

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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: IN RE SEPTEMBER 11 LITIGATION : 21 MC 97 (AKH)
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: : **JURY TRIAL DEMANDED**
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MASTER ANSWER OF CROSS-CLAIM DEFENDANTS AMR CORPORATION AND AMERICAN AIRLINES, INC. TO THE PORT AUTHORITY OF NEW YORK AND NEW JERSEY, WTC RETAIL LLC AND THE PORT AUTHORITY TRANS-HUDSON CORPORATION’S CROSS-CLAIMS AGAINST CERTAIN DEFENDANTS IN PLAINTIFFS’ AMENDED FLIGHT 11 MASTER LIABILITY COMPLAINT

Cross-Claim Defendants AMR Corporation (“AMR”) and American Airlines, Inc. (“American”), by and through their attorneys, Condon & Forsyth LLP and Debevoise & Plimpton LLP, answer Defendant and Cross-Claim Plaintiff The Port Authority of New York and New Jersey (hereinafter “The PANYNJ”), and Additional Cross-Claim Plaintiffs WTC Retail LLC (hereinafter “WTCR”) and The Port Authority Trans-Hudson Corporation’s (hereinafter “PATH”) Cross-Claims Against Certain Defendants in Plaintiffs’ Amended Flight 11 Master Liability Complaint (the “Cross-Claims”) as follows:

PRELIMINARY STATEMENT

1. AMR and American deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraphs 1 and 2 of the Cross-Claims.
2. AMR and American deny all allegations set forth in paragraphs 3, 4, 5, and 6, except AMR and American do not dispute that terrorists deliberately seized control of American Flight 11 and intentionally crashed the aircraft into One World Trade Center, which subsequently collapsed, and that the terrorists’ actions resulted in personal injuries, loss of life,

and damage to property. AMR and American leave all questions of law to be decided by the Court.

JURISDICTION

3. AMR and American deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraphs 7 and 8, except AMR and American do not dispute that Public Law 107-42, “The Air Transportation Safety And System Stabilization Act,” as amended by Public Law 107-71, “The Aviation and Transportation Security Act,” creates original and exclusive jurisdiction in the United States District Court for the Southern District of New York for all actions brought for claims resulting from or relating to the terrorist-related aircraft crashes of September 11, 2001. AMR and American leave all questions of law to be decided by the Court.

PARTIES TO THE CROSS-CLAIMS

CROSS-CLAIM PLAINTIFFS

4. AMR and American deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraphs 9, 10 and 11. AMR and American leave all questions of law to be decided by the Court.

CROSS-CLAIM DEFENDANTS

5. AMR and American admit the allegations set forth in paragraphs 12 and 13.

6. The allegations in paragraphs 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35 and 36 are not directed to AMR and American; therefore, AMR and American make no response to them. To the extent those allegations are intended to or can be construed to state a claim against AMR or American, they are denied.

**AS AND FOR A FIRST CROSS-CLAIM AGAINST
THE CROSS-CLAIM DEFENDANTS**

7. Answering paragraph 37, AMR and American repeat, reiterate, and reallege each allegation, admission, and denial in paragraphs 1 through 6 of this Answer with the same force and effect as if set forth in full herein.

8. AMR and American deny the allegations set forth in paragraphs 38 and 39. AMR and American leave all questions of law to be decided by the Court.

**AS AND FOR A SECOND CROSS-CLAIM AGAINST
THE CROSS-CLAIM DEFENDANTS**

9. Answering paragraph 40, AMR and American repeat, reiterate, and reallege each allegation, admission, and denial in paragraphs 1 through 8 of this Answer with the same force and effect as if set forth in full herein.

10. AMR and American deny the allegations set forth in paragraph 41. AMR and American leave all questions of law to be decided by the Court.

**AS AND FOR A THIRD CROSS-CLAIM AGAINST
THE CROSS-CLAIM DEFENDANTS**

11. Answering paragraph 42, AMR and American repeat, reiterate, and reallege each allegation, admission, and denial in paragraphs 1 through 10 of this Answer with the same force and effect as if set forth in full herein.

