

Robert M. Callagy (RC-8135)
Alun W. Griffiths (AG-3516)
SATTERLEE STEPHENS BURKE & BURKE LLP
230 Park Avenue
New York, New York 10169
Telephone: (212) 818-9200
Attorneys for Defendant AirTran Airways, Inc.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X
:
Civil Action No. 21 MC 97 (AKH)
:
IN RE: SEPTEMBER 11, 2001 LITIGATION
:
:
-----X

**ANSWER OF DEFENDANT AIRTRAN AIRWAYS, INC. TO PLAINTIFFS’
SECOND AMENDED FLIGHT 77 MASTER LIABILITY COMPLAINT
(THE PENTAGON CRASH)**

Defendant AirTran Airways, Inc. (“AirTran”), by its attorneys, Satterlee Stephens Burke & Burke LLP, for its Answer and Affirmative Defenses with respect to Plaintiffs’ Second Amended Flight 77 Master Liability Complaint (the “Master Amended Complaint”), alleges as follows:

AirTran denies the introductory paragraph titled “Background” and denies that the Amended Master Complaint states a valid claim against AirTran, except AirTran admits that the Complaint purports to bring numerous causes of action against various defendants.

JURISDICTION AND VENUE

1. With respect to the allegations contained in Paragraphs 1 and 2 of the Amended Master Complaint, respectfully refers all questions of law to the Court.

2. Denies knowledge or information sufficient to form a belief with respect to the truth of the allegations contained in Paragraph 3 of the Amended Master Complaint.

THE PARTIES

3. Denies knowledge or information sufficient to form a belief with respect to the truth of the allegations contained in Paragraphs 4 through 12, inclusive, of the Amended Master Complaint.

4. Denies each and every allegation contained in Paragraph 13 of the Amended Master Complaint, except admits that AirTran is a corporation duly organized and existing under the laws of Delaware and maintains its principal place of business in the State of Florida and that it was and is a common carrier engaged in the business, among others, of transporting passengers by air on regularly scheduled flights from Dulles Airport.

5. Denies knowledge or information sufficient to form a belief with respect to the truth of the allegations contained in Paragraphs 14 through 20, inclusive, of the Amended Master Complaint.

6. With respect to Paragraph 21 of the Amended Master Complaint, no response is required.

7. Denies knowledge or information sufficient to form a belief with respect to the truth of the allegations contained in Paragraphs 22 through 31, inclusive, of the Amended Master Complaint.

GENERAL ALLEGATIONS

8. Denies knowledge or information sufficient to form a belief with respect to the truth of the allegations contained in Paragraphs 32 through 35, inclusive, of the Amended Master Complaint.

9. Denies each and every allegation contained in Paragraphs 36 and 37 of the Amended Master Complaint insofar as such allegations are asserted against AirTran and denies knowledge or information sufficient to form a belief as to those allegations insofar as they are asserted against the other defendants.

10. Denies knowledge or information sufficient to form a belief with respect to the truth of the allegations contained in Paragraphs 38 through 41, inclusive, of the Amended Master Complaint.

11. Denies each and every allegation contained in Paragraphs 42 through 51, inclusive, of the Amended Master Complaint, except denies knowledge or information sufficient to form a belief as to American, the other Airlines, except AirTran, MWA and the Security Company Defendants but admits that AirTran was licensed as a commercial air carrier authorized to transport passengers for hire and begs leave to refer to all applicable federal statutes, rules, regulations, and environmental directives for an accurate statement of what is contained therein, in proper context.

12. Denies knowledge or information sufficient to form a belief with respect to the truth of the allegations contained in Paragraphs 52 through 59, inclusive, of the Amended Master Complaint.

COUNT ONE
(Not Asserted Against AirTran)

13. With respect to Paragraph 60 of the Amended Master Complaint, repeats and realleges each and every denial and admission heretofore pleaded in response to Paragraphs 1 through 59, inclusive, of the Amended Master Complaint with the same force and effect as if hereinafter more fully set forth herein at length.

14. Denies knowledge or information sufficient to form a belief with respect to the truth of the allegations contained in Paragraph 61 of the Amended Master Complaint.

15. Denies each and every allegation contained in Paragraph 62 of the Amended Master Complaint insofar as such allegations are asserted against AirTran and denies knowledge or information sufficient to form a belief as to those allegations insofar as they are asserted against the other defendants.

16. Denies knowledge or information sufficient to form a belief with respect to the truth of the allegations contained in Paragraphs 63 through 65, inclusive, of the Amended Master Complaint.

17. Denies each and every allegation contained in Paragraph 66 of the Amended Master Complaint insofar as such allegations are asserted against AirTran and denies knowledge or information sufficient to form a belief as to those allegations insofar as they are asserted against the other defendants.

COUNT TWO

18. With respect to Paragraph 67 of the Amended Master Complaint, repeats and realleges each and every denial and admission heretofore pleaded in response to Paragraphs 1 through 66, inclusive, of the Amended Master Complaint with the same force and effect as if hereinafter more fully set forth herein at length.

