

Judge Moots US Airways' Relief Claim In Antitrust Ticket Row

By **Linda Chiem**

Law360, New York (September 8, 2015, 4:52 PM ET) -- A New York federal judge on Friday tossed US Airways Inc.'s claim for declaratory judgment in its antitrust suit accusing Sabre Holdings Corp. of inflating booking fees after finding that the airlines' claim was moot, but rejected Sabre's offer to pay \$20 to dodge all remaining claims.

U.S. District Judge Lorna G. Schofield granted Sabre's motion to dismiss the airlines' claim for declaratory judgment, agreeing that US Airways' claim for relief was moot because it relates to past actions that will not impact the legal relations or rights of the parties. Specifically, the 2011 contract the parties had inked carving out the booking fees the airlines would pay has since expired and has no effect on the parties' current legal statuses, according to court documents.

"US Airways has stated that the declaratory judgment it seeks is 'purely retrospective' and relates to 'past injuries', stemming from an expired contract, which is the basis for its vertical antitrust claims, and Sabre's pre-settlement agreement conduct that is the basis for its horizontal, GDS-conspiracy claim," Judge Schofield said in the order. "Any potential impact that a declaratory judgment might have on the parties' future legal relationship in 2019 and later is just that — potential and speculative."

In order for a declaratory judgment claim to satisfy the case-or-controversy requirement, the dispute must be "definite and concrete, touching the legal relations of parties having adverse legal interests ... as distinguished from an opinion advising what the law would be upon a hypothetical state of facts," according to the order.

"As US Airways' claim for declaratory relief is not based on a live case or controversy and will not impact the parties' legal relationship, it is moot," the judge said.

However, the judge declined, for now, to enter a judgment against Sabre based on the ticket distributor's July offer to pay \$20 to defeat what's left of US Airways' antitrust suit, which was first filed in 2011, without admitting any liability on all of the airlines' remaining available claims. Sabre can renew the offer though, according to the order.

"Under US Airways' argument, whether or not Sabre's offer on July 9, 2015, provides complete relief, there would be complete relief if such an offer is made now as the declaratory judgment relief is dismissed," the judge said.

The judge directed US Airways to file a letter within one week of the date of the opinion, stating

whether it intends to move to amend its complaint to restore its full request for damages.

Judge Schofield in January had already trimmed down most of US Airway's antitrust suit, ruling that the airline couldn't seek certain damages from Sabre because its claims were barred by both the statute of limitations and an earlier settlement agreement between Sabre and American Airlines parent AMR Corp., which merged with US Airways. That ruling limited US Airways' surviving claims to declaratory relief, damages and costs, according to the order.

In granting Sabre summary judgment on certain claims that month, Judge Schofield ruled that US Airways was not allowed to seek damages for conduct that occurred before February 2011 because of the statute of limitations on the airline's antitrust claims. She also ruled that the airline couldn't seek damages or other relief for conduct that occurred or would occur after October 2012, when its now parent American Airlines settled its own monopoly claims with Sabre.

A Sabre spokesman declined to comment on ongoing litigation. A spokesman for US Airways said Tuesday that the company is reviewing the ruling and will respond this week.

Sabre is represented by Chris Lind, Karma M. Giulianelli, Sean C. Grimsley and Andrew MacNally of Bartlit Beck Herman Palenchar & Scott LLP, George S. Cary, Steven J. Kaiser, Kenneth Reinker, Bradley Justus, Carl Lawrence Malm and Lev Dassin of Cleary Gottlieb Steen & Hamilton LLP and Joseph Kattan of Gibson Dunn.

US Airways is represented by Charles P. Diamond, Andrew J. Frackman, Katrina M. Robson and Madhu Pocha of O'Melveny & Myers LLP.

The case is US Airways Inc. v. Sabre Holdings Corp. et al., case number 1:11-cv-02725, in the U.S. District Court for the Southern District of New York.

-- Additional reporting by Maya Rajamani and Aaron Vehling. Editing by Patricia K. Cole.