government Plaintiffs will make a good faith effort to accommodate those scheduling requests.

B. Scope of Cross Examination. If the Government Plaintiffs call an American Express employee who is also on American Express's witness list at trial, American Express may elect to conduct an examination that either (1) is limited to the scope of the Government Plaintiffs' direct examination, in which case American Express may call the same witness to testify during its case-in-chief; or (2) goes beyond the scope of the Government Plaintiffs' direct examination, in which case American Express may not call that same witness to testify during in its case-in-chief.

C. Exchange of Demonstratives. The parties will exchange any demonstratives they expect to use on a given trial day no later than 9 a.m. on the preceding calendar day.

D. Length of the Trial Week. The parties agree to a four-day-per-week trial schedule.

E. Exceptions for Good Cause Shown. Exceptions to the procedures set forth herein may be made for good-cause shown. In the event that a party seeks such relief, it shall meet and confer with the other party to attempt to resolve the issue in good faith before bringing it to the Court's attention.

## II. OPEN ISSUES

Process, requirements and limits for submitting evidence into the trial record.

Dated: April 22, 2014

Respectfully submitted by:

FOR PLAINTIFF THE UNITED STATES  
OF AMERICA

/s/ Ethan C. Glass

CRAIG W. CONRATH  
ETHAN C. GLASS  
U.S. Department of Justice  
Antitrust Division, Litigation III Section  
450 Fifth Street, N.W., Suite 4000  
Washington, DC 20530  
Telephone: (202) 307-0468

FOR PLAINTIFFS STATE OF OHIO AND  
ON BEHALF OF ALL PLAINTIFF STATES

/s/Mitchell L. Gentile

MITCHELL L. GENTILE  
Office of the Ohio Attorney General  
150 East Gay Street, 23rd Floor  
Columbus, OH 43215  
Tel: (614) 466-4328  
Fax: (614) 995-0266

FOR DEFENDANTS AMERICAN  
EXPRESS COMPANY AND AMERICAN  
EXPRESS TRAVEL RELATED  
SERVICES COMPANY, INC.

/s/Kevin J. Orsini

EVAN R. CHESLER  
STUART W. GOLD  
PETER T. BARBUR  
KEVIN J. ORSINI  
CRAVATH, SWAINE & MOORE LLP  
825 Eighth Avenue  
New York, NY 10019

/s/Philip C. Korologos

DONALD L. FLEXNER  
PHILIP C. KOROLOGOS  
ERIC J. BRENNER  
BOIES, SCHILLER & FLEXNER LLP  
575 Lexington Avenue, 7th Floor  
New York, NY 10022