19. Denies each and every allegation contained in Paragraphs 68 through 73, inclusive, of the Amended Master Complaint insofar as such allegations are asserted against AirTran and denies knowledge or information sufficient to form a belief as to such allegations insofar as they are asserted against the other defendants.

COUNT THREE

20. With respect to Paragraph 74 of the Amended Master Complaint, repeats and realleges each and every denial and admission heretofore pleaded in response to Paragraphs 1 through 73, inclusive, of the Amended Master Complaint with the same force and effect as if hereinafter more fully set forth herein at length.

21. Denies each and every allegation contained in Paragraphs 75 through 78, inclusive, of the Amended Master Complaint insofar as such allegations are asserted against AirTran and denies knowledge or information sufficient to form a belief as to such allegations insofar as they are asserted against the other defendants.

22. Denies knowledge or information sufficient to form a belief with respect to the truth of the allegations contained in Paragraphs 79 and 80 of the Amended Master Complaint.

23. Denies each and every allegation contained in Paragraphs 81 through 83, inclusive, of the Amended Master Complaint insofar as such allegations are asserted against AirTran and denies knowledge or information sufficient to form a belief as to such allegations insofar as they are asserted against the other defendants.

COUNT FOUR

24. With respect to Paragraph 84 of the Amended Master Complaint, repeats and realleges each and every denial and admission heretofore pleaded in response to Paragraphs 1 through 83, inclusive, of the Amended Master Complaint with the same force and effect as if hereinafter more fully set forth herein at length.

25. Denies each and every allegation contained in Paragraphs 85 and 86 of the Master Complaint insofar as such allegations are asserted against AirTran and denies knowledge

or information sufficient to form a belief as to such allegations insofar as they are asserted against the other defendants.

COUNT FIVE
(Not Asserted Against AirTran)

26. With respect to Paragraph 87 of the Amended Master Complaint, repeats and realleges each and every denial and admission heretofore pleaded in response to Paragraphs 1 through 86, inclusive, of the Amended Master Complaint with the same force and effect as if hereinafter more fully set forth herein at length.

27. Denies knowledge or information sufficient to form a belief with respect to the allegations contained in Paragraphs 88 and 89 of the Amended Master Complaint.

28. Denies each and every allegation contained in Paragraph 90 of the Master Complaint insofar as such allegations are asserted against AirTran and denies knowledge or information sufficient to form a belief as to such allegations insofar as they are asserted against the other defendants.

COUNT SIX
(Not Asserted Against AirTran)

29. With respect to Paragraph 91 of the Amended Master Complaint, repeats and realleges each and every denial and admission heretofore pleaded in response to Paragraphs 1 through 90, inclusive, of the Amended Master Complaint with the same force and effect as if hereinafter more fully set forth herein at length.

30. Denies knowledge or information sufficient to form a belief with respect to the truth of the allegations contained in Paragraphs 92 through 94, inclusive, of the Amended Master Complaint.

31. Denies each and every allegation contained in Paragraph 95 of the Master Complaint insofar as such allegations are asserted against AirTran and denies knowledge or information sufficient to form a belief as to such allegations insofar as they are asserted against the other defendants.

COUNT SEVEN
(Not Asserted Against AirTran)

32. With respect to Paragraph 96 of the Amended Master Complaint, repeats and realleges each and every denial and admission heretofore pleaded in response to Paragraphs 1 through 95, inclusive, of the Amended Master Complaint with the same force and effect as if hereinafter more fully set forth herein at length.

33. Denies knowledge or information sufficient to form a belief with respect to the allegations contained in Paragraphs 97 through 100, inclusive, of the Amended Master Complaint.

34. Denies each and every allegation contained in Paragraph 101 of the Master Complaint insofar as such allegations are asserted against AirTran and denies knowledge or information sufficient to form a belief as to such allegations insofar as they are asserted against the other defendants.

COUNT EIGHT
(Not Asserted Against AirTran)

35. With respect to Paragraph 102 of the Amended Master Complaint, repeats and realleges each and every denial and admission heretofore pleaded in response to Paragraphs 1 through 101, inclusive, of the Amended Master Complaint with the same force and effect as if hereinafter more fully set forth herein at length.

36. Denies knowledge or information sufficient to form a belief with respect to the allegations contained in Paragraphs 103 and 104 of the Amended Master Complaint.

COUNT NINE

37. With respect to Paragraph 105 of the Amended Master Complaint, repeats and realleges each and every denial and admission heretofore pleaded in response to Paragraphs 1 through 104, inclusive, of the Amended Master Complaint with the same force and effect as if hereinafter more fully set forth herein at length.

38. Denies each and every allegation contained in Paragraphs 106 through 112, inclusive, of the Amended Master Complaint to the extent same are asserted against AirTran and deny knowledge or information sufficient to form a belief to the extent same are asserted against the other defendants.

COUNT TEN

39. With respect to Paragraph 113 of the Amended Master Complaint, repeats and realleges each and every denial and admission heretofore pleaded in response to Paragraphs 1 through 112, inclusive, of the Amended Master Complaint with the same force and effect as if hereinafter more fully set forth herein at length.