12. AMR and American deny all allegations set forth in paragraphs 43, 44 and 45, except AMR and American do not dispute that terrorists deliberately seized control of American Flight 11 and intentionally crashed the aircraft into One World Trade Center, which subsequently collapsed and that the terrorists' actions resulted in personal injuries, loss of life, and damage to property. AMR and American leave all questions of law to be decided by the Court.

FIRST AFFIRMATIVE DEFENSE

13. The Cross-Claims fail to state a claim upon which relief can be granted.

SECOND AFFIRMATIVE DEFENSE

14. Public Law 107-42, "The Air Transportation Safety And System Stabilization Act," as amended by Public Law 107-71, "The Aviation and Transportation Security Act," provides an exclusive federal cause of action for all claims arising from the terrorist-related aircraft crashes of September 11, 2001.

15. To the extent Cross-Claim Plaintiffs assert causes of action other than that provided for by this legislation, those causes of action must be dismissed as a matter of law.

THIRD AFFIRMATIVE DEFENSE

16. Cross-Claim Plaintiffs' alleged damages were caused by the unforeseeable, intervening, and/or superseding criminal acts of third parties who were not under the care, custody, control, or supervision of AMR or American; therefore, AMR and American cannot be held liable for Cross-Claim Plaintiffs' alleged damages.

FOURTH AFFIRMATIVE DEFENSE

17. The Federal Aviation Act of 1958 (Public Law 5-726, 72 Stat. 731, formerly codified as 49 U.S.C. §1301 et seq. now recodified and incorporated into 49 U.S.C. §40101 et seq.), and the federal regulations promulgated pursuant thereto, establish the uniform and exclusive standards that air carriers must follow for aviation safety and security and these federal standards preempt State law standards governing flight operations, passenger screening, maintenance, inspection, flight crew training and in-flight security procedures which Cross-Claim Plaintiffs and Plaintiffs allege that AMR and American violated.

18. AMR's and American's compliance with these federal standards preclude a finding of liability against them.

FIFTH AFFIRMATIVE DEFENSE

19. Any of Cross-Claim Plaintiffs' claims that relate to rates, routes, and services provided by AMR or American are expressly preempted by 49 U.S.C. §41713.

SIXTH AFFIRMATIVE DEFENSE

20. The alleged damages complained of were caused by the negligence or intentional misconduct of parties other than AMR and American and for whom AMR and American are not responsible; therefore, AMR and American are not liable to Cross-Claim Plaintiffs or, in the alternative, AMR's and American's liability to Cross-Claim Plaintiffs, if any, should be reduced in accordance with applicable law.

SEVENTH AFFIRMATIVE DEFENSE

21. Cross-Claim Plaintiffs lack capacity and/or standing to maintain this action.

EIGHTH AFFIRMATIVE DEFENSE

22. The alleged damages complained of were not proximately caused by any negligence or culpable conduct on the part of AMR or American, their agents, or employees.

NINTH AFFIRMATIVE DEFENSE

23. AMR and American are not liable to Cross-Claim Plaintiffs because AMR and American complied with all applicable government regulations in effect at the time of the events described in the Cross-Claims.

TENTH AFFIRMATIVE DEFENSE

24. Cross-Claim Plaintiffs' claims based on common law or statutory law of the individual States requiring air carriers to implement security procedures that are different from or inconsistent with the obligations imposed by the Federal Aviation Act of 1958 (Public Law 5-726, 72 Stat. 731, formerly codified as 49 U.S.C. § 1301 et seq. and now recodified and incorporated as 49 U.S.C. § 40101 et seq.) and the federal regulations promulgated pursuant thereto are barred by Public Law 107-42, "The Air Transportation Safety And System Stabilization Act," as amended by Public Law 107-71, "The Aviation and Transportation Security Act."

ELEVENTH AFFIRMATIVE DEFENSE

25. Cross-Claim Plaintiffs' claims based on common law or statutory law of the individual States requiring air carriers to implement security procedures that are different from or inconsistent with the obligations imposed by the Federal Aviation Act of 1958 (Public Law 5-726, 72 Stat. 731, formerly codified as 49 U.S.C. § 1301 et seq. and now recodified and incorporated as 49 U.S.C. § 40101 et seq.) and the federal regulations promulgated pursuant thereto are barred since compliance with those state laws would constitute an unconstitutional burden on interstate air commerce.

