

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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**PLAINTIFFS' AMENDED FLIGHT 175 MASTER LIABILITY COMPLAINT**  
**(TWO WORLD TRADE CENTER CRASH)**

Plaintiffs,<sup>1</sup> by their respective attorneys complaining of defendants herein, upon information and belief, respectfully state as and for their common liability allegations as follows:

**BACKGROUND**

These actions seek damages on behalf of plaintiffs, the heirs and next of kin of decedents, and the Estates of decedents for the personal injuries to and wrongful deaths of the individuals who were killed in the hijacking and crash of United Air Lines Flight 175 (hereinafter "Flight 175") into Two World Trade Center (hereinafter "Two World Trade") as well as on behalf of those who were in Two World Trade or in the vicinity thereof and were killed as a result of the fires in and collapse of Two World Trade on September 11, 2001 and its aftermath.

In sum, these actions allege that for several years prior to September 11, 2001, the defendants named herein had actual knowledge of the fact that terrorist groups and individuals associated with them had publicly proclaimed a pathological hatred of the United States, its citizens and those who resided or traveled within or to its borders and vowed to kill Americans and to destroy American institutions and that airlines and

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<sup>1</sup> For ease of reference, a chart summarizing the litigants is attached as Appendix A.

airports and buildings of cultural significance were a likely target of that violence. The risk of harm was heightened by the fact these defendants had knowledge of dangerous long-standing flaws in airline and airport security, that commercial passenger aircraft were demonstrated to be vulnerable to attacks by persons intent upon causing death and injury in furtherance of their ideologies, and yet the defendants failed to take reasonable action to prevent harm to passengers, flight crew and persons in buildings or on the ground who could be injured or killed as the result of a deliberate crash in light of that knowledge and the risk presented. These defendants also knew or should have recognized what numerous evaluations disclosed; namely, that the airline and airport security systems who implemented, operated and maintained the security systems and the imaging equipment routinely failed to detect dangerous and deadly weapons capable of causing injury or death passing through so-called security checkpoints. These defendants are jointly and severally liable for the wrongful deaths, injuries and damages resulting from the September 11 attacks because they were negligent, careless, wanton and reckless in failing to develop, implement, and maintain adequate airline and airport security systems and imaging equipment at Portland (Maine) International Jetport (hereinafter "Portland Jetport"), and Logan International Airport, Boston, Massachusetts (hereinafter "Logan Airport"), failed to implement reasonable and effective security measures prior to September 11, 2001 to deter and to prevent hijackers from carrying dangerous and deadly weapons capable of causing injury or death aboard Flight 5930, which departed from Portland Jetport and was a connecting flight to Flight 175 at Logan Airport, and Flight 175 and failed to take the necessary

measures to protect and secure the cockpit of Flight 175 from intrusion by terrorists who sought to gain control of the aircraft and cause it to crash.

Defendant BOEING, which is in the business of designing and manufacturing commercial air transport aircraft, was equally aware of the terrorist risks to civil aviation and failed to incorporate in its aircraft design structures and systems to prevent unauthorized and unlawful access to the cockpit of its aircraft.

Tower Plaintiffs<sup>2</sup> allege that THE PORT AUTHORITY and THE BUILDING DEFENDANTS failed to design, maintain and repair Two World Trade so that it was safe from dangerous and hazardous conditions and to ensure that the building structure could survive the effects of a terrorist attack upon it as well as a post-attack fire. These defendants failed to ensure that Two World Trade incorporated and maintained safety features and devices such as structural fireproofing and sprinkler systems, and failed to develop and implement evacuation plans that would allow building occupants prompt, safe and effective egress from all parts of the building for all Two World Trade occupants.

### **JURISDICTION AND VENUE**

1. This Court has subject matter jurisdiction over all defendants pursuant to the “Air Transportation Safety And Systems Stabilization Act,” Pub.L. 107-42, 115 Stat. 230 (“ATSSSA”), Sections 408(b)(1) and (3), which establishes that “[t]he United States District Court for the Southern District of New York shall have original and exclusive

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<sup>2</sup> Where appropriate, the Personal Representatives of the decedents who were occupants or in the vicinity of Two World Trade on and subsequent to September 11, 2001 are referred to collectively as “the Tower Plaintiffs.”

jurisdiction over all actions brought for any claim (including any claim for loss of property, personal injury, or death) resulting from or relating to the terrorist-related aircraft crashes of September 11, 2001.”<sup>3</sup> Sections 408(b)(1) and (3) of ATSSSA establish venue in this Court.

2. Jurisdiction is also based upon supplemental jurisdiction, pursuant to 28 U.S.C. §1367, with respect to any claims forming part of the same case or controversy.

3. Notices of Claim were served upon THE PORT AUTHORITY OF NEW YORK AND NEW JERSEY (hereinafter “THE PORT AUTHORITY”) in a manner and within the time required by §7107 of the Unconsolidated Laws of New York.

4. Plaintiff has previously served a Notice of Claim on each of THE BUILDING DEFENDANTS named herein and filed with the Southern District of New York pursuant to an order of the Honorable Judge Alvin K. Hellerstein in accordance with N.Y. C.P.L.R. § 214-d and an action was timely filed thereafter.

## **THE PARTIES**

### **PLAINTIFFS**

5. On September 11, 2001, decedents were fare-paying passengers<sup>4</sup> aboard Flight 175.

6. On September 11, 2001, The Tower Plaintiffs’ decedents were occupants or in the vicinity of Two World Trade when Flight 175 struck Two World Trade or when

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<sup>3</sup> Some actions are also based upon diversity jurisdiction, 28 U.S.C. § 1332, in that there is complete diversity of citizenship and the amount in controversy exceeds the sum of \$75,000, exclusive of interest and costs

<sup>4</sup> Except decedent Alicia Titus, who was a Flight Attendant on board Flight 175.

Two World Trade collapsed or thereafter while the risk of injury or death was still present.

7. Plaintiffs are the duly appointed Personal Representatives of the Estates of decedents and thereby have standing to maintain these actions.

**“THE AIRLINE DEFENDANTS”**

8. Defendant UAL CORPORATION is a corporation organized and existing under the laws of Delaware and maintains its principal place of business in Illinois.

9. Defendant UAL is engaged in the business of air transportation of passengers for hire.

10. Defendant UNITED AIR LINES, INC. is a corporation organized and existing under the laws of Delaware and maintains its principal place of business in Illinois.

11. At all times pertinent to the Complaint, UNITED AIR LINES, INC. was a common carrier engaged in the business of transporting passengers by air and operated regularly scheduled flights from Portland Jetport and Logan Airport. UNITED AIR LINES, INC. was jointly, severally and contractually liable by and through its agents, employees and contractors for maintaining the airline and airport security systems at Portland Jetport and Logan Airport.

12. Defendant UAL is the parent corporation of and exercised control over its wholly-owned subsidiary, UNITED AIRLINES, INC.

13. Defendant UAL, as the parent corporation of its wholly-owned subsidiary UNITED, is liable for the negligent, reckless and wanton acts of UNITED AIRLINES, INC. (UAL and UNITED AIR LINES, INC. are hereinafter referred to as “UNITED”.)

14. On September 11, 2001, UNITED operated a Boeing 767-200 aircraft, registration no. N612UA ("the subject aircraft"), designated as Flight 175 which departed from Logan Airport with an intended destination of Los Angeles International Airport, California.

15. Defendant COLGAN AIR, INC. is a corporation duly organized and existing under the laws of Virginia and maintains its principal place of business in Virginia.

16. Defendant COLGAN AIR, INC., d/b/a US AIRWAYS EXPRESS is a corporation organized and existing under the laws of Virginia which maintains its principal place of business in Virginia.

17. COLGAN AIR, INC. and COLGAN AIR INC., d/b/a US AIRWAYS EXPRESS are hereinafter referred to as "COLGAN".

18. Defendant US AIRWAYS, INC. (hereinafter "US AIRWAYS") is a corporation duly organized and existing under the laws of Delaware and maintains its principal place of business in Virginia.

