

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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U. DISTRICT COURT SDNY
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PLAINTIFFS' AMENDED FLIGHT 93 MASTER LIABILITY COMPLAINT

(THE SHANKSVILLE CRASH)

Plaintiffs,¹ by their respective attorneys complaining of the 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 wrongful deaths of the individuals who were killed in the hijacking and crash of United Air Lines Flight 93 (hereinafter "Flight 93") in Shanksville, Pennsylvania on September 11, 2001. Flight 93 originated at Terminal A, Newark International Airport (hereinafter "Newark Airport") and was bound for San Francisco International Airport.

In sum, these actions allege that for several years prior to September 11, 2001, UNITED, THE OTHER AIRLINE DEFENDANTS and THE SECURITY COMPANY DEFENDANTS named herein, and THE PORT AUTHORITY 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

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

resided or traveled within or to its borders and vowed to kill Americans and to destroy American institutions and that airlines and airports were a likely target of their violence. The risk of harm to airline passengers was heightened by the fact that 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 protect passengers from harm 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 them 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 at Newark 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 aboard Flight 93 capable of causing injury or death to passengers and crew on the aircraft, and failed to take the necessary measures to protect and secure the cockpit of Flight 93 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.

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 (the “Act”), 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 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.”²

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.

THE PARTIES

4. On September 11, 2001, each decedent was a fare-paying passenger aboard Flight 93.

² 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

UNITED AIR LINES

5. Defendant UAL CORPORATION (hereinafter "UAL") is a corporation duly organized and existing under the laws of Delaware and maintains its principal place of business in Illinois.

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

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

8. Defendant UNITED AIR LINES, INC. is a common carrier engaged in the business of transporting passengers by air and operates regularly scheduled flights from Newark Airport and is responsible for the airline and airport security system at Newark Airport.

9. Defendant UAL is the parent corporation of and exercised control over its wholly-owned subsidiary, defendant UNITED AIR LINES, INC.

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

11. On September 11, 2001, UNITED operated a Boeing 757, registration number N591UA ("the subject aircraft") designated as Flight 93 which departed from Newark International Airport, New Jersey (hereinafter "Newark") with an intended destination of San Francisco International Airport.

THE SECURITY COMPANY DEFENDANTS

12. Defendant ARGENBRIGHT SECURITY, INC. (hereinafter “ARGENBRIGHT”) is a corporation duly organized and existing under the laws of Georgia and maintains its principal place of business in Georgia.

13. Defendant SECURICOR PLC (hereinafter “SECURICOR”) is a foreign corporation duly organized and existing under the laws of the United Kingdom and maintains its principal place of business in the United Kingdom.

14. Defendant SECURICOR is the parent corporation of and exercised control over its wholly-owned subsidiary, defendant ARGENBRIGHT.

15. Defendant SECURICOR, as the parent corporation of its wholly-owned subsidiary ARGENBRIGHT, is liable for the negligent, reckless and wanton acts of ARGENBRIGHT.

16. ARGENBRIGHT and SECURICOR (collectively hereinafter “THE SECURITY COMPANY DEFENDANTS”) were corporations engaged in the business of, and separately and collectively assumed responsibility for, developing, implementing, owning, operating, managing, maintaining and supervising airline and airport security for UNITED for their flights departing from Newark Airport, including Flight 93.

THE OTHER AIRLINE DEFENDANTS

17. Defendant AMERICAN AIRLINES, INC. (hereinafter “AMERICAN”) is a corporation duly organized and existing under the laws of Delaware and maintains its principal place of business in Texas. At all relevant times pertinent to the Complaint, AMERICAN was a common carrier engaged in the business of transporting passengers

by air and operated regularly scheduled flights from Newark Airport. AMERICAN was jointly, severally and contractually liable by and through its agents, employees and contractors for maintaining the airline and airport security system at Newark Airport.

18. 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. At all relevant times pertinent to the Complaint, AMR was a common carrier engaged in the business of transporting passengers by air and operated regularly scheduled flights from Newark Airport. AMR was jointly, severally and contractually liable by and through its agents, employees and contractors for maintaining the airline and airport security system at Newark Airport.

