IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA, *et al.*, *Plaintiffs*, *v.* US AIRWAYS GROUP, INC. and AMR CORPORATION, *Defendants*,	Case No. 1:13-cv-01236-CKK (Before Special Master Levie)

DEFENDANTS' REPLY IN SUPPORT OF MOTION TO COMPEL RELEVANT FACTS OBTAINED FROM THIRD-PARTY INTERVIEWS

Plaintiffs acknowledge that Interrogatory 1 seeks only facts and names—yet insist it seeks attorney mental impressions. It does not. It seeks only relevant "factual information" provided by third-party interviewees, and the identities of those interviewees. The government cannot hide these facts behind the work-product doctrine simply because they are recorded in legal memoranda—the memoranda may be protected, but the facts are not. Wright & Miller, Federal Practice & Procedure § 2023; *Hickman v. Taylor*, 329 U.S. 495, 507 (1947) (parties can be compelled to disgorge facts).

Unlike the *Hickman* petitioner—who requested "exact copies" of witness statements and "exact provisions" of oral statements—Defendants do not seek a witness-by-witness reconstruction of attorney questioning. *See United States v. Dean Foods Co.*, 2010 WL 3980185, *3 & n.2 (E.D. Wis. 2010).

The government cites *In re Sealed Case*, but that involved a deposition probing attorney recollections. 856 F.2d 268, 273 (D.C. Cir. 1988). In contrast, the interrogatory here allows the

government "to craft a response" that ensures "its counsel's mental impressions . . . are not reflected in the answer." *Dean Foods* at *3 n.3.

The few rulings going Plaintiffs' way are devoid of reasoning—*see, e.g.*, *Blue Cross/Blue Shield* at 5 ("attorneys conducted this investigation," so the "results are therefore work product"); *Apple* at 1 ("Denied.")—and most of the remaining cases cited by Plaintiffs—unlike here—involve only a small number of identified witnesses where the requesting party could easily reconstruct the missing facts through its own discovery.

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Respectfully submitted,

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