19. At all times pertinent to the Complaint, defendants COLGAN and US AIRWAYS were common carriers engaged in the business of transporting passengers by air and operate regularly scheduled flights from Portland Jetport and Logan Airport.

20. On September 11, 2001, COLGAN operated as US Airways Flight 5930 as a regularly scheduled passenger flight for hire, carrying hijackers from Portland Jetport to Logan Airport. COLGAN's aircraft displayed US AIRWAYS' logo, trade dress, paint scheme and livery, under the full actual and apparent authority, knowledge and consent of defendant US AIRWAYS.

21. UNITED, COLGAN and US AIRWAYS are collectively referred to as “THE AIRLINE DEFENDANTS.” THE AIRLINE DEFENDANTS were each jointly, severally and contractually liability by and through its agents, employees for maintaining the airline and airport security systems at Portland Jetport and Logan Airport.

#### **THE NON-CARRYING AIRLINE DEFENDANTS**

22. Defendant CAPE AIR, INC. (hereinafter “CAPE AIR”) is a corporation duly organized and existing under the laws of Massachusetts and maintains its principal place of business in Massachusetts.

23. Defendant CONTINENTAL AIRLINES, INC, is a corporation duly organized and existing under the laws of Delaware and maintains its principal place of business in Texas.

24. Defendant DELTA AIRLINES, INC. is a corporation duly organized and existing under the laws of Delaware and maintains its principal place of business in Georgia.

25. Defendant DELTA EXPRESS, INC. (hereinafter “DELTA EXPRESS”) is a corporation duly organized and existing under the laws of Delaware and maintains its principal place of business in Georgia.

26. Defendant MIDWEST EXPRESS AIRLINES, INC. (hereinafter “MIDWEST”) is a corporation duly organized and existing under the laws of Wisconsin and maintains its principal place of business in Wisconsin.

27. Defendant AMERICAN AIRLINES, INC. is a corporation duly organized and existing under the laws of Delaware and maintains its principal place of business in Texas.

28. Defendant AMR CORPORATION (hereinafter "AMR") is a corporation duly organized and existing under the laws of Delaware and maintains its principal place of business in Texas. Defendant AMR is the parent corporation of and exercised control over its wholly-owned subsidiary, AMERICAN.

29. Defendant AMR, as the parent corporation of its wholly-owned subsidiary AMERICAN is liable for the negligence, reckless and wanton acts of AMERICAN.

30. Defendant NORTHWEST AIRLINES, INC., is a corporation duly organized and existing under the laws of Delaware and maintains its principal place of business in Minnesota.

31. Defendant MIDWAY AIRLINES CORPORATION is a corporation duly organized and existing under the laws of Delaware and maintains its principal place of business in North Carolina.

32. Defendant AMERICA WEST AIRLINES, INC. is a corporation duly organized and existing under the laws of Delaware and maintains its principal place of business in Arizona.

33. Defendant AIRTRAN AIRWAYS, INC. is a corporation duly organized and existing under the laws of Delaware and maintains its principal place of business in Florida.

34. Defendant AMERICAN TRANS AIR, INC. is a corporation duly organized and existing under the laws of Indiana and maintains its principal place of business in Florida.

35. Defendants CAPE AIR, CONTINENTAL AIRLINES, INC, DELTA AIRLINES, INC., DELTA EXPRESS, MIDWEST, AMERICAN AIRLINES, INC., AMR,

NORTHWEST AIRLINES, INC., MIDWAY AIRLINES CORPORATION, AMERICA WEST AIRLINES, INC., AIRTRAN AIRWAYS, INC. and AMERICAN TRANS AIR, INC. are collectively referred to hereinafter as “THE NON-CARRYING AIRLINE DEFENDANTS.”

36. At all times pertinent to the Complaint, THE NON-CARRYING AIRLINE DEFENDANTS were common carriers engaged in the business of transporting passengers by air and operated regularly scheduled flights from Portland Jetport and/or Logan Airport. THE NON-CARRYING AIRLINE DEFENDANTS were each jointly, severally and contractually liable by and through their agents, employees and contractors for maintaining the airline and airport security systems at Portland Jetport and/or Logan Airport.

#### **THE SECURITY COMPANY DEFENDANTS**

37. Defendant HUNTLEIGH USA CORPORATION (“HUNTLEIGH”) is a corporation duly organized and existing under the laws of Missouri and maintains its principal place of business in Missouri.

38. Defendant ICTS INTERNATIONAL NV (“ICTS”) is a business entity of unknown form duly organized and existing under the laws of The Netherlands and maintains its principal place of business in The Netherlands.

39. Defendant ICTS is the parent corporation of and exercised control over its wholly-owned subsidiary, defendant HUNTLEIGH.

40. Defendant ICTS, as the parent corporation of its wholly-owned subsidiary HUNTLEIGH, is liable for the negligent, reckless and wanton acts of HUNTLEIGH.

41. Defendant GLOBE AVIATION SERVICES CORPORATION (“GLOBE”) is a corporation organized and existing under the laws of Delaware and maintains its principal place of business in Texas.

42. Defendant BURNS INTERNATIONAL SECURITY SERVICES CORPORATION (“BISSC”) is a corporation organized and existing under the laws of Delaware and maintains its principal place of business in Illinois.

43. Defendant BURNS INTERNATIONAL SERVICES CORPORATION (“BISC”) is a corporation organized and existing under the laws of Delaware and maintains its principal place of business in Illinois.

44. Defendants BISSC and BISC are hereinafter referred to as “BURNS”.

45. Defendant BURNS is the parent corporation of and exercised control over its wholly-owned subsidiary, defendant GLOBE.

46. Defendant BURNS, as the parent corporation of its wholly-owned subsidiary Globe, is liable for the negligent, reckless and wanton acts of GLOBE.

47. Defendant PINKERTON’S INC. (hereinafter “PINKERTON”) is a corporation duly organized and existing under the laws of Delaware and maintains its principal place of business in Illinois.

48. Defendant PINKERTON is the parent corporation of and exercised control over its wholly-owned subsidiaries, defendants GLOBE and BURNS.

49. Defendant PINKERTON, as the parent corporation of its wholly-owned subsidiaries GLOBE and BURNS, is liable for the negligent, reckless and wanton acts of GLOBE and BURNS.

50. Defendant SECURITAS AB (“SECURITAS”) is a business entity of unknown form duly organized and existing under the laws of Sweden and maintains its principal place of business in Sweden.

51. Defendant SECURITAS is the parent corporation of and exercised control over its wholly-owned subsidiaries, defendants GLOBE, BURNS and PINKERTON.

52. Defendant SECURITAS, as the parent corporation of its wholly-owned subsidiaries GLOBE, BURNS and PINKERTON, is liable for the negligent, reckless and wanton acts of GLOBE, BURNS and PINKERTON.

53. At all times pertinent to the Complaint, GLOBE, BURNS, PINKERTON, SECURITAS, HUNTLEIGH and ICTS (hereinafter collectively referred to as “THE SECURITY COMPANY DEFENDANTS”) were corporations and entities engaged in the business of, and separately and collectively assumed responsibility for, implementing, developing, owning, operating, managing, maintaining and supervising the airline and airport security systems at Portland Jetport and Logan Airport.

#### **AIRPORT OPERATOR DEFENDANTS**

54. Defendant CITY OF PORTLAND, MAINE (hereinafter “PORTLAND”) is a government entity duly organized and existing under the laws of Maine and maintains its principal place of business in Maine. At all times pertinent to the Complaint, defendant PORTLAND developed, owned, controlled, operated, managed and maintained Portland Jetport and was jointly, severally and contractually liable by and through its agents, employees and contractors for maintaining the airline and airport security system at Portland Jetport.

