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The Boeing Company

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

IN RE SEPTEMBER 11, 2001 LITIGATION

NO. 21 MC 97 (AKH)

**DEFENDANT THE BOEING COMPANY'S MASTER ANSWER TO THE
PORT AUTHORITY'S CROSS-CLAIMS AGAINST CERTAIN
DEFENDANTS IN PLAINTIFFS' AMENDED FLIGHT 11 MASTER
LIABILITY COMPLAINT**

Defendant and cross-claim defendant The Boeing Company ("Boeing") submits the following answer to the cross-claims asserted by defendant and cross-claim plaintiff The Port Authority of New York and New Jersey and the additional cross-claim plaintiffs WTC Retail LLC and The Port Authority Trans-Hudson Corporation (collectively "The Port Authority") contained in the "Cross-Claims by the Port Authority Against Certain Defendants in Plaintiffs' Amended Flight 11 Master Liability Complaint."

PRELIMINARY STATEMENT

1. The allegations contained in paragraph 1 are legal conclusions to which no answer is required and none is given.

2. Boeing is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 2 and therefore denies same.

3. Answering paragraph 3, Boeing admits that American Airlines Flight 11 and United Airlines Flight 175 were hijacked on September 11, 2001 and crashed into One World Trade Center and Two World Trade Center. Boeing lacks information sufficient to form a belief as to the truth of any remaining allegations and therefore denies same.

4. To the extent that the allegations contained in paragraphs 4-6 are conclusions of law, no response is required and none is given. To the extent that the remaining allegations are directed against Boeing, Boeing denies same. To the extent that the remaining allegations contained in that paragraph are directed at other defendants, no response is required from Boeing or, if a response is required, Boeing is without knowledge or information sufficient to form a belief as to the truth of the allegations and therefore denies same.

JURISDICTION

5. The allegations contained in paragraphs 7 and 8 are legal conclusions to which no answer is required and none is given.

PARTIES TO THE CROSS-CLAIMS

Cross-Claim Plaintiffs

6. Boeing is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraphs 9-11 and therefore denies same.

Cross-Claim Defendants

7. The allegations contained in paragraphs 12-35 are directed at other defendants and no response is required from Boeing or, if a response is required, Boeing is without knowledge or information sufficient to form a belief as to the truth of the allegations and therefore denies same.

8. Boeing admits the allegations contained in paragraph 36.

FIRST CROSS-CLAIM AGAINST THE CROSS-CLAIM DEFENDANTS

9. Answering paragraph 37, Boeing herein incorporates by reference its answers to the allegations contained in paragraphs 1 through 36 as though fully set forth herein.

10. To the extent that the allegations contained in paragraphs 38 and 39 are conclusions of law, no response is required and none is given. To the extent that the remaining allegations are directed at Boeing and a response is required, Boeing denies same. To the extent the remaining allegations are directed at other defendants, no response is required from Boeing or, if a response is required, Boeing is without knowledge or information sufficient to form a belief as to the truth of the allegations and therefore denies same.

SECOND CROSS-CLAIM AGAINST THE CROSS-CLAIM DEFENDANTS

11. Answering paragraph 40, Boeing herein incorporates by reference its answers to the allegations contained in paragraphs 1 through 39 as though fully set forth herein.

12. To the extent that the allegations contained in paragraph 41 are conclusions of law, no response is required and none is given. To the extent that the remaining allegations are directed at Boeing and a response is required, Boeing denies same. To the extent the remaining allegations are directed at other defendants, no response is required from Boeing or, if a response

is required, Boeing is without knowledge or information sufficient to form a belief as to the truth of the allegations and therefore denies same.

THIRD CROSS-CLAIM
AGAINST THE CROSS-CLAIM DEFENDANTS

13. Answering paragraph 42, Boeing herein incorporates by reference its answers to the allegations contained in paragraphs 1 through 41 as though fully set forth herein.

