

**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

Trial Commences: November 25, 2013

[PROPOSED] TRIAL PROCEDURES ORDER

In order to administer this civil action in a manner fair to the litigants and consistent with the Parties' interest in completing this litigation in the shortest possible time and at the least possible cost, it is hereby **ORDERED** that the Parties¹ shall comply with each of the directives set forth in this Order.

¹ The Parties are Plaintiffs the United States of America, the State of Arizona, the District of Columbia, the State of Florida, the State of Michigan, the Commonwealth of Pennsylvania, the State of Tennessee, and the Commonwealth of Virginia (collectively, the "Plaintiffs"), and Defendants US Airways Group, Inc. and AMR Corporation (collectively, the "Defendants").

SCHEDULE OF EVENTS AND DEADLINES

Date (2013)	Event / Deadline
November 8	Parties exchange final witness lists
November 12	Parties exchange final exhibit lists Parties exchange deposition designations and designation summaries Parties exchange proposed stipulations
November 15	Parties exchange amendments to final witness lists Parties exchange amendments to final exhibit lists Parties exchange objections and counter-designations for depositions Parties file trial briefs Amici file briefs Parties file non-Daubert motions in limine Parties exchange supplemental and/or rebuttal expert reports (per prior order)
November 17	Parties exchange objections to exhibit lists
November 18	Parties meet and confer re: objections to exhibit lists Parties exchange objections to counter-designations for depositions Parties file oppositions to non-Daubert motions in limine
November 20	Parties file final witness lists as amended Parties file replies in support of non-Daubert motions in limine Parties file final exhibit lists as amended Parties file stipulations Close of expert discovery (per prior order)
November 21	Pretrial conference at 10:30 a.m. (per prior order) Parties lodge joint compilation of all deposition designations (noting outstanding objections and reflecting agreed confidentiality redactions) with Chambers Parties lodge electronic copies of trial exhibits (reflecting agreed confidentiality redactions) with Chambers
November 22	Parties file responses to trial briefs and/or amicus briefs
November 25	First day of trial (per prior order)
December 16 or 17	Estimated last day of trial

Date (2013)	Event / Deadline
December 21 (est.)	Parties file proposed findings of fact and conclusions of law five days after the last day of trial (but if the fifth day is a federal holiday, then six days after the conclusion of trial)
December 30 (est.)	Parties file post-trial briefs, including oppositions to proposed findings of fact and conclusions of law fourteen days after the last day of trial (but if the fourteenth day is a federal holiday, then fifteen days after the conclusion of trial) [If the Court is amenable, Parties waive the filing of replies to proposed findings of fact and conclusions of law.]
January 6, 2014	Closing arguments

OTHER PROVISIONS

1. Calculation of Time

a) The term “day(s),” as used in this Order, refers to calendar days.

2. Trial Briefs and Pretrial Conference

a) By the date listed in the Schedule of Events and Deadlines (“Schedule”), each side shall file a trial brief. These briefs shall be in lieu of the pretrial statements contemplated in Local Civil Rule 16.5. Each side’s brief shall not exceed 50 pages of text. Each side may file one 10-page brief responding to the opposing side’s brief and/or any briefs filed by amici by the date listed in the Schedule.

b) A final Pretrial Conference will be held on the date and at the time listed in the Schedule.

3. Post-Trial Briefing

a) On the dates listed in the Schedule, each side (or each Party) shall file proposed findings of fact and conclusions of law. Within 24 hours of filing, each side (or each Party) shall deliver to Chambers a CD or DVD containing an electronic copy of their proposed findings of fact and conclusions of law hyperlinked to the authorities relied upon and, to the extent feasible, admitted exhibits and trial testimony.

b) The findings of fact shall set forth in paragraph form, separately numbered, all factual contentions relied upon by each Party in support of its claims or defenses and shall be free of pejorative language or argument.

c) Conclusions of law shall be supported by appropriate citation to legal authority.

d) On the date specified in the Schedule, each side (or each Party) shall file a document incorporating (1) a post-trial brief and (2) an opposition to the opposing side’s (or

opposing Parties') findings of fact and conclusions of law. The brief component of this document shall not exceed 25 pages of text.

4. **Motions in Limine**

- a) The timing of motions in limine shall be governed by the Schedule.
- b) Motions in limine and oppositions thereto shall not exceed ten pages of text, and replies shall not exceed five pages of text.

5. **Daubert Motions and Experts**

- a) *Daubert* motions, if any, shall be filed not later than 72 hours after the filing of the written direct testimony of the expert(s) to which they pertain, and any opposition shall be filed not later than 72 hours of the filing of the motion.
- b) *Daubert* motions and oppositions thereto shall not exceed fifteen pages of text, and replies shall not exceed seven pages of text.
- c) Experts designed by a Party shall be entitled to keep one copy of their expert report(s), deposition testimony, and trial testimony following the conclusion of this matter.