55. Defendant MASSACHUSETTS PORT AUTHORITY (hereinafter “MASSPORT”) is a government entity duly organized and existing under the laws of Massachusetts and maintains its principal place of business in Massachusetts. At all times pertinent to the Complaint, defendant MASSPORT developed, owned, controlled, operated, managed and maintained Logan Airport and was jointly, severally and contractually liable by and through its agents, employees and contractors for maintaining the airline and airport security system at Logan Airport.

#### **THE BOEING DEFENDANT**

56. Defendant THE BOEING COMPANY (hereinafter “BOEING”) is a corporation duly organized and existing under the laws of Delaware and maintains its principal place of business in Washington.

57. At all times pertinent to the Complaint, defendant BOEING was engaged in the business of designing and manufacturing aircraft to be used to transport passengers and crew by common carriers such as UNITED and others throughout the world.

58. Defendant BOEING designed and manufactured the subject aircraft, including the subject cockpit environment, including the cockpit door and locking mechanisms.

#### **THE BUILDING OWNERS**

59. Defendant PORT AUTHORITY OF NEW YORK & NEW JERSEY (“PORT AUTHORITY”) is a corporation organized and existing under the laws of New York and New Jersey which maintains its principal place of business in New York.

60. Defendant WORLD TRADE CENTER PROPERTIES LLC (hereinafter “WTC PROPERTIES”) is a corporation organized and existing under the laws of New York and maintains its principal place of business in New York.

61. THE PORT AUTHORITY OF NEW YORK & NEW JERSEY and WTC PROPERTIES are collectively referred to hereinafter as “THE PORT AUTHORITY.”

### **THE BUILDING DEFENDANTS**

62. Defendant MINORU YAMASAKI ASSOCIATES, INC. (hereinafter “YAMASAKI”) is a corporation duly organized and existing under the laws of Michigan and maintains its principal place of business in Michigan.

63. Defendants EMERY ROTH AND PARTNERS LLC d/b/a EMERY ROTH & SONS and EMERY ROTH & SONS P.C. (hereinafter collectively “ER&S”) are corporations duly organized and existing under the laws of New York and maintain their principal place of business in New York.

64. At all times pertinent to the Complaint, defendants YAMASAKI and ER&S were engaged in the business of providing architectural services and undertook to be and were responsible for designing, planning, preparing building specifications for and supervising construction of Two World Trade.

65. Defendant SKILLING WARD MAGNUSSON BARKSHIRE INC. (hereinafter “SWMB”) is a corporation duly organized and existing under the laws of Washington and maintains its principal place of business in Washington.

66. Defendant MAGNUSSON KLEMENCIC ASSOCIATES (hereinafter “MAGNUSSON”) is a corporation duly organized and existing under the laws of Washington and maintains its principal place of business in Washington.

67. Defendant LESLIE E. ROBERTSON ASSOCIATES (hereinafter "LERA") is a corporation duly organized and existing under the laws of New York and maintains its principal place of business in New York.

68. At all times pertinent to the Complaint, defendants SWMB, MAGNUSSON and LERA were engaged in the business of providing structural engineering and building consulting services and were responsible for designing, planning, engineering, evaluating, testing, preparing building specifications for and supervising construction of Two World Trade.

69. Defendant TISHMAN REALTY & CONSTRUCTION COMPANY (hereinafter "TISHMAN") is a corporation duly organized and existing under the laws of New York and maintains its principal place of business in New York.

70. On and prior to September 11, 2001, defendant TISHMAN was engaged in the business of building construction and undertook to be and was responsible for approving the materials to be used and supervising construction of Two World Trade.

71. Defendants YAMASAKI, ER&S, SWMB, MAGNUSSON, LERA and TISHMAN are collectively referred to hereinafter as "THE BUILDING DEFENDANTS."

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#### **GENERAL ALLEGATIONS**

72. On and prior to September 11, 2001, UNITED by its officers, agents, employees, servants or representatives, operated, controlled and supervised the airline and airport security system at Logan Airport and the ticketing check-in and boarding processes, including identification and document checks for the subject aircraft and flight.

73. On September 11, 2001, UNITED, by its officers, agents, employees, servants or representatives, owed decedents a duty of care to safeguard its airplanes and passengers and crew to prevent hijackers from breaching the airline and airport security system and carrying dangerous weapons aboard the subject aircraft to threaten its safety and injure or kill passengers and/or operate it so as to cause injury or death to passengers, crew and ground victims; ensure the subject aircraft was safe and secure from unreasonable dangers, including injury or death to passengers and crew aboard; and operate the subject aircraft so as not to cause injury or death.

74. On and prior to September 11, 2001, COLGAN by its officers, agents, employees, servants or representatives operated, controlled and supervised the airline and airport security system at Portland Jetport and the ticketing check-in and boarding processes, including identification and document checks for the Colgan aircraft and flight.

75. On September 11, 2001, COLGAN, by its officers, agents, employees, servants or representatives, owed decedents a duty of care to safeguard its airplanes and passengers to prevent hijackers from breaching the airline and airport security system and carrying dangerous weapons aboard the Colgan aircraft and on subsequent connecting flights within the airline and airport security system, including the subject flight.

76. On and prior to September 11, 2001, defendant MASSPORT was required and undertook to develop, implement, operate, maintain, supervise and control an airline and airport security program, including passenger screening and other

security activities, that would ensure the safety of persons traveling in air transportation against acts of criminal violence and air piracy.

77. On and prior to September 11, 2001, defendant MASSPORT, by its officers, agents, employees, servants or representatives operated, controlled and supervised the airline and airport security system at Logan Airport, including passenger screening, security checkpoint operations, and controlling access to secure areas of the airport.

78. On September 11, 2001, defendant MASSPORT, by its officers, agents, employees, servants or representatives owed decedents a duty of care to safeguard the subject aircraft and its passengers and flight crew and to prevent hijackers from breaching the airline and airport security system and carrying dangerous weapons aboard the subject aircraft to threaten its safety and/or injure or kill passengers and crew aboard it.

79. On and prior to September 11, 2001, defendant PORTLAND was required and undertook to develop, implement, operate, maintain, supervise and control an airline and airport security program, including passenger screening and other security activities, that would ensure the safety of persons traveling in air transportation against acts of criminal violence and air piracy.

80. On and prior to September 11, 2001, defendant PORTLAND, by its officers, agents, employees, servants or representatives operated, controlled and supervised the airline and airport security system at Portland Jetport, including passenger screening, security checkpoint operations, and controlling access to secure areas of the airport.

81. On September 11, 2001, defendant PORTLAND, by its officers, agents, employees, servants or representatives owed decedents a duty of care to safeguard the Colgan aircraft and its passengers and flight crew and to prevent hijackers from breaching the airline and airport security system and carrying dangerous weapons aboard the subject aircraft to threaten its safety and/or injure or kill passengers and crew aboard it.

82. On and prior to September 11, 2001, THE NON-CARRYING AIRLINE DEFENDANTS, by their officers, agents, employees, servants or representatives operated, controlled, supervised and maintained the airline and airport security system at the subject airports, including but not limited to passenger screening and security checkpoint operations.

83. On September 11, 2001, THE NON-CARRYING AIRLINE DEFENDANTS, by their officers, agents, employees, servants or representatives owed decedents a duty of care to safeguard the subject aircraft, passengers and crew to prevent hijackers or others from breaching the airline and airport security system and carrying dangerous weapons aboard the subject aircraft to threaten its safety and/or injure or kill passengers and crew aboard it.

84. On and prior to September 11, 2001, THE SECURITY COMPANY DEFENDANTS were corporations and entities engaged in the business of owning, operating, managing, maintaining and supervising airline and airport security for various airlines at numerous airports, including defendant UNITED for its flights departing from Logan Airport, including the subject flight, and for defendant COLGAN for flights departing from Portland Jetport and the Colgan flight.

85. On and prior to September 11, 2001, THE SECURITY COMPANY DEFENDANTS were required and undertook to select, hire, train, instruct, and supervise the security checkpoint screeners, metal detector and x-ray machine monitors and others who operated, maintained and controlled the Logan Airport and Portland Jetport security checkpoints for defendant UNITED'S and COLGAN'S flights, including the subject flight and the Colgan flight, regarding passenger screening, ticket and identification documents detection, confiscation of dangerous weapons, passenger risk evaluations and other security measures to prevent hijackers from boarding the subject and Colgan aircraft.