19. Defendant CONTINENTAL AIRLINES, INC. (hereinafter "CONTINENTAL") is a corporation duly organized and existing under the laws of Delaware and maintains its principal place of business in Texas. At all relevant times pertinent to the Complaint, CONTINENTAL was a common carrier engaged in the business of transporting passengers by air and operated regularly scheduled flights from Newark Airport. CONTINENTAL was jointly, severally and contractually liable by and through its agents, employees and contractors for maintaining the airline and airport security system at Newark Airport.

20. Defendant AMERICA WEST AIRLINES, INC. (hereinafter "AMERICA WEST") is a corporation duly organized and existing under the laws of Delaware and maintains its principal place of business in Arizona. At all relevant times pertinent to the Complaint, AMERICA WEST was a common carrier engaged in the business of transporting passengers by air and operated regularly scheduled flights from Newark

Airport. AMERICA WEST was jointly, severally and contractually liable by and through its agents, employees and contractors for maintaining the airline and airport security system at Newark Airport.

21. 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. At all relevant times pertinent to the Complaint, US AIRWAYS was a common carrier engaged in the business of transporting passengers by air and operated regularly scheduled flights from Newark Airport. US AIRWAYS was jointly, severally and contractually liable by and through its agents, employees and contractors for maintaining the airline and airport security system at Newark Airport.

22. Defendant US AIR GROUP d/b/a US AIRWAYS EXPRESS (hereinafter "US AIR GROUP") is a corporation duly organized and existing under the laws of Delaware and maintains its principal place of business in Ohio. At all relevant times pertinent to the Complaint, US AIR GROUP was a common carrier engaged in the business of transporting passengers by air and operated regularly scheduled flights from Newark Airport. US AIR GROUP was jointly, severally and contractually liable by and through its agents, employees and contractors for maintaining the airline and airport security system at Newark Airport.

23. Defendant AIRTRAN AIRWAYS, INC, (hereinafter "AIRTRAN") is a corporation duly organized and existing under the laws of Delaware and maintains its principal place of business in Florida. At all relevant times pertinent to the Complaint, AIRTRAN was a common carrier engaged in the business of transporting passengers

by air and operated regularly scheduled flights from Newark Airport. AIRTRAN was jointly, severally and contractually liable by and through its agents, employees and contractors for maintaining the airline and airport security system at Newark Airport.

24. Defendant TEM ENTERPRISES d/b/a CASINO EXPRESS (hereinafter “CASINO EXPRESS”) is a corporation duly organized and existing under the laws of Nevada and maintains its principal place of business in Nevada. At all relevant times pertinent to the Complaint, CASINO EXPRESS was a common carrier engaged in the business of transporting passengers by air and operated regularly scheduled flights from Newark Airport. CASINO EXPRESS was jointly, severally and contractually liable by and through its agents, employees and contractors for maintaining the airline and airport security system at Newark Airport.

25. Defendant NATIONAL AIRLINES, INC. (hereinafter “NATIONAL”) is a corporation duly organized and existing under the laws of Delaware and maintains its principal place of business in Nevada. At all times pertinent to the Complaint, NATIONAL was a common carrier engaged in the business of transporting passengers by air and operated regularly scheduled flights from Newark Airport. NATIONAL was jointly, severally and contractually liable by and through its agents, employees and contractors for maintaining the airline and airport security system at Newark Airport.

26. Defendants AMERICAN, AMR, CONTINENTAL, AMERICA WEST, US AIRWAYS, US AIR GROUP, AIRTRAN, CASINO EXPRESS and NATIONAL are collectively referred to hereinafter as “THE OTHER AIRLINE DEFENDANTS.”

THE PORT AUTHORITY

27. THE PORT AUTHORITY is a corporation duly organized and existing under the laws of New York and New Jersey and maintains its principal place of business in New York.

28. On September 11, 2001, THE PORT AUTHORITY controlled, operated, managed and maintained Newark Airport under a lease with the City of Newark, New Jersey and was responsible for airline and airport security for all flights departing from Newark Airport and shared responsibility for airport security at Newark Airport.

