

**UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT**

AMERICAN AIRLINES, INC. and AMR CORP.,	x	
	:	
Petitioners,	:	
	:	
v.	:	Docket Nos. 06-1275-ag(L) and Consolidated Proceedings
	:	
TRANSPORTATION SECURITY ADMINISTRATION, DEPARTMENT OF HOMELAND SECURITY, and the UNITED STATES,	:	<u>This document relates to ALL PROCEEDINGS</u>
	:	
Respondents.	:	
	x	

**COUNTER-NOTICE OF ORDER OF JUDICIAL PANEL ON
MULTIDISTRICT LITIGATION**

Petitioners American Airlines, Inc. and AMR Corp. (collectively “American”) hereby respond to the “Notice of the Consolidation Order of the Judicial Panel on Multidistrict Litigation” (“Notice”) filed by counsel to Petitioner Industrial Risk Insurer (“IRI”). American filed a petition in the United States Court of Appeals for the District of Columbia Circuit that has been consolidated in this Court pursuant to a random designation of the Judicial Panel on Multidistrict Litigation.

1. IRI asserts that the April 18, 2006 Order of the Judicial Panel on Multidistrict Litigation (“Panel Order”) (attached as Exhibit A) is directly relevant to its Response to a pending Motion to Transfer filed by the Transportation Security Administration, Department of Homeland Security (“TSA”). But as the Order itself makes clear, the Panel was not in any way making a finding on the

appropriateness of this Court or the Court of Appeals for the District of Columbia Circuit as a forum for review of any Order issued by the Transportation Security Administration, Department of Homeland Security (“TSA”). Instead, the Panel was merely “randomly select[ing],” literally by lottery, among the courts in which petitions for review of the TSA’s March 17, 2006 Order had been filed within ten days of the issuance of the Order. Indeed, the Order is signed by a Deputy Clerk in her capacity as “Random Selector.” *See* Judicial Panel on Multidistrict Litigation Rule of Procedure 17.1.

2. TSA issued two closely-related Final Orders. As to the first, dated February 7, 2006, American filed the first petition for review on March 17, 2006 in the United States Court of Appeals for the District of Columbia Circuit. Under 28 U.S.C. § 2112, that Court therefore became the presumptive forum for review of that order. The TSA has indicated that it intends to file the record for review of that Order in the District of Columbia Circuit. As to the second, dated March 17, 2006, American filed a petition for review on March 20, 2006 in the D.C. Circuit, on the same day that IRI filed a petition for review in this Court. Because multiple petitions for review of the March 17, 2006 Order had been filed in two different Circuits within ten days of the issuance of the Order, TSA notified the Judicial Panel on Multidistrict Litigation. The Judicial Panel issued an order on April 18, 2006 indicating that it had selected this Court by lottery for review of the TSA’s March 17, 2006 Final Order and consolidated the petitions, including the petition

American filed in the D.C. Circuit under docket number 06-1100, relating to the March 17, 2006 Final Order. The Panel Order did not, and could not, affect the question of where the February 7, 2006 Final Order would be reviewed and represents nothing more than a chance determination of the court for review of the March 17, 2006 Final Order.

3. A motion to transfer the petitions filed in the D.C. Circuit seeking review of both the February 7, 2006 and March 17, 2006 Final Orders to this Court was filed in the D.C. Circuit on April 4, 2006 and is now fully briefed and awaiting decision. Once the D.C. Circuit has decided that motion, the issue of which circuit should review the February 7, 2006 and March 17, 2006 Final Orders will be *res judicata*. As a matter of housekeeping, at that point any petitions that need to be transferred in accordance with the D.C. Circuit's decision (including those relating to the March 17, 2006 Final Order that were directed to this Court by virtue of the lottery system of the Judicial Panel on Multidistrict Litigation) can be.
4. TSA filed a motion to transfer the petitions seeking review of the February 7, 2006 Final Order originally filed in this Court to the D.C. Circuit. In response to that motion, IRI's counsel stated:

To the extent the DC Transfer Motion is granted, it would be a waste of judicial resources to round-trip the petitions arising out of the 2/7 Order to the DC Circuit and back again, as TSA suggests. To the extent the DC Transfer Motion is denied, petitioners will notify this Court

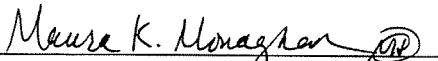
promptly, in which case we will lodge no opposition to transfer of the petitions from the 2/7 Order.