86. On and prior to September 11, 2001, THE SECURITY COMPANY DEFENDANTS, by their respective officers, agents, servants, employees and/or representatives developed, operated, maintained, controlled and supervised the airline and airport security for defendant UNITED'S flights, including the subject flight, and defendant COLGAN'S flights, including the Colgan flight.

87. On September 11, 2001, THE SECURITY COMPANY DEFENDANTS, by their officers, agents, employees, servants or representatives, owed decedents a duty of care to safeguard the subject aircraft, and to prevent hijackers from breaching the airline and airport security system and carrying dangerous objects aboard the subject aircraft to threaten its safety and injure or kill passengers and crew and/or operate it so as to cause injury or death to passengers, crew and ground victims.

88. On September 11, 2001, THE SECURITY COMPANY DEFENDANTS, by their respective officers, agents, servants, employees and/or representatives, owed decedents a duty of care to safeguard the Colgan aircraft, and to prevent hijackers from

breaching the airline and airport security system and carrying dangerous objects aboard the Colgan aircraft and transporting dangerous weapons on subsequent connecting flights within the airline and airport security system, including the subject flight.

89. Prior to September 11, 2001, the Department of Transportation through its Federal Aviation Administration licensed THE AIRLINE DEFENDANTS and THE NON-CARRYING AIRLINE DEFENDANTS as commercial air carriers authorized to transport passengers for hire, pursuant to which THE AIRLINE DEFENDANTS and THE NON-CARRYING AIRLINE DEFENDANTS had an obligation to comply with all federal statutes, rules, regulations, and environmental directives to achieve the highest level of airport and airline security to prevent harm to passengers, flight crew and persons in buildings or on the ground who might suffer injury or death as a result of a terrorist action.

90. On and prior to September 11, 2001, THE AIRLINE DEFENDANTS, THE NON-CARRYING AIRLINE DEFENDANTS, THE SECURITY COMPANY DEFENDANTS, PORTLAND and MASSPORT, through their agents, servants, officers, employees, designees and/or contractors jointly and severally undertook and were required to develop, design, implement, own, operate, manage, supervise, staff, equip, maintain, control, monitor, service, repair and/or oversee the airline and airport security system and imaging equipment at Portland Jetport and Logan Airport (including, but not limited to passenger screening, security checkpoint operations, pre-boarding passenger and luggage inspections, controlling access to secure areas and other security activities, ticketing purchase and check-in procedures and passenger identification and document checks for the subject aircrafts and flights), to prevent individuals from

carrying aboard aircraft and/or being supplied with deadly and/or dangerous weapons, including but not limited to, box cutters, knives and/or razors and protect against acts of criminal violence and air piracy.

91. Prior to September 11, 2001, THE AIRLINE DEFENDANTS, THE NON-CARRYING AIRLINE DEFENDANTS, PORTLAND and MASSPORT, entered into contractual relationships with THE SECURITY COMPANY DEFENDANTS to provide security screening services and imaging equipment at Portland Jetport and Logan Airport.

92. On and prior to September 11, 2001, THE AIRLINE DEFENDANTS, THE NON-CARRYING AIRLINE DEFENDANTS, THE SECURITY COMPANY DEFENDANTS, PORTLAND and MASSPORT, by their respective officers, agents, employees, servants and/or representatives, separately and collectively, selected, hired, trained, instructed and supervised the security checkpoint screeners, metal detector and x-ray machine monitors and others who operated, maintained and controlled the security checkpoints at Portland Jetport and Logan Airport.

93. Prior to September 11, 2001, regular meetings were held among THE AIRLINE DEFENDANTS, THE NON-CARRYING AIRLINE DEFENDANTS, THE SECURITY COMPANY DEFENDANTS, PORTLAND and MASSPORT, during which airport security was addressed, and details about terrorist threats and potential security breaches were reviewed and discussed.

94. On and prior to September 11, 2001, all defendants, their agents, associates, and partners, and each of them, were the agent, servant, employee, assignee, successor in interest, or joint venturer of each other and were acting within

the purpose or scope of such agency or employment; and all acts or omissions alleged herein of each defendant were authorized, adopted, approved, or ratified by each of the other defendants.

95. All defendants, and each of them, were fully informed of the actions of their agents and employees, and no officer, director, or managing agent of defendants repudiated those actions, which failure to repudiate constituted adoption and approval of said actions and then all defendants, and each of them, thereby ratified those actions.

96. Prior to September 11, 2001, THE AIRLINE DEFENDANTS, THE NON-CARRYING AIRLINE DEFENDANTS, THE SECURITY COMPANY DEFENDANTS, PORTLAND and MASSPORT, knew or should have known of the grave risk of attacks upon civil aviation generally, and commercial aircraft and airports. The Department of Transportation Inspector General, Federal Aviation Administration, Government Accounting Office and other independent and industry auditors repeatedly published information concerning terrorist threats to civil aviation. For example, in its 1999 annual report, *Criminal Acts Against Civil Aviation* (hereinafter "The 1999 Report"), the FAA's Office of Civil Aviation Security advised of potential dangers, including the identification of Osama Bin Laden as a specific threat to hijack an airliner and target the United States:

"Another threat to civil aviation is from Saudi terrorist financier Usama Bin Ladin....In a May, 1998 interview, Bin Ladin implied that he could use a shoulder-fired surface-to-air missile to shoot down a military passenger aircraft transporting U.S. military personnel. He reiterated that his attacks would not distinguish between U.S. civilians and military personnel. Moreover, an exiled Islamic leader in the United Kingdom proclaimed in

August 1998 that Bin Ladin would ‘bring down an airliner, or hijack an airliner to humiliate the United States.’”

The 1999 Report at 59.

The report also points to the 1994 Ramzi Yousef conspiracy to place explosive devices on as many as 12 U.S. airliners flying out of the Far East as further evidence of the desire and intent to attack U.S. commercial aircraft. Id.

In addition, threats that aircraft would be used as missiles and crashed into American institutions were passed on to the FAA and THE AIRLINE DEFENDANTS, THE NON-CARRYING AIRLINE DEFENDANTS, THE SECURITY COMPANY DEFENDANTS, PORTLAND and MASSPORT, and other commercial carriers:

In January, 1995, a Philippine National Police raid turned up materials in a Manila apartment indicating that three individuals - Ramzi Yousef, Abdul Murad and Khalid Shaykh Mohammed - planned, among other things, to crash an airplane into CIA headquarters....Information on the threat was passed to the FAA, which briefed U.S. and major foreign carriers.

Joint Inquiry Staff Statement, Part I, Eleanor Hill, Staff Director, Joint Inquiry Staff, September 18, 2002, at p.26.

In the 1999 Report, the FAA issued the following warning:

“There is every reason to believe that civil aviation will continue to be an attractive target for terrorist groups...Increased awareness and vigilance are necessary to deter future incidents – be they from terrorists like Ramzi Yousef or non-terrorists bent on suicide, as occurred in Brazil in 1997. It is important to do the utmost to prevent such acts rather than to lower security measures by interpreting the statistics [which showed a decrease in incidents between 1993 and 1998] as an indication of a decreased threat.”

The 1999 Report at p. 59-60.

97. Following the bombing of the World Trade Center in New York City in 1993, defendants knew full well that terrorists were intent upon destroying the World

Trade Center and that the World Trade Center complex would remain a primary target for further terrorist attacks. Thus, it was reasonably foreseeable that if terrorists gained control of a commercial airliner, such as Flight 175, that the terrorists would attempt to cause it to crash into the World Trade Center and defendants consequently had a duty to take effective measures to counter that threat and risk. Defendants failed in that duty.