THE BOEING DEFENDANT

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

30. Defendant BOEING is 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.

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

GENERAL ALLEGATIONS

32. 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 the subject airport and the ticketing check-in and

boarding processes, including identification and document checks for the subject aircraft and flight.

33. On September 11, 2001, UNITED, by its officers, agents, employees, servants or representatives owed the highest 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 subject aircraft to threaten its safety and/or injure or kill passengers and crew aboard it; 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.

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

35. On September 11, 2001, defendant THE PORT AUTHORITY, by its officers, agents, employees, servants or representatives owed a duty of care to safeguard the subject aircraft and passengers 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.

36. On and prior to September 11, 2001, THE OTHER AIRLINE DEFENDANTS, by their officers, agents, employees, servants or representatives operated, controlled, supervised and maintained the airline and airport security system

at the subject airport, including but not limited to passenger screening and security checkpoint operations.

37. On September 11, 2001, THE OTHER AIRLINE DEFENDANTS, by their officers, agents, employees, servants or representatives owed a duty of care to safeguard the subject aircraft and passengers 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.

38. On and prior to September 11, 2001, THE SECURITY COMPANY DEFENDANTS were corporations 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 Newark International Airport and for the subject flight.

39. On and prior to September 11, 2001, THE SECURITY COMPANY DEFENDANTS, by their respective officers, agents, employees, servants and/or representatives 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 subject airport's security checkpoints for defendant UNITED's flights, including the subject 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 aircraft.

40. 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.

41. On September 11, 2001, THE SECURITY COMPANY DEFENDANTS, by their respective officers, agents, employees, servants or representatives owed a duty of care to safeguard the subject aircraft and its passengers 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/or injure or kill passengers and crew aboard it.

42. Prior to September 11, 2001, the Department of Transportation through its Federal Aviation Administration licensed UNITED and THE OTHER AIRLINE DEFENDANTS as commercial air carriers authorized to transport passengers for hire, pursuant to which UNITED and THE OTHER AIRLINE DEFENDANTS had an obligation to comply with all federal statutes, rules, regulations, and environmental directives to achieve the highest level of airline and airport security to ensure that passengers were protected from harm as a result of a terrorist action.

43. On and prior to September 11, 2001, UNITED, THE SECURITY COMPANY DEFENDANTS, THE OTHER AIRLINE DEFENDANTS, and THE PORT AUTHORITY, through their agents, servants, officers, employees, designees and/or contractors jointly and severally undertook and were required to develop, implement, own, operate, manage, supervise, staff, equip, maintain, control and/or oversee the airline and airport security system at Newark 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 aircraft and flight), to ensure the safety of persons traveling in air transportation against acts of criminal violence and air piracy.

44. Prior to September 11, 2001, UNITED, THE OTHER AIRLINE DEFENDANTS and THE PORT AUTHORITY entered into contractual relationships with THE SECURITY COMPANY DEFENDANTS to provide security screening services at Newark Airport.

45. On and prior to September 11, 2001, UNITED, THE SECURITY COMPANY DEFENDANTS, THE OTHER AIRLINE DEFENDANTS, and THE PORT AUTHORITY, 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 Newark Airport.

46. Prior to September 11, 2001, regular meetings were held among UNITED, THE OTHER AIRLINE DEFENDANTS, THE SECURITY COMPANY DEFENDANTS, and THE PORT AUTHORITY during which airport security was discussed, and details about terrorist threats and potential security breaches were reviewed and discussed.

47. 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.

48. 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.

49. Prior to September 11, 2001, UNITED, THE SECURITY COMPANY DEFENDANTS, THE OTHER AIRLINE DEFENDANTS and THE PORT AUTHORITY 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 UNITED, THE OTHER AIRLINE DEFENDANTS, THE SECURITY COMPANY DEFENDANTS, THE PORT AUTHORITY 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.

50. 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 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 were unsafe and needed significant improvements in staffing, training and equipment in order to ensure the safety of persons traveling by air transportation against acts of criminal violence, hijacking and air piracy.