TWELFTH AFFIRMATIVE DEFENSE

26. Pursuant to Public Law 107-42, "The Air Transportation Safety And System Stabilization Act," as amended by Public Law 107-71, "The Aviation and Transportation Security Act," recovery by Cross-Claim Plaintiffs and Plaintiffs, if any, should be reduced by any collateral source payment that has been or will be paid to Cross-Claim Plaintiffs and Plaintiffs in accordance with Section 4545(c) of the New York Civil Practice Law and Rules or

in accordance with such similar or counterpart principles as may be derived by this Court from New York law.

THIRTEENTH AFFIRMATIVE DEFENSE

27. Pursuant to Public Law 107-42, “The Air Transportation Safety And System Stabilization Act,” as amended by Public Law 107-71, “The Aviation and Transportation Security Act,” AMR’s and American’s liability, if any, must be limited in accordance with the provisions of Article 16 of the New York Civil Practice Law and Rules or in accordance with such similar or counterpart principles as may be derived by this Court from New York law.

FOURTEENTH AFFIRMATIVE DEFENSE

28. Pursuant to Public Law 107-42, “The Air Transportation Safety And System Stabilization Act,” as amended by Public Law 107-71, “The Aviation and Transportation Security Act,” if Cross-Claim Plaintiffs or Plaintiffs release or enter into a covenant not to sue or enforce a judgment with any other persons claimed to be liable for Cross-Claim Plaintiffs’ or Plaintiffs’ damages, the amount recoverable against AMR and American must be reduced in accordance with Section 15-108 of New York’s General Obligations Law or in accordance with such similar or counterpart principles as may be derived by this Court from New York law.

FIFTEENTH AFFIRMATIVE DEFENSE

29. Pursuant to Public Law 107-42, “The Air Transportation Safety And System Stabilization Act,” as amended by Public Law 107-71, “The Aviation and Transportation Security Act,” if Plaintiffs have filed claims with the “September 11th Victims Compensation Fund of 2001,” Plaintiffs are barred from filing a civil action to recover damages sustained as a result of the terrorist-related aircraft crashes of September 11, 2001; and Cross-Claim Plaintiffs are barred from recovering any or all of the damages that Cross-Claim Plaintiffs paid to Plaintiffs

who were barred from filing a civil action to recover damages sustained as a result of the terrorist-related aircraft crashes of September 11, 2001.

SIXTEENTH AFFIRMATIVE DEFENSE

30. Since AMR or American were not in actual possession or control of the aircraft at the time of the crash, AMR's and American's liability is limited pursuant to 49 U.S.C.A. § 44112 (2002).

SEVENTEENTH AFFIRMATIVE DEFENSE

31. Public Law 107-42, "The Air Transportation Safety And System Stabilization Act," as amended by Public Law 107-71, "The Aviation and Transportation Security Act," limits the amount of damages recoverable from AMR and American to American's liability insurance coverage.

EIGHTEENTH AFFIRMATIVE DEFENSE

32. The Cross-Claims and all causes of action therein should be dismissed on the ground that Cross-Claim Plaintiffs have failed to join all necessary and indispensable parties.

NINETEENTH AFFIRMATIVE DEFENSE

33. The Cross-Claims should be dismissed for insufficiency of service of process.

TWENTIETH AFFIRMATIVE DEFENSE

34. The Cross-Claims are barred by the applicable statute of limitations.

TWENTY-FIRST AFFIRMATIVE DEFENSE

35. AMR and American owed no legal duty to the ground damage Cross-Claim Plaintiffs.

TWENTY-SECOND AFFIRMATIVE DEFENSE

36. To the extent Cross-Claim Plaintiffs or Plaintiffs seek to recover for business interruption losses unaccompanied by property damage, all claims based on such losses should be dismissed.

TWENTY-THIRD AFFIRMATIVE DEFENSE

37. The imposition of punitive damages in this case would violate the Due Process Clauses of the Fifth and Fourteenth Amendments to the United States Constitution and of Article I, Section 6 of the New York State Constitution because the standards for determining liability for punitive damages and the standards for determining the amount of punitive damages in New York are unduly vague and subjective, and permit retroactive, random, arbitrary and capricious, excessive, and disproportionate punishment that serves no legitimate government interest.