98. Prior to September 11, 2001, the defendants knew or should have known about documented and reported numerous security breaches involving unauthorized access to secure areas (including ramps and aircraft) and warnings that security was at risk and that the passenger and carry-on baggage screening system was vulnerable; those reports detailed dangerous, long-standing flaws and deficiencies in airport security and warned the defendants that their airline and airport security systems and imaging equipment were unsafe and needed significant improvements in staffing, training and equipment in order to ensure the safety of persons traveling by air transportation and prevent acts of criminal violence, hijacking and air piracy that could result in injury or death to persons in buildings or on the ground.

99. On and prior to September 11, 2001, THE AIRLINE DEFENDANTS, THE NON-CARRYING AIRLINE DEFENDANTS, THE SECURITY COMPANY DEFENDANTS, PORTLAND and MASSPORT, knew or should have known that evaluations of the airline and airport security systems as they existed on September 11, 2001, revealed that said systems constituted a grave security risk; that THE SECURITY COMPANY DEFENDANTS provided inadequate screening services and that the screening equipment was inadequate, inappropriate and unsafe and that such

inadequacies posed severe dangers to aircraft passengers, flight crew and the public; that THE SECURITY COMPANY DEFENDANTS failed to adequately train their employees, hired illegal aliens, failed to conduct required criminal background checks, and routinely failed in security evaluations.

100. On September 11, 2001, the hijackers passed through the airline and airport security system and imaging equipment at Portland Jetport and Logan Airport, boarded Flights 5930 and 175 respectively, and carried or obtained dangerous and deadly weapons capable of causing injury or death, including but not limited to, box cutters, knives, razors and/or disabling gas.

101. On September 11, 2001, at approximately 8:14 a.m., Flight 175 departed Logan with 56 passengers and 9 crew members.

102. At some time after take-off and upon information and belief, five terrorists on board hijacked and commandeered the subject aircraft with the aid of dangerous and deadly weapons capable of causing injury or death, including, but not limited to, box cutters, knives and/or razors.

103. Upon information and belief, certain passengers and crew were injured or killed during the hijacking.

104. Upon information and belief, the five individuals who hijacked Flight 175 have been identified as Marwan Al-Shehhi, Fayez Rashid Ahmed Hassan Al Qadi Banihammad, Ahmed Alghamdi, Hamza Alghamdi and Mohand Alshehri (collectively referred to as the "hijackers") and were associated with or members of the Al Qaeda terror network led by Osama Bin Laden.

105. At approximately 9:03 a.m., after the hijackers gained control, the subject aircraft crashed into Two World Trade between the 78<sup>th</sup> and 84<sup>th</sup> floors of the building, killing all persons on board the subject aircraft igniting fires and ultimately causing the structure to collapse. The Tower Plaintiffs' decedents were injured and killed in the crash, the resulting fires or subsequent collapse.

106. As a result of the actions of the hijackers, the passengers of Flight 175 were subjected to unusual G-forces, causing physical personal injuries, as well as pre-death pain and suffering, extreme emotional distress, extreme terror, and unremitting fear of impending death based on the knowledge that the hijackers had killed or attempted to kill passengers or crew aboard Flight 175 and that other aircraft had been hijacked and crashed into the north tower of the World Trade Center, and damage to their personal property. The Tower Plaintiffs' decedents endured pre-death pain and suffering, extreme emotional distress, extreme terror and unremitting fear of impending death and damage to their personal property.

107. The terrorist attack upon the World Trade Center in New York City in 1993 demonstrated that the World Trade Center was a primary target for terrorists who would seek to cause mass destruction, deaths and injuries precisely because of its size, the number of people who occupied it on a daily basis and its importance as a symbol of America's democracy and its achievements.

108. At all times pertinent to the Complaint, THE PORT AUTHORITY was engaged in the business of designing, constructing, maintaining, inspecting, servicing, repairing, owning, leasing, managing, operating and controlling the World Trade Center complex, including the subject building.

109. At all times pertinent to the Complaint, THE PORT AUTHORITY, by their respective officers, agents, employees, servants and/or representatives, owed to decedents duties to use reasonable care to design, construct, maintain, inspect, service, repair, own, lease, manage, operate and control the subject building so that it was safe from dangerous and hazardous conditions; to ensure the building structure could withstand the effects of a fire as required by industry and government standards; to provide occupants with a safe and unobstructed escape routes from the building; to ensure safety features such as structural fireproofing and sprinkler systems were properly installed, serviced, maintained and operated; and to develop, implement and maintain adequate and effective egress and evacuation plans for the subject building and its occupants.

110. Prior to September 11, 2001, defendants YAMASAKI and ER&S were engaged in the business of providing architectural services and were THE PORT AUTHORITY'S agents under contract and undertook to be and were responsible for designing, planning, preparing building specifications for and supervising construction of the subject building.

111. Prior to September 11, 2001, defendants SWMB, MAGNUSSON and LERA were engaged in the business of providing structural engineering and building consulting services and were THE PORT AUTHORITY'S agents under contract and undertook to be and were responsible for designing, planning, engineering, evaluating, testing, preparing building specifications for and supervising construction of the subject building.

112. Prior to September 11, 2001, defendant TISHMAN was engaged in the business of building construction and was THE PORT AUTHORITY'S agent under contract and undertook to be and was responsible for approving the materials to be used and supervising construction of the subject building.

113. On or prior to September 11, 2001, defendants YAMASAKI, ER&S, SWMB, MAGNUSSON, LERA and TISHMAN, by their respective officers, agents, employees, servants and/or representatives, owed decedents duties to use reasonable care to design, plan, test, evaluate, build and construct the subject building so that it was safe from dangerous and hazardous conditions; to ensure the building structure could withstand the effects of a fire as required by industry and government standards; to provide occupants with a safe and unobstructed escape routes from the building; and to ensure safety features such as structural fireproofing and sprinkler systems were properly installed.

114. At all relevant times, THE PORT AUTHORITY and THE BUILDING DEFENDANTS, their subsidiaries and each of them were the agent of each other and were acting within the time, purpose or scope of such agency; and all acts or omissions alleged herein of each of THE PORT AUTHORITY and THE BUILDING DEFENDANTS were authorized, adopted or approved by each of the other building defendants.

115. As a direct and proximate result of the conduct of all defendants, the defendants are jointly and severally liable for damages sustained by each plaintiff and each plaintiff is entitled to recover such damages to the extent allowed under applicable state law.

## COUNT ONE

### **CLAIMS FOR PERSONAL INJURIES, WRONGFUL DEATH AND SURVIVAL DAMAGES AGAINST THE AIRLINE DEFENDANTS, THE NON-CARRYING AIRLINE DEFENDANTS, THE SECURITY COMPANY DEFENDANTS, PORTLAND AND MASSPORT BASED ON NEGLIGENCE, NEGLIGENCE PER SE, RECKLESS CONDUCT, AND CONSCIOUS DISREGARD FOR RIGHTS AND SAFETY**

116. Plaintiffs incorporate by reference all prior allegations in this Complaint.

117. On and prior to September 11, 2001, THE AIRLINE DEFENDANTS, THE NON-CARRYING AIRLINE DEFENDANTS, THE SECURITY COMPANY DEFENDANTS, PORTLAND and MASSPORT, by their officers, agents, employees, servants or representatives had an independent, joint and several, nondelegable duty to safeguard Flight 175 and all other aircraft that operated at Portland Jetport and Logan Airport to prevent hijackers from carrying dangerous and deadly weapons capable of causing injury or death aboard the aircraft or otherwise threaten the safety of passengers and crew as well as people in buildings or on the ground who might suffer death or injury as a result of a crash.

118. The defendants were jointly and severally required to secure Flight 175 from unreasonable dangers such as terrorist action aboard the aircraft, including hijacking, resulting in injuries or death to passengers and crew; and/or to operate the subject aircraft in a manner which would not result in injury or death to its passengers and crew as well as individuals in buildings or on the ground who might suffer death or injury at the hands of the terrorists or otherwise by a crash of the airplane.