51. On and prior to September 11, 2001, UNITED, THE OTHER AIRLINE DEFENDANTS and THE PORT AUTHORITY knew or should have known evaluations of the airline and airport security systems revealed that the systems, as they existed on September 11, 2001, constituted a grave security risk; that THE SECURITY COMPANY DEFENDANTS provided screening services which were inadequate and that such inadequacies posed severe dangers to its passengers and the public; that THE SECURITY COMPANY DEFENDANTS failed to adequately train its employees, hired illegal aliens, failed to conduct required criminal background checks, and routinely failed in security evaluations.

52. On September 11, 2001, four hijackers passed through the airline and airport security system at Newark Airport, boarded Flight 93, and carried or obtained dangerous and deadly weapons capable of causing injury or death.

53. At 8:01 a.m., Flight 93 pushed away from Gate 17 at Newark International Airport. Shortly after pushback, the captain informed the passengers that there would be a delay.

54. At 8:24 a.m., United Flight 175 notified air traffic control that “we heard a suspicious transmission on our departure from BOS. Sounds like somebody keyed the

mike and said everyone stay in your seats.” Three minutes later, the flight disappeared from radar.

55. At 8:40 a.m., The Federal Aviation Administration notified the Northeast Air Defense Sector of NORAD that American Airlines Flight 11 had been hijacked.

56. On September 11, 2001 at approximately 8:45 a.m., despite the knowledge that other civilian aircraft which had taken off from airports in the United States had been hijacked and diverted from their intended flight path, Flight 93 was given clearance to depart Newark Airport with 38 passengers and 7 crew members.

57. At approximately 9:00 a.m., UNITED warned its aircraft to barricade its cockpit doors and beware of cockpit intrusions, and at 9:03 a.m., United Flight 175 was flown into the South Tower of the World Trade Center.

58. Approximately forty minutes into the subject flight, and upon information and belief, four 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, a firearm, box cutters, knives, razors and/or disabling gas.

59. Upon information and belief, the four individuals who hijacked Flight 93 have been identified as Saeed Alghamdi, Ahmed Ibrahim A. Al Haznawi, Ahmed Alnami, and Ziad Samir Jarrah (collectively referred to as the “hijackers”) and were associated with or members of the Al Qaeda terror network led by Osama Bin Laden.

60. Upon information and belief, after the hijackers took control of the subject aircraft, various passengers and crew on board Flight 93 made telephone calls using cell phones and the subject aircraft’s on board GTE Airfone Service.

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

62. During these telephone calls, the passengers and crew on board Flight 93 learned that other aircraft had crashed into the North and South Towers of the World Trade Center located in New York, New York and into the Pentagon located in Arlington, Virginia.

63. Upon information and belief, having learned that other aircraft crashed into various national landmarks, at approximately 9:58 a.m. certain passengers on board Flight 93 attempted to re-take control of the subject aircraft to prevent the hijackers from using Flight 93 as an instrument of mass destruction.

64. Upon information and belief, at approximately 10:05 a.m., due to the heroic efforts of the passengers to prevent the hijackers from using the subject aircraft as an instrument of mass destruction, the subject aircraft crashed in Somerset County, near Shanksville, Pennsylvania, killing all passengers and crew.

65. As a result of the actions of the hijackers, the passengers of Flight 93 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 93 and that other aircraft had been hijacked and crashed into the World Trade Center and Pentagon, and damage to their personal property.

66. As a direct and proximate consequence 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 WRONGFUL DEATH AND SURVIVAL DAMAGES AGAINST UNITED, THE SECURITY COMPANY DEFENDANTS AND THE PORT AUTHORITY BASED ON NEGLIGENCE; NEGLIGENCE PER SE; RECKLESS CONDUCT AND CONSCIOUS DISREGARD FOR RIGHTS AND SAFETY

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

68. On and prior to September 11, 2001, UNITED, THE SECURITY COMPANY DEFENDANTS and THE PORT AUTHORITY, by their officers, agents, employees, servants or representatives, had an independent, joint and several, nondelegable duty to exercise and provide the passengers of Flight 93 with the highest level security and care to safeguard Flight 93 and all other aircraft that operated at Newark Airport to prevent hijackers from carrying dangerous and deadly weapons capable of causing injury or death aboard aircraft or otherwise threaten the safety of passengers and crew and/or injure or kill passengers and crew.