TWENTY-FOURTH AFFIRMATIVE DEFENSE

38. The imposition of punitive damages in this case would violate the Due Process Clauses of the Fifth and Fourteenth Amendments to the United States Constitution and of Article I, Section 6 of the New York State Constitution because New York's post-verdict review procedures for scrutinizing punitive damage verdicts do not provide a meaningful constraint on the discretion of juries to impose punishment.

TWENTY-FIFTH AFFIRMATIVE DEFENSE

39. The imposition of punitive damages in this case in the absence of the procedural safeguards accorded to defendants subject to punishment in criminal proceedings, including a reasonable doubt standard of proof, would violate the Fourth, Fifth, and Sixth

Amendments and the Due Process Clauses of the Fifth and Fourteenth Amendments to the United States Constitution and of Article I, Section 6 of the New York State Constitution.

TWENTY-SIXTH AFFIRMATIVE DEFENSE

40. The imposition of punitive damages in this case based upon a theory of *respondeat superior* without proof that an officer, director, or managing agent of AMR or American acted with the requisite state of mind would violate the Due Process Clauses of the Fifth and Fourteenth Amendments to the United States Constitution and of Article I, Section 6 of the New York State Constitution.

TWENTY-SEVENTH AFFIRMATIVE DEFENSE

41. The imposition of joint and several liability for punitive damages in this case would violate the Due Process Clause of the Fifth and Fourteenth Amendments to United States Constitution and of Article I, Section 6 of the New York State Constitution.

TWENTY-EIGHTH AFFIRMATIVE DEFENSE

42. The imposition of punitive damages in this case would violate the Excessive Fines Clause of the New York State Constitution.

TWENTY-NINTH AFFIRMATIVE DEFENSE

43. The imposition of punitive damages in this case based upon evidence of defendants' wealth or financial status would violate the Due Process Clauses of the Fifth and Fourteenth Amendments to the United States Constitution and of Article I, Section 6 of the New York State Constitution.

THIRTIETH AFFIRMATIVE DEFENSE

44. The imposition of punitive damages in this case based on the out-of-state conduct, profits, and aggregate financial status of defendants would violate the Commerce

Clause, the Equal Protection Clause, and the Privileges and Immunities Clause of the United States Constitution.

THIRTY-FIRST AFFIRMATIVE DEFENSE

45. The imposition of punitive damages in this case in the absence of a showing of malicious intent to cause Plaintiffs or Cross-Claim Plaintiffs harm would violate the Due Process Clauses of the Fifth and Fourteenth Amendments to the United States Constitution and of Article I, Section 6 of the New York State Constitution.

THIRTY-SECOND AFFIRMATIVE DEFENSE

46. The imposition of punitive damages in this case pursuant to New York law to punish defendants for conduct that occurred outside of New York would violate the Due Process Clauses of the Fifth and Fourteenth Amendments to the United States Constitution and of Article I, Section 6 of the New York State Constitution as well as the Commerce Clause of the United States Constitution.

THIRTY-THIRD AFFIRMATIVE DEFENSE

47. Cross-claim plaintiffs' alleged damages were caused by an act of war.

THIRTY-FOURTH AFFIRMATIVE DEFENSE

48. Cross-claim plaintiffs' claims are barred by the state secrets doctrine.

THIRTY-FIFTH AFFIRMATIVE DEFENSE

49. Cross-claim plaintiffs' Complaint must be dismissed to the extent that relevant evidence required by AMR and American to mount their defense is prohibited from disclosure by 14 C.F.R. § 1520 et seq. as Sensitive Security Information.

THIRTY-SIXTH AFFIRMATIVE DEFENSE

50. AMR and American hereby allege and incorporate each and every affirmative defense set forth in AMR and American's Master Answer to Plaintiffs' Amended Flight 11 Master Liability Complaint with the same force and effect as if set forth in full herein.

THIRTY-SEVENTH AFFIRMATIVE DEFENSE

51. AMR and American reserve the right to add affirmative defenses as necessary based on information obtained during investigation or discovery.

WHEREFORE, AMR and American demand judgment dismissing the Cross-Claims in their entirety or, alternatively, judgment limiting their liability pursuant to the foregoing, together with costs and disbursements and such other and further relief which this Court deems just and proper under the circumstances.

Dated: November 18, 2005


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