119. On and prior to September 11, 2001, THE AIRLINE DEFENDANTS, THE NON-CARRYING AIRLINE DEFENDANTS, THE SECURITY COMPANY DEFENDANTS, PORTLAND and MASSPORT, entered into contracts for security services for all flights departing from Portland Jetport and Logan Airport. These defendants had a duty to exercise the highest degree of care to prevent individuals carrying weapons from passing through security checkpoints at Portland Jetport and Logan Airport and prior to boarding aircraft there, and in recognition of that duty, voluntarily entered into contracts with THE SECURITY COMPANY DEFENDANTS to provide various airline and airport security services.

120. By virtue of their negligence, THE AIRLINE DEFENDANTS, THE NON-CARRYING AIRLINE DEFENDANTS, THE SECURITY COMPANY DEFENDANTS, PORTLAND and MASSPORT breached their contracts to provide effective security at Portland Jetport and Logan Airport and to prevent security breaches which could cause injury or death to passengers, crew and individuals in buildings or on the ground who might suffer death or injury as a result of a deliberate crash.

121. On September 11, 2001, hijackers penetrated said airline and airport security system at Portland Jetport and subsequently Logan Airport, brought dangerous weapons onto the Colgan aircraft and subsequently the UNITED aircraft and used said dangerous weapons to seize control of the UNITED aircraft and then crash it into Two World Trade Center injuring and killing decedents.

122. On and prior to September 11, 2001, THE AIRLINE DEFENDANTS, THE NON-CARRYING AIRLINE DEFENDANTS, THE SECURITY COMPANY DEFENDANTS, PORTLAND, and MASSPORT, by their respective officers, agents,

employees, servants and/or representatives, breached their duty to decedents and engaged in conduct that was reckless, negligent, negligent per se, wrongful, unlawful, careless, and willful and wanton in conscious disregard of the rights and safety of the decedents by violating applicable rules and regulations, including Federal Aviation Regulations; and further by creating unreasonable dangers to decedents in that THE AIRLINE DEFENDANTS, THE NON-CARRYING AIRLINE DEFENDANTS, THE SECURITY COMPANY DEFENDANTS, PORTLAND, and MASSPORT:

- failed to implement, operate, maintain, supervise and control an adequate airline and airport security system that ensured the safety of and protected passengers and crew and persons on the ground or in buildings who might suffer injury or death upon improper or unauthorized operation of an aircraft against acts of criminal violence and air piracy;
- failed to adequately train, staff and equip Portland Jetport and Logan Airport's airline and airport security system;
- failed to improve airline and airport security despite knowledge and prior warnings of numerous security breaches and lapses and terrorist threats to airline security;
- failed to properly screen the hijackers and allowed them aboard the subject aircraft with dangerous and deadly weapons capable of causing injury or death;
- violated proper security procedures, including FAA and internal airline/security guidelines and other security directives;
- failed to properly scrutinize the hijackers' tickets and identification documents;
- failed to properly monitor security checkpoints, x-ray machines and metal detectors;
- failed to install state of the art security equipment and systems to prevent hijacking and routinely failed to detect dangerous and deadly weapons capable of causing injury or death in undercover investigations;

- failed to adequately protect the subject aircraft's cockpit from unauthorized entry;
- failed to prevent the hijackers from entering the unprotected cockpit;
- failed to implement adequate safety and security measures to prevent hijacking;
- failed to equip the subject aircraft with a secure cockpit door and adequate locking mechanisms; and
- defendants were otherwise negligent, engaged in conduct that was negligent per se, reckless, wrongful, unlawful, careless, and/or willful in conscious disregard for rights and safety.

123. As a direct and proximate result of the conduct of all defendants, the defendants are jointly and severally liable for damages sustained by each plaintiff and each plaintiff is entitled to recover such damages to the extent allowed under applicable state law.

124. Plaintiffs and the Estates of decedents and the heirs and next of kin of the decedents have sustained and are entitled to recover compensatory damages allowed under law, including damages for the value of decedents' life, loss of net earnings of the decedents, loss of probable support, future contributions and pecuniary benefits, loss of services, loss of inheritance of prospective accumulations, mental anguish, emotional pain and suffering, grief and sorrow, loss of society, companionship, comfort, protection, care, attention, advice, maintenance, counsel, guidance, and decedents' pre-death conscious pain, suffering and fear of death, loss of personal property, and funeral and burial expenses, and other damages.

## COUNT TWO

### **CLAIMS FOR PERSONAL INJURIES, WRONGFUL DEATH AND SURVIVAL DAMAGES AGAINST THE AIRLINE DEFENDANTS, THE NON-CARRYING AIRLINE DEFENDANTS, PORTLAND, AND MASSPORT BASED ON NEGLIGENT SELECTION**

125. Plaintiffs incorporate by reference all prior allegations in this Complaint.

126. On and prior to September 11, 2001, THE AIRLINE DEFENDANTS, THE NON-CARRYING AIRLINE DEFENDANTS, PORTLAND and MASSPORT had an independent and non-delegable duty to provide and maintain competent and careful security of their terminal operations area and aircraft. In recognition of that duty, THE AIRLINE DEFENDANTS, THE NON-CARRYING AIRLINE DEFENDANTS, PORTLAND and MASSPORT subcontracted for security services to protect all flights departing from Portland Jetport and Logan Airport.

127. THE AIRLINE DEFENDANTS, THE NON-CARRYING AIRLINE DEFENDANTS, PORTLAND and MASSPORT failed to exercise reasonable care in the selection of a competent and careful security system contractor by employing THE SECURITY COMPANY DEFENDANTS.

128. THE AIRLINE DEFENDANTS, THE NON-CARRYING AIRLINE DEFENDANTS, PORTLAND and MASSPORT each had a duty or voluntarily undertook a duty through their contracts with THE SECURITY COMPANY DEFENDANTS to exercise the highest degree of care for the safety and security of all passengers and crew passing through security at Portland Jetport and Logan Airport.

129. THE AIRLINE DEFENDANTS, THE NON-CARRYING AIRLINE DEFENDANTS, PORTLAND and MASSPORT each knew or should have known that

the security screening systems and services at Portland Jetport and Logan Airport provided by THE SECURITY COMPANY DEFENDANTS were grossly inadequate and posed a severe danger to its aircraft, passengers, crew and the public. THE AIRLINE DEFENDANTS, THE NON-CARRYING AIRLINE DEFENDANTS, PORTLAND and MASSPORT knew or should have known that the security systems at Portland Jetport and Logan Airport had been demonstrated to be like a sieve frequently unable to detect dangerous and deadly weapons capable of causing injury or death in numerous evaluations.

130. THE AIRLINE DEFENDANTS, THE NON-CARRYING AIRLINE DEFENDANTS, PORTLAND and MASSPORT knew or should have known that THE SECURITY COMPANY DEFENDANTS failed to adequately train their employees, hired illegal aliens, failed to conduct required criminal background checks, and routinely failed in undercover security evaluations to detect even the most obvious of dangerous and deadly weapons capable of causing injury or death.

131. THE SECURITY COMPANY DEFENDANTS' work as security system contractors at Portland Jetport and Logan Airport presents a risk of physical harm and death unless skillfully and carefully performed commensurate with the threat of terrorist action.

132. THE SECURITY COMPANY DEFENDANTS had a record of incompetent and careless operation and maintenance of their contracted security service obligations over many years according to FAA "Red Team" audits and other independent checks on the effectiveness of their security systems.

133. THE AIRLINE DEFENDANTS, THE NON-CARRYING AIRLINE DEFENDANTS, PORTLAND and MASSPORT's failure to remedy these known security lapses was a reckless, negligent and willful and wanton breach of their respective duties of care to all passengers and crew passing through Portland Jetport and Logan Airport and boarding aircraft there.

134. THE AIRLINE DEFENDANTS, THE SECURITY COMPANY DEFENDANTS, PORTLAND and MASSPORT's failure to exercise reasonable care in the selection, continued retention and supervision of competent and careful security systems and contractors were proximate contributing factors to the causes of decedents injuries, death and damages.