69. The defendants were jointly and severally required to secure Flight 93 from unreasonable dangers, such as terrorist action aboard the aircraft, including hijacking, and to operate the subject aircraft in a manner which would not result in injury or death to its passengers.

70. On and prior to September 11, 2001, UNITED and THE PORT AUTHORITY entered into contracts with THE SECURITY COMPANY DEFENDANTS for security services for all flights departing from Newark Airport. These defendants had a duty to exercise the highest degree of care for the safety and security of all

passengers passing through security checkpoints at Newark 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.

71. By virtue of their negligence, UNITED, THE PORT AUTHORITY and THE SECURITY COMPANY DEFENDANTS breached their contracts to provide effective security at Newark Airport and to prevent security breaches which could cause injury or death to passengers.

72. On and prior to September 11, 2001, UNITED, THE SECURITY COMPANY DEFENDANTS and THE PORT AUTHORITY, by their respective officers, agents, employees, servants and/or representatives, breached their duty to decedents and engaged in conduct which was reckless, negligent, negligent per se, wrongful, unlawful, careless, and willful and wanton in conscious disregard of the rights and safety of the passengers by violating applicable rules and regulations, including Federal Aviation Regulations; and further by creating unreasonable dangers to Flight 93 passengers in that UNITED, THE SECURITY COMPANY DEFENDANTS, and THE PORT AUTHORITY:

- failed to implement, operate, maintain, supervise and control an adequate airline and airport security system that ensured the safety of and protected passengers against acts of criminal violence and air piracy;
- failed to adequately train, staff and equip Newark 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.

73. 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 TWO

CLAIMS FOR WRONGFUL DEATH AND SURVIVAL DAMAGES AGAINST THE OTHER AIRLINE DEFENDANTS BASED ON NEGLIGENCE; NEGLIGENCE PER SE; RECKLESS CONDUCT AND CONSCIOUS DISREGARD FOR RIGHTS AND SAFETY

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

75. On and prior to September 11, 2001, THE OTHER AIRLINE DEFENDANTS had an independent and non-delegable duty to maintain the security of their aircraft and Newark Airport. In recognition of that duty, THE OTHER AIRLINE DEFENDANTS subcontracted for security services to protect all flights departing from Newark Airport.

76. THE OTHER AIRLINE DEFENDANTS each had a duty or voluntarily undertook a duty through its contract with THE SECURITY COMPANY DEFENDANTS to exercise the highest degree of care for the safety and security of all passengers passing through security at Newark Airport.

77. THE OTHER AIRLINE DEFENDANTS each knew or should have known that the security screening systems and services at Newark Airport provided by THE SECURITY COMPANY DEFENDANTS were grossly inadequate and posed a severe danger to its passengers and the public. THE OTHER AIRLINE DEFENDANTS knew or should have known that the security systems at Newark 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.

78. Each of THE OTHER AIRLINE DEFENDANTS knew or should have known that THE SECURITY COMPANY DEFENDANTS failed to adequately train its

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.

79. THE OTHER AIRLINE DEFENDANTS' 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 passing through Newark Airport and boarding aircraft there.

80. 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 THREE

CLAIMS FOR WRONGFUL DEATH AND SURVIVAL DAMAGES AGAINST UNITED, THE OTHER AIRLINE DEFENDANTS AND THE PORT AUTHORITY BASED ON NEGLIGENT SELECTION

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

82. UNITED, THE OTHER AIRLINE DEFENDANTS and THE PORT AUTHORITY had a non-delegable duty to the traveling public, including decedents, to provide competent and careful security of their terminal operations area and aircraft. In recognition of that duty, UNITED, THE OTHER AIRLINE DEFENDANTS and THE PORT AUTHORITY subcontracted for security services to protect all flights departing from Newark.