Response to Transportation Security Administration's Motion to Transfer, No. 06-1275-ag(L), United States Court of Appeals for the Second Circuit. All parties thus appear to accept the logical approach of awaiting the D.C. Circuit's ruling on the Motion to Transfer and then making any housekeeping transfers as needed. The Panel Order, which does not in any way represent an evaluation of the appropriateness of the respective courts for review of the TSA's Orders, does nothing to alter the advisability of that approach.

Dated: New York, New York
April 28, 2006

Respectfully submitted,

DEBEVOISE & PLIMPTON LLP

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EXHIBIT A

APR 18 2006

FILED
CLERK'S OFFICE

DOCKET NO. RTC-83

BEFORE THE JUDICIAL PANEL ON MULTIDISTRICT LITIGATION

IN RE TRANSPORTATION SECURITY ADMINISTRATION, FINAL ORDER ON
REQUESTS FOR IDENTIFICATION OF SENSITIVE SECURITY INFORMATION IN
DOCUMENTS SUBMITTED AS PART OF THE SECOND WAVE OF DISCOVERY IN "IN
RE SEPTEMBER 11 LITIGATION," 21 MC 97 (S.D.N.Y.), ISSUED ON MARCH 17, 2006

American Airlines, Inc. v. TSA, DC Circuit, No. 06-1100
Argenbright Security, Inc. v. TSA, DC Circuit, No. 06-1101
Huntleigh USA, Inc. v. TSA, DC Circuit, No. 06-1103
Boeing Co. v. TSA, DC Circuit, No. 06-1108
Globe Aviation Service Corp. v. TSA, DC Circuit, No. 06-1107
US Airways, Inc. v. TSA, DC Circuit, No. 06-1114
Industrial Risk Insurers v. TSA, Second Circuit, No. 06-1279
World Trade Center Properties LLC v. TSA, Second Circuit, No. 06-1320
Ugolyn v. TSA, Second Circuit, No. 06-1339
Gabrielle v. TSA, Second Circuit, No. 06-1341
Greater New York Mutual Insurance Co. v. TSA, Second Circuit, No. 06-1356
Insurance Co., of Greater New York v. TSA, Second Circuit, No. 06-1358
Vadhan v. TSA, Second Circuit, No. 06-1368
Speisman v. TSA, Second Circuit, No. 06-1516

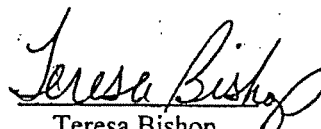
CONSOLIDATION ORDER

The Transportation Security Administration issued an order dated March 17, 2006. On April 18, 2006, the Panel filed, pursuant to 28 U.S.C. § 2112(a)(3), a notice of multicircuit petitions for review of that order. The notice included 14 petitions for review pending in two circuit courts of appeal as follows: District of Columbia Circuit and Second Circuit.

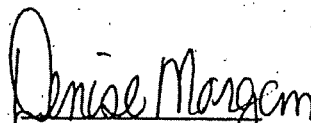
The Panel has randomly selected the United States Court of Appeals for the Second Circuit in which to consolidate these petitions for review.

IT IS THEREFORE ORDERED that, pursuant to 28 U.S.C. § 2112(a)(3), the above-captioned petitions for review are consolidated in the Second Circuit and that this circuit is designated as the circuit in which the record is to be filed pursuant to Rules 16 and 17 of the Federal Rules of Appellate Procedure.

FOR THE PANEL:



Teresa Bishop
Deputy Clerk
Random Selector



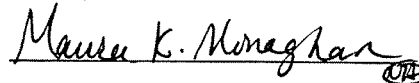
Denise Morgan
Deputy Clerk
Witness

CERTIFICATE OF SERVICE

I, Maura K. Monaghan, an attorney with the firm of Debevoise & Plimpton LLP, attorneys for Petitioners American Airlines, Inc. and AMR Corporation, certify:

I am over eighteen (18) years of age. On this 28th day of April 2006, I caused to be served by Federal Express to the parties on the attached service list the foregoing Counter-Notice of Order of Judicial Panel on Multidistrict Litigation.

I certify under the penalty of perjury that the foregoing is true and correct.

Handwritten signature of Maura K. Monaghan in cursive script, with a circled initial 'M' at the end.

Maura K. Monaghan

Dated: New York, New York
April 28, 2006

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