135. As a direct and proximate result of the conduct of all defendants, the defendants are jointly and severally liable for damages sustained by plaintiffs and plaintiffs are entitled to recover such damages to the extent allowed under applicable state law.

### **COUNT THREE**

#### **CLAIMS FOR PERSONAL INJURIES, WRONGFUL DEATH AND SURVIVAL DAMAGES AGAINST DEFENDANT BOEING BASED ON STRICT TORT LIABILITY**

136. Plaintiffs incorporate by reference all prior allegations in this Complaint.

137. The aforementioned aircraft was being used in an intended and foreseeable manner on the morning of September 11, 2001.

138. Defendant BOEING defectively designed the cockpit or flight deck environment, including its door and accompanying locks of the subject aircraft. The design in use on September 11, 2001 in the subject aircraft was unreasonably

dangerous in that it could easily be penetrated by a determined passenger. The cockpit door was not secure and the accompanying locks were insufficient to deter or prevent unauthorized or unlawful entry to thwart a hijacking attack. Alternative and safer designs were available for a nominal increase in cost which would have prevented these terrorists from gaining access to the cockpit on Flight 175.

139. This defective design permitted the terrorists to gain access to the cockpit of Flight 175 and hijack the aircraft. BOEING'S defective design was a proximate cause of the personal injuries to and death of decedents.

140. As a direct and proximate result of the conduct of defendant BOEING, BOEING is jointly and severally liable for damages sustained by plaintiffs and plaintiffs are entitled to recover such damages to the extent allowed under applicable state law.

#### **COUNT FOUR**

##### **CLAIMS FOR PERSONAL INJURIES, WRONGFUL DEATH AND SURVIVAL DAMAGES AGAINST DEFENDANT BOEING BASED ON NEGLIGENT DESIGN**

141. Plaintiffs incorporate by reference all prior allegations in this Complaint.

142. Defendant BOEING owed all passengers and crew who fly on their aircraft and those persons on the ground or in buildings who might suffer injury or death as a result of improper or unauthorized operation of a BOEING aircraft, including decedents, a duty of care in safely designing the aircraft including a secure cockpit door and accompanying locks.

143. Defendant BOEING recklessly and negligently breached this duty of care by failing to design the cockpit doors and accompanying locks to the subject aircraft in a manner which would prevent hijackers and/or other passengers from accessing the

cockpit. The cockpit door on Flight 175 was not secure and the accompanying locks were insufficient to deter or prevent a hijacking.

144. Defendant BOEING knew or should have known that the design of its cockpit door was defective. Defendant BOEING failed to remedy this defect. Defendant BOEING knew or should have known that alternative and safer designs were available for a nominal increase in cost which would have prevented these terrorists from entering the cockpit on Flight 175.

145. This defective design permitted the terrorists to easily gain access to the Flight 175 cockpit on September 11, 2001 and was a proximate cause of the injuries to and deaths of decedents.

146. As a direct and proximate result of the conduct of defendant BOEING, BOEING is jointly and severally liable for damages sustained by plaintiffs and plaintiffs are entitled to recover such damages to the extent allowed under applicable state law.

## **COUNT FIVE**

### **CLAIMS FOR PERSONAL INJURIES, WRONGFUL DEATH AND SURVIVAL DAMAGES AGAINST DEFENDANT BOEING BASED ON BREACH OF WARRANTY**

147. Plaintiffs incorporate by reference all prior allegations in this Complaint.

148. Prior to September 11, 2001, defendant BOEING expressly and/or impliedly warranted and represented that the subject aircraft and its component parts and systems, including, but not limited to, the subject aircraft's structure and airframe, including the subject aircraft's cockpit door, were airworthy, of merchantable quality, and/or fit and safe for the purposes for which they were designed, manufactured, assembled, inspected, tested, distributed, sold, serviced, maintained, and/or repaired,

intended and used, and defendant BOEING further warranted that the subject aircraft and its component parts and systems, including, but not limited to the subject aircraft's structure and airframe, including the subject aircraft's cockpit door, were free from all defects.

149. Defendant BOEING breached said warranties in that the subject aircraft and its component parts and systems, including, but not limited to, the subject aircraft's structure and airframe, including the subject aircraft's cockpit door, were not airworthy, of merchantable quality, and/or fit and safe for the purposes for which they were designed, manufactured, assembled, inspected, tested, distributed, sold, serviced, maintained, and/or repaired, intended and used and further were not free from all defects and said breach of warranties proximately caused the terrorist hijacking, crash, injuries to and death of decedents.

150. As a direct and proximate result of the conduct of defendant BOEING, BOEING is jointly and severally liable for damages sustained by plaintiffs and plaintiffs are entitled to recover such damages to the extent allowed under applicable state law.

## **COUNT SIX**

### **CLAIMS FOR WRONGFUL DEATH AND SURVIVAL DAMAGES AND PERSONAL INJURIES ON BEHALF OF THE TOWER PLAINTIFFS AGAINST THE PORT AUTHORITY AND THE BUILDING DEFENDANTS BASED ON NEGLIGENCE**

151. Plaintiffs incorporate by reference all prior allegations in this Complaint.

152. Since the World Trade Center was designed and built in the late 1960's and early 1970's, THE PORT AUTHORITY and THE BUILDING DEFENDANTS knew or should have known that the World Trade Center complex in New York City, due to its

size as well as location in an area heavily traversed by aircraft, could be struck by such an aircraft.

153. Since at least 1993, THE PORT AUTHORITY and THE BUILDING DEFENDANTS knew or should have known that the buildings that constituted the World Trade Center complex were a primary target for terrorist attack due to their size, symbolic significance and because they were in the heart of New York City. Despite this knowledge, THE PORT AUTHORITY and THE BUILDING DEFENDANTS failed to develop an adequate and safe evacuation and egress plan for the building occupants and failed to ensure that the building could withstand the crash of an aircraft and the resulting fire.

154. THE PORT AUTHORITY and THE BUILDING DEFENDANTS, by their officers, agents, employees, servants and/or representatives, owed to the Tower Plaintiffs' decedents, duties to use reasonable care to design, construct, maintain, inspect, service, repair, own, lease, manage, operate and control Two World Trade so that it could withstand the crash of an aircraft and the resulting fire; that it was safe for dangerous and hazardous conditions; that its occupants were provided with safe and unobstructed escape routes from the building; to ensure that structural fireproofing and sprinkler systems were properly installed, serviced, maintained and operated; and to develop, implement and maintain safe, adequate and effective egress and evacuation plans for Two World Trade and its occupants.

155. The collapse of Two World Trade and the resulting injuries and deaths were proximately caused by the negligence of THE PORT AUTHORITY and THE BUILDING DEFENDANTS, their respective officers, agents, employees, servants or

representatives, who breached their duty of care to the Tower Plaintiffs' decedents, violated applicable rules and regulations; created unreasonable dangers in Two World

Trade in that THE PORT AUTHORITY and THE BUILDING DEFENDANTS:

- negligently designed, constructed, serviced, repaired, inspected and maintained Two World Trade;
- negligently failed to adhere to safe engineering practices and standards used in the design and construction of high-rise buildings;
- negligently failed to inspect, discover and repair unsafe and dangerous conditions which it knew would detrimentally affect the safety of the building's occupants;
- negligently failed to provide a safe and unobstructed escape route from Two World Trade;
- negligently tested and evaluated Two World Trade's ability to withstand impact forces and fire;
- negligently installed an inadequate and unsafe sprinkler system;
- negligently installed, inspected, repaired and maintained inadequate and unsafe fireproofing materials throughout Two World Trade;
- negligently allowed spray-on fireproofing materials to fall off or flake away from the building's structure leaving steel exposed and unprotected from fire and heat;
- negligently developed and maintained an unsafe and inadequate emergency management plan for catastrophic events;
- negligently developed and maintained an inadequate egress and evacuation plan for the building and its occupants;
- negligently ordered building occupants to remain in the building rather than evacuate;
- negligently applied, interpreted and/or enforced applicable building and fire safety codes, regulations and practices;

and said THE PORT AUTHORITY and THE BUILDING DEFENDANTS were otherwise negligent.