6. **Exhibits**

- a) On the date listed in the Schedule, the Parties shall exchange final lists of exhibits to be offered at trial (subject to amendment as described in the following subsection), other than solely for impeachment or rebuttal. No side's list shall exceed [Defendants' proposal: 400 / Plaintiffs' proposal: 800] exhibits.
- b) On the date listed in the Schedule, the Parties shall exchange amendments to their final lists of exhibits to be offered at trial, other than solely for impeachment or rebuttal. Again, no side's list shall exceed [Defendants' proposal: 400 / Plaintiffs' proposal: 800] total exhibits.

c) Upon request, a Party shall provide a copy of any exhibit on its exhibit list to another Party.

d) On the date listed in the Schedule, the Parties shall exchange any objections to the opposing side's exhibits. On the date listed in the Schedule, the Parties shall meet and confer about these objections.

e) On the date listed in the Schedule, the Parties shall file a list of all exhibits to be used at trial, other than solely for impeachment or rebuttal, as amended.

f) No Party shall be permitted to offer any exhibit at trial that is not disclosed on its final exhibit list as amended without leave of Court for good cause, unless it is offered solely for impeachment or rebuttal.

g) Procedures to Provide Exhibits

i. On the date listed in the Schedule, each Party shall deliver to Chambers one or more CDs/DVDs containing electronic copies of the exhibits listed by that Party. Submitted exhibits shall include all agreed confidentiality redactions.

ii. For any witness being called for live testimony, the calling Party must provide, at the time the witness takes the stand to testify, binders of the exhibits the calling Party intends to use during the witness's direct examination during that day of trial. Two copies shall be provided to the Court, one copy shall be provided for use by the witness, and three copies shall be provided to the opposing Parties.

iii. Five days following the last day of testimony, Parties shall jointly deliver to Chambers one or more CDs/DVDs containing electronic copies of all non-sealed exhibits admitted into evidence, and, separately, one or more CDs/DVDs containing electronic copies of all sealed exhibits admitted into evidence.

7. **Deposition Designations and Counter-Designations**

a) On the date listed in the Schedule, the Parties shall exchange designations of deposition testimony to be offered at trial, other than solely for impeachment or rebuttal, and a one-page summary of each deposition designated.

b) On the date listed in the Schedule, the Parties shall exchange counter-designations of deposition testimony and any objections to the opposing side's deposition designations.

c) On the date listed in the Schedule, the Parties shall exchange objections to the opposing side's counter-designations.

d) On the date listed in the Schedule, the offering Party shall file the combined deposition designations and counter-designations and objections thereto. Only the portions of the transcript that have been designated or counter-designated shall be filed. To accompany the designations, the offering Party shall file one or more CDs or DVDs containing copies of all exhibits cited in the designated portions of the deposition testimony but no other exhibits. All designated transcripts, along with their exhibits, shall include all agreed confidentiality redactions.

e) No Party shall be permitted to offer any deposition testimony at trial that was not disclosed before commencement of trial without leave of Court for good cause, unless it is offered solely for impeachment or rebuttal.

8. **Witness Lists and Testimony**

a) On the date listed in the Schedule, the Parties shall exchange final witness lists (subject to amendment as described in the following subsection). If a listed witness has not previously been deposed by the opposing side in this litigation, the opposing side is entitled to take that witness's deposition before he or she testifies.

b) On the date listed in the Schedule, the Parties shall exchange amendments to their final witness lists.

c) On the date listed in the Schedule, the Parties shall file final witness lists as amended. These witness lists shall note the names of the Parties' witnesses and their affiliation/title.

d) Direct testimony shall be submitted by written declaration or affidavit, in a question and answer format, unless the witness is an "adverse" witness or a non-party who did not cooperate in the drafting of his/her written direct testimony, in which case the witness shall appear live.

e) A witness submitting written direct testimony must appear live for cross-examination, unless the opposing side declines to examine the witness, in which case the witness need not appear at all.

f) Written direct testimony must be exchanged between Parties by 8:00 a.m. three days before the witness appears for cross examination, and a copy of such testimony, reflecting unresolved objections, will be filed with the Court by 5:00 p.m. two days before the witness appears for cross examination.

g) For live witnesses, a Party must notify the other side of the witnesses it will call to testify and, to the extent practical, the length of the witnesses' expected testimony three days before that testimony is expected.

h) Within 24 hours of receiving notice from an opposing Party that the opposing Party intends to call that Party's witness adversely, the recipient Party shall provide the noticing Party a list of the general subjects about which the witness is expected to testify during live testimony. After that witness's adverse examination is complete, the witness shall be tendered

for examination by the opposing Party. Consistent with Federal Rule of Evidence 611(c), such examination shall be without “scope” limitations, so that the witness need appear at trial on only one occasion.

i) No Party shall be permitted to call any witness who was not disclosed on its final witness list as amended without leave of the Court for good cause, unless he or she is called solely for impeachment or rebuttal.

9. **Demonstrative Exhibits**

a) Pursuant to the Scheduling and Case Management Order, demonstrative exhibits, other than those to be used by experts, do not need to be included on exhibit lists, but unless otherwise agreed or ordered, need to be provided to trial counsel for the Parties at least 24 hours before any such exhibit may be introduced, or otherwise used, at trial.

b) Demonstratives must be marked for identification as trial exhibits even if not moved into evidence.

10. **Trial Time**

a) Trial is expected to last approximately 10-12 court days. Trial will be held from 9:00 a.m. to 5:00 p.m. on November 25-27, December 2-6, December 9, part of December 10, December 13, and, if necessary, December 16-20 or such other dates and times as the Court shall determine.

b) *Examination time:* Each side shall be entitled to [Defendants’ proposal: 30 hours of examination time / Plaintiffs’ proposal: an equal portion of the examination time allowed to Parties in the current trial schedule] (whether direct, cross, re-direct, or re-cross). Opening and closing time limits are in addition to the aforementioned examination time limit.

c) *Openings and closings:* The Parties shall have 90 minutes per side to present their opening statements, with this time split between the various Parties per side as they see fit. The date and time of closing arguments shall be determined by the Court. Notwithstanding Section 9(a) (Demonstrative Exhibits), the Parties are not required to exchange demonstratives to be used in opening statements or closing arguments.

Dated: October __, 2013

HON. COLLEEN KOLLAR-KOTELLY
UNITED STATES DISTRICT JUDGE