14. Answering paragraph 43, Boeing admits that several buildings in and around the World Trade Center were damaged on September 11, 2001. Boeing is without knowledge or information sufficient to form a belief as to the truth of any remaining allegations and therefore denies same.

15. To the extent that the allegations contained in paragraphs 44 and 45 are conclusions of law, no response is required and none is given. To the extent that the remaining allegations are directed at Boeing and a response is required, Boeing denies same. To the extent the remaining allegations are directed at other defendants, no response is required from Boeing or, if a response is required, Boeing is without knowledge or information sufficient to form a belief as to the truth of the allegations and therefore denies same.

AFFIRMATIVE DEFENSES

By way of further answer to the Cross-Claims by the Port Authority Against Certain Defendants in Plaintiffs' Amended Flight 11 Master Liability Complaint, Boeing asserts the following affirmative defenses:

FIRST AFFIRMATIVE DEFENSE

16. The Cross-Claims by the Port Authority Against Certain Defendants in Plaintiffs' Amended Flight 11 Master Liability Complaint fail to state a claim upon which relief can be granted.

SECOND AFFIRMATIVE DEFENSE

17. 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. To the extent Cross-Claims by the Port Authority Against Certain Defendants in Plaintiffs' Amended Flight 11 Master Liability Complaint 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

18. The Port Authority's alleged damages were caused by the unforeseeable, intervening, and/or superseding acts of third parties, for which Boeing is not responsible.

FOURTH AFFIRMATIVE DEFENSE

19. 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 airplane manufacturers must follow for aviation safety and security, and these federal standards preempt state law design standards which the Port Authority alleges that Boeing violated. Boeing complied with these federal standards, and the subject airplanes were

certified as airworthy by the Federal Aviation Administration, thus precluding a finding of liability against Boeing.

FIFTH AFFIRMATIVE DEFENSE

20. Boeing hereby places at issue the negligence, fault and responsibility of all persons and entities who may have contributed in any degree to the injuries, damages and/or losses alleged to have been sustained by the Port Authority, in proportion to each person's degree of negligence, fault or responsibility. Judgment, if any, against Boeing should be reduced to an amount that represents its proportionate share of the Port Authority's total damages, if any.

SIXTH AFFIRMATIVE DEFENSE

21. To the extent that the Port Authority's claims are based on common law or statutory law of the individual states requiring airplane manufacturers to design airplanes to standards 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, they 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."

SEVENTH AFFIRMATIVE DEFENSE

22. The Port Authority has failed to mitigate its damages.

EIGHTH AFFIRMATIVE DEFENSE

23. Recovery by the Port Authority, if any, should be reduced by any collateral source payment that has been or will be paid to the Port Authority in accordance with the applicable state law as may be derived by this Court from New York law, including its choice of law principles.

NINTH AFFIRMATIVE DEFENSE

24. Boeing's liability, if any, must be limited to its proportionate share in accordance with the applicable state law as may be derived by this Court from New York law, including its choice of law principles.

TENTH AFFIRMATIVE DEFENSE

25. If the Port Authority releases or enters into a covenant not to sue or enforce a judgment with any other persons claimed to be liable for the Port Authority's damages, the amount recoverable against Boeing must be reduced in accordance with the applicable law as may be derived by this Court from New York law, including its choice of law principles.

ELEVENTH 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," the amount of damages recoverable from Boeing shall not be in an amount greater than the limits of liability insurance coverage maintained by Boeing.

TWELFTH AFFIRMATIVE DEFENSE

27. The Port Authority has failed to join all necessary and indispensable parties.

THIRTEENTH AFFIRMATIVE DEFENSE

28. Damages, compensatory and punitive, may be barred or limited by applicable state law as may be derived by this Court from New York law, including its choice of law principles.

