

**UNITED STATES JUDICIAL PANEL**  
**on**  
**MULTIDISTRICT LITIGATION**

**IN RE: DOMESTIC AIRLINE TRAVEL  
ANTITRUST LITIGATION**

MDL No. 2656

**ORDER DENYING TRANSFER**

**Before the Panel:**\* Plaintiffs in the adversary proceeding listed on Schedule A (*Fjord*) move under 28 U.S.C. § 1407(c) to transfer *Fjord* from the Bankruptcy Court of the Southern District of New York to the District of the District of Columbia for inclusion in MDL No. 2656. Defendants American Airlines Group Inc., American Airlines, Inc., Delta Air Lines, Inc., Southwest Airlines Co., United Continental Holdings, Inc., and United Airlines, Inc. (collectively, the Airlines) oppose the motion.

The actions in MDL No. 2656 share factual questions arising out of an alleged conspiracy by defendants—the nation’s four largest airlines with an alleged collective market share of approximately 80%—to fix prices for domestic airline tickets by keeping domestic flight capacity artificially low. The moving plaintiffs argue that they have sought to amend their complaint in *Fjord* to allege similar price fixing claims under the Sherman Act, and thus *Fjord* will share common questions of fact with the actions in MDL No. 2656.

Plaintiffs’ reliance on a proposed amended complaint to establish common questions of fact dooms their transfer motion. The operative complaint in *Fjord* does not assert a claim under the Sherman Act relating to an alleged conspiracy by the Airlines to fix prices for domestic airline tickets by restricting domestic flight capacity. Rather, plaintiffs challenge the merger of American Airlines and US Airways under Section 7 of the Clayton Act—a very different dispute from that being litigated in MDL No. 2656. Such common factual issues as may exist—primarily, allegations that the result of the merger would be to reduce competition and thus facilitate collusive behavior with respect to capacity restrictions and fare increases—are far outweighed by the substantial differences between *Fjord* and the actions in the MDL. While the proposed amended complaint would add Sherman Act price-fixing claims relating to the alleged conspiracy at the heart of this MDL, we decline to transfer *Fjord* to the MDL on the basis of a hypothetical complaint.

Additionally, the procedural posture of *Fjord* counsels against transfer. Plaintiffs filed this adversary proceeding more than two years ago, and most pretrial proceedings—such as discovery—have been completed. The Bankruptcy Court has invested significant time and resources

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\* Judge Charles R. Breyer took no part in the decision of this matter. Additionally, certain Panel members who could be members of the putative classes in this litigation have renounced their participation in these classes and have participated in this decision.

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to adjudicate plaintiffs' claims. Transfer at this point would disrupt the proceedings in *Fjord* and unnecessarily inject additional factual and legal issues into the centralized proceedings.

IT IS THEREFORE ORDERED that the motion to transfer the action listed on Schedule A is denied.

PANEL ON MULTIDISTRICT LITIGATION



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Sarah S. Vance  
Chair

Marjorie O. Rendell  
Ellen Segal Huvelle  
Catherine D. Perry

Lewis A. Kaplan  
R. David Proctor

**IN RE: DOMESTIC AIRLINE TRAVEL  
ANTITRUST LITIGATION**

MDL No. 2656

**SCHEDULE A**

Southern District of New York

FJORD, ET AL. v. AMR CORPORATION, ET AL., Bky. Adv. No. 1:13-01392