156. As a direct and proximate result of the conduct of all defendants, the defendants are jointly and severally liable for damages sustained by each plaintiff and each plaintiff is entitled to recover such damages to the extent allowed under applicable state law.

## **COUNT SEVEN**

### **CLAIM FOR WRONGFUL DEATH AND SURVIVAL DAMAGES BASED ON RES IPSA LOQUITUR**

157. Plaintiffs incorporate by reference all prior allegations in this Complaint.

158. Defendants, and each of them, had exclusive management and control of the aircraft and airport security systems, through which the terrorists penetrated, and whose actions resulted in damages and death to each plaintiffs' decedent. The penetration of the security system and plaintiffs' decedents' deaths as set forth above are such that in the ordinary course of events would not have occurred if defendants had exercised ordinary care in the maintenance and operation of the security systems. Because of the defendants' exclusive control and management of the systems, defendants are possessed of superior, if not exclusive, access to information concerning the precise cause of the incident, and each plaintiff relies on the negligence of defendants, as inferred from the general circumstances alleged herein. The penetration of the security system was not due to any action or contribution on the part of plaintiff's decedent.

159. As a direct and proximate result of the conduct of all defendants, the defendants are jointly and severally liable for damages sustained by each plaintiff and each plaintiff is entitled to recover such damages to the extent allowed under applicable state law.

## **COUNT EIGHT**

### **CLAIM FOR NEGLIGENT INFLICTION OF EMOTIONAL DISTRESS AGAINST ALL DEFENDANTS**

160. Plaintiffs incorporate by reference all prior allegations in this Complaint.

161. Defendants owe a duty to the public and to the Plaintiffs to adequately safeguard air travel. Defendants undertook this duty freely.

162. Defendants knew or should have known that their conduct and actions in failing to implement adequate security systems would lead to increased danger, risk of catastrophic injury, and severe, debilitating emotional distress to its passengers and crew and to those on the ground, and to the Plaintiffs. The Defendants knew or should have known that the failure to implement adequate safety and security measures placed the public in extreme danger, increasing the risk of injury and the resulting emotional distress.

163. The conduct and actions of the Defendants were done in breach of their duties and in negligent disregard for the rights and lives of the general public and of those killed and injured at Two World Trade.

164. The course of conduct undertaken by the Defendants in failing to safeguard airports and aircraft was such that it was reasonably foreseeable to result in the death, injury and suffering of innocent people, both in the air and on the ground.

The repeated failure to implement adequate security culminated in injury of and damage to decedents resulting in severe, continuing, permanent mental, physical and emotional distress and suffering, and resulting loss of consortium and services to Plaintiffs.

165. As a direct and proximate cause of Defendants' negligent, grossly negligent and/or reckless misconduct and disregard for public and aviation safety in breach of their duty, Plaintiffs have suffered severe emotional distress and ongoing psychiatric injuries and damages.

166. Defendants, by reason of their negligent breach of duty and/or recklessness, inflicted emotional distress upon the Plaintiffs.

167. As a direct and proximate result of the conduct of all defendants, the defendants are jointly and severally liable for damages sustained by plaintiffs and plaintiffs are entitled to recover such damages to the extent allowed under applicable state law.

## **COUNT NINE**

### **CLAIM FOR PUNITIVE DAMAGES AGAINST ALL DEFENDANTS**

168. Plaintiffs incorporate by reference all prior allegations in this Complaint.

169. The failure of the airline and airport security system at Portland Jetport and Logan Airport and the failure to secure the aircraft cockpit, which resulted in the hijacking of the subject aircraft and injuries and death to the decedents, were caused by the wanton, gross, reckless and wilful misconduct of defendants, including their officers, agents, servants and/or employees as set forth herein, whose actions and

omissions were outrageous, willful, wanton and gross and said defendants acted with reckless disregard for public and aviation safety.

170. As a direct and proximate result of the conduct of all defendants, the defendants are jointly and severally liable for damages sustained by plaintiffs and plaintiffs are entitled to recover such damages to the extent allowed under applicable state law.

**WHEREFORE**, the plaintiffs demand judgment against THE AIRLINE DEFENDANTS, THE NON-CARRYING AIRLINE DEFENDANTS, THE SECURITY COMPANY DEFENDANTS, PORTLAND, MASSPORT, BOEING, THE PORT AUTHORITY and THE BUILDING DEFENDANTS to the extent allowed under applicable state law.

**JURY DEMAND**

Plaintiffs demand a trial by jury.

Dated: New York, New York  
March 31, 2004

PLAINTIFFS' EXECUTIVE COMMITTEE

By:

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## APPENDIX A

### Flight 175 First Amended Master Complaint

#### PLAINTIFFS:

<b>Plaintiff(s)</b>	<b>Decedent</b>	<b>Case No(s).</b>
Ellen Mariani	Louis Mariani	01-Civ-11628
Lauren A. Peters	Louis Neil Mariani	03-Civ-6940
Rhonda Lopez	Maclovio Lopez, Jr.	02-Civ-0458
Julie Sweeney	Brian Sweeney	02-Civ-1727
Beverly Titus John Titus	Alicia Titus	02-Civ-6365
Marie Koutny	Marie Pappalardo	02-Civ-2802
Suzanne Ward Baker	Timothy Ward	02-Civ-6364
Beverly Eckert	Sean Rooney	02-Civ-7122
Maria Luisa Pocasangre Alfredo Pocasangre	Maria DeBarrera	02-Civ-7152
Mary Jones Mikael Carstanjen	Cristoffer Carstanjen	02-Civ-7153
Mary Bavis	Mark Bavis	02-Civ-7154
Monica Gabrielle	Richard Gabrielle	02-Civ-7176
Gladys Salvo	Samuel Salvo	02-Civ-7267
Catherine Jalbert	Robert Jalbert	03-Civ-6801
Katherine Bailey	Garnet Bailey	03-Civ-6802
Elizabeth Gail Hayden	James Hayden	03-Civ-6811
Patricia Quigley	Patrick Quigley	03-Civ-7028
Madeleine Zuccala	Joseph J. Zuccala	03-Civ-7051
Patrick Nassaney Margaret Nassaney	Shawn Nassaney	03-Civ-7083
Felicita Sanchez Jesus Sanchez, Sr.	Jesus Sanchez, Jr.	03-Civ-7084
Edward Radburn	Bettina Browne	04-Civ-1809

## APPENDIX A

### **Flight 175 First Amended Master Complaint**

#### **DEFENDANTS:**

AMR Corporation  
American Airlines, Inc.  
Air Tran Airways, Inc.  
America West Airlines, Inc.  
American Trans Air, Inc.  
Cape Air, Inc.  
Colgan Air, Inc.  
Continental Airlines, Inc.  
Delta Airlines, Inc.  
Delta Express, Inc.  
Midway Airlines Corporation  
Midwest Express Airlines, Inc.  
Northwest Airlines Corporation  
UAL Corporation  
United Airlines, Inc.  
US Airways, Inc.  
The Boeing Company  
Port Authority of New York and New Jersey  
Massachusetts Port Authority  
Burns International Security Services Corp.  
Globe Aviation Services  
Huntleigh USA Corporation  
ICTS International NV  
Pinkerton's Inc.  
Securitas AB

**APPENDIX A**

**Flight 175 First Amended Master Complaint**

**DEFENDANTS (continued):**

Minoru Yamasaki Associates

Emery Roth & Partners LLC d/b/a Emery Roth & Sons

Emery Roth & Sons, P.C.

Skilling Ward Magnusson & Barkshire

Magnusson Klemencic Associates

Leslie E. Robertson & Associates

Tishman Realty & Construction Company

Silverstein Properties/World Trade Center Properties LLC