FOURTEENTH AFFIRMATIVE DEFENSE

29. The Port Authority's claims may be barred by applicable statutes of limitations.

FIFTEENTH AFFIRMATIVE DEFENSE

30. The injuries and damages at issue in the Cross-Claims by the Port Authority Against Certain Defendants in Plaintiffs' Amended Flight 11 Master Liability Complaint occurred, in whole or in part, as a result of the intentional, knowing, or negligent misuse of the subject airplanes.

SIXTEENTH AFFIRMATIVE DEFENSE

31. To the extent the Cross-Claims by the Port Authority Against Certain Defendants in Plaintiffs' Amended Flight 11 Master Liability Complaint allege claims based on an alleged breach of warranty, such claims are barred, in whole or in part, by the absence of privity between the Port Authority and Boeing and/or by lack of proper notice to Boeing.

SEVENTEENTH AFFIRMATIVE DEFENSE

32. To the extent the Cross-Claims by the Port Authority Against Certain Defendants in Plaintiffs' Amended Flight 11 Master Liability Complaint allege claims based on an alleged breach of warranty, such claims are barred, in whole or in part, because Boeing did not make any

warranties to the Port Authority with respect to the subject airplanes or any of their component parts.

EIGHTEENTH AFFIRMATIVE DEFENSE

33. To the extent the Cross-Claims by the Port Authority Against Certain Defendants in Plaintiffs' Amended Flight 11 Master Liability Complaint allege claims based on an alleged breach of warranty, such claims are barred, in whole or in part, because the Port Authority is not a third-party beneficiary of any warranties that Boeing may have made.

NINETEENTH AFFIRMATIVE DEFENSE

34. To the extent the Cross-Claims by the Port Authority Against Certain Defendants in Plaintiffs' Amended Flight 11 Master Liability Complaint allege claims based on an alleged breach of warranty, the Port Authority's right to recovery, if any, are limited to or precluded by the warranty provisions in Boeing's contract of sale for the product.

TWENTIETH AFFIRMATIVE DEFENSE

35. If the Port Authority was damaged by products originally sold by Boeing, that product was substantially altered or misused by person and/or entities other than Boeing and over whom Boeing had no control or right of control, without Boeing's knowledge, consent or advice, following the date of initial manufacture and the sale of such products, and such alteration or misuse proximately caused the events in the Cross-Claims by the Port Authority Against Certain Defendants in Plaintiffs' Amended Flight 11 Master Liability Complaint and the resulting damages.

TWENTY-FIRST AFFIRMATIVE DEFENSE

36. The design of the subject airplanes, and each component thereof that was installed at the time of delivery, was consistent with the “state of the art” at the time of their design and manufacture.

TWENTY-SECOND AFFIRMATIVE DEFENSE

37. The Port Authority’s claims are barred by the state secrets doctrine.

TWENTY-THIRD AFFIRMATIVE DEFENSE

38. The Port Authority’s claims must be dismissed to the extent the evidence necessary for Boeing to mount its defense is designated Sensitive Security Information that cannot be disclosed pursuant to 14 CFR § 1520 et seq.

TWENTY-FOURTH AFFIRMATIVE DEFENSE

39. The Port Authority’s alleged damages were caused by an act of war.

TWENTY-FIFTH AFFIRMATIVE DEFENSE

40. The Port Authority’s alleged damages were remote and not a reasonably foreseeable consequence of any alleged conducted by Boeing; therefore, Boeing owed no duty to the Port Authority as a matter of law and cannot be held liable for the Port Authority’s alleged damages.

Boeing hereby reserves the right to add affirmative defenses as necessary based on information obtained during investigation or discovery. Nothing contained herein shall be deemed to impose upon Boeing any burden of proof not imposed by applicable substantive law.

WHEREFORE, Boeing demands judgment dismissing the Cross-Claims by the Port Authority Against Certain Defendants in Plaintiffs' Amended Flight 11 Master Liability Complaint in its entirety or, alternatively, judgment limiting its liability pursuant to the foregoing, together with costs and disbursements and such other and further relief in its favor that this Court deems just and proper under the circumstances.

DATED this 18th day of November, 2005.

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