40. Denies each and every allegation contained in Paragraphs 114 and 115 of the Amended Master Complaint to the extent same are asserted against AirTran and deny knowledge or information sufficient to form a belief to the extent same are asserted against the other defendants.

AS AND FOR A FIRST AFFIRMATIVE DEFENSE

41. The Amended Master Complaint fails to state a claim upon which relief can be granted.

AS AND FOR A SECOND AFFIRMATIVE DEFENSE

42. Any injuries and damages sustained by the plaintiffs were caused solely and wholly by reason of the intentional acts of a third person or persons not under the control of AirTran.

AS AND FOR A THIRD AFFIRMATIVE DEFENSE

43. Any injuries and damages sustained by the plaintiffs were caused solely and wholly by reason of the careless and negligent conduct of a third person or persons not under the control of AirTran.

AS AND FOR A FOURTH AFFIRMATIVE DEFENSE

44. If AirTran is found liable, any and all liability being specifically denied, such liability is less than or equal to fifty percent (50%) of the total liability of all persons who may be found liable and therefore AirTran's liability shall be limited to its equitable share.

AS AND FOR A FIFTH AFFIRMATIVE DEFENSE

45. AirTran had neither actual nor constructive notice of any condition or conditions alleged to have caused the injuries set forth in the Amended Master Complaint.

AS AND FOR A SIXTH AFFIRMATIVE DEFENSE

46. AirTran did not cause or otherwise create any condition or conditions alleged to have caused the injuries set forth in the Amended Master Complaint.

AS AND FOR A SEVENTH AFFIRMATIVE DEFENSE

47. Any injuries and/or damages incurred by plaintiffs were proximately caused by the intentional acts of the hijackers, which acts were not foreseeable to AirTran.

AS AND FOR AN EIGHTH AFFIRMATIVE DEFENSE

48. AirTran had neither the right nor the power to correct, ameliorate or otherwise rectify any conditions which plaintiffs allege caused the injuries and/or damages set forth in the Amended Master Complaint.

AS AND FOR A NINTH AFFIRMATIVE DEFENSE

49. AirTran owed no duty to plaintiffs.

AS AND FOR A TENTH AFFIRMATIVE DEFENSE

50. Plaintiffs' claims are barred by their failure to name one or more necessary parties needed for the fair and complete adjudication of this matter.

AS AND FOR AN ELEVENTH AFFIRMATIVE DEFENSE

51. If AirTran is found liable to plaintiffs, any such liability being specifically denied, plaintiffs recovery shall not exceed the limits of liability coverage maintained by AirTran, as set forth in Section 408(a)(1) of the Air Transportation Safety System Stabilization Act.

AS AND FOR A TWELFTH AFFIRMATIVE DEFENSE

52. Any plaintiff who has submitted a claim to the Victim Compensation Fund created by the Air Transportation Safety and System Stabilization Act is barred from recovery against AirTran.

AS AND FOR A THIRTEENTH AFFIRMATIVE DEFENSE


53. Plaintiffs' claims are barred by the doctrines of waiver and estoppel.

AS AND FOR A FOURTEENTH AFFIRMATIVE DEFENSE

54. The amount of any recovery by plaintiffs against AirTran must be reduced to the extent any plaintiff is indemnified by a collateral source, as set forth in Section 4545(c) of the New York Civil Practice Law and Rules.

Dated: New York, New York
April 30, 2004

SATTERLEE STEPHENS BURKE & BURKE LLP

By: 

Robert M. Callagy (RC-8135)

Alun W. Griffiths (AG-3516)

230 Park Avenue

New York, New York 10169

Tel.: (212) 818-9200

Fax: (212) 818-9606

Attorneys for Defendant

AIRTRAN AIRWAYS, INC.

To: Plaintiffs' Liaison Counsel:
Marc S. Moller, Esq.
KREINDLER & KREINDLER
100 Park Avenue
New York, NY 10017-5590
Tel: (212) 687-8181
Fax: (212) 972-9432

Plaintiffs' Executive Committee:
John A. Greaves, Esq.
BAUM HEDLUND
12100 Wilshire Boulevard, Suite 950
Los Angeles, CA 90025-7114
Tel.: (310) 207-3233
Fax: (310) 820-7444

Michel F. Baumeister, Esq.
BAUMEISTER & SAMUELS, P.C.
One Exchange Plaza
New York, NY 10006-3008
Tel.: (212) 363-1200
Fax: (212) 363-1346

Paul J. Hanly, Jr., Esq.
HANLY & CONROY, LLP
415 Madison Avenue
New York, NY 10017-1111
Tel.: (212) 401-7600
Fax: (212) 401-7635

Michael J. Kuckelman, Esq.
WARDEN, TRIPLETT, GRIER, P.A.
Tower 42, Level 7
25 Old Broad Street
London EC2N 1HN
England
Tel.: 011-44-0207 872-5779
Fax: 011-44-0207 419 1360

Timothy W. Triplett, Esq.
Kristopher A. Kuehn, Esq.
WARDEN, TRIPLETT, GRIER, P.A.
Building 40 Corporate Woods
9401 Indian Creek Parkway, Suite 1100
Overland Park, KS 66210
Tel.: (913) 491-3000
Fax: (913) 491-2979