83. UNITED, THE OTHER AIRLINE DEFENDANTS and THE PORT AUTHORITY failed to exercise reasonable care in the selection of a competent and careful security system contractor by employing THE SECURITY COMPANY DEFENDANTS.

84. UNITED, THE OTHER AIRLINE DEFENDANTS and THE PORT AUTHORITY each knew or should have known that the security screening systems and services at Newark Airport provided by THE SECURITY COMPANY DEFENDANTS were grossly inadequate and posed a severe danger to its aircraft, passengers and the public. UNITED, THE OTHER AIRLINE DEFENDANTS and THE PORT AUTHORITY knew or should have known that the security systems at Newark 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.

85. UNITED, THE OTHER AIRLINE DEFENDANTS and THE PORT AUTHORITY 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.

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

87. 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.

88. UNITED, THE OTHER AIRLINE DEFENDANTS and THE PORT AUTHORITY’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 passing through Newark Airport and boarding aircraft there.

89. UNITED, THE OTHER AIRLINE DEFENDANTS and THE PORT AUTHORITY’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 each decedent’s injuries and damages.

90. 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 FOUR

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

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

92. 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 any plaintiffs' decedent.

93. 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 FIVE

CLAIMS FOR WRONGFUL DEATH AND SURVIVAL DAMAGES AGAINST DEFENDANT BOEING BASED ON STRICT TORT LIABILITY

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

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

96. 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 93.

97. This defective design permitted the terrorists to gain access to the cockpit of Flight 93 and hijack the aircraft. BOEING's defective design was a proximate cause of the deaths of decedents on Flight 93.

98. 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 SIX

CLAIMS FOR WRONGFUL DEATH AND SURVIVAL DAMAGES AGAINST DEFENDANT BOEING BASED ON NEGLIGENT DESIGN

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

100. Defendant BOEING owed all passengers who fly on their aircraft and those who flew on Flight 93 a duty of care in safely designing the aircraft including a secure cockpit door and accompanying locks.

101. 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 93 was not secure and the accompanying locks were insufficient to deter or prevent a hijacking.

102. 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 93.

103. This defective design permitted the terrorists to easily gain access to the Flight 93 cockpit on September 11, 2001 and was a proximate cause of the deaths of decedents.

104. 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

CLAIMS FOR WRONGFUL DEATH AND SURVIVAL DAMAGES AGAINST DEFENDANT BOEING BASED ON BREACH OF WARRANTY

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

106. 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.

107. 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 and deaths of the decedents.

COUNT EIGHT

CLAIM FOR NEGLIGENT INFLICTION OF EMOTIONAL DISTRESS AGAINST ALL DEFENDANTS

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

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

110. 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 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.

111. 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 Shanksville.

112. 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 plaintiffs' decedents resulting in severe, continuing, permanent mental, physical and emotional distress and suffering, and resulting loss of consortium and services to plaintiffs.

113. 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.

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

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 NINE

**CLAIM FOR PUNITIVE DAMAGES
AGAINST ALL DEFENDANTS**

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

117. The failure of the airline and airport security system at Newark and the failure to secure the aircraft cockpit, which resulted in the hijacking of the subject aircraft and injuries and death to the decedent, 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.

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

WHEREFORE, the plaintiffs demand judgment against UNITED, THE SECURITY COMPANY DEFENDANTS, THE PORT AUTHORITY, THE OTHER

AIRLINE DEFENDANTS and BOEING for all damages to the extent allowed under applicable law.

Dated: New York, New York
March 31, 2004

PLAINTIFFS' EXECUTIVE COMMITTEE

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APPENDIX A

Flight 93 First Amended Master Complaint

PLAINTIFFS:

Plaintiff(s)	Decedent	Case No(s).
Carole O'Hare Elizabeth Kemmerer	Hilda Marcin	02-Civ-0456
David James Miller Catherine Stefani	Nicole Carol Miller	02-Civ-1728
Deena Burnett	Thomas E. Burnett, Jr.	02-Civ-6186
Beverly Burnett	Thomas E. Burnett, Jr.	03-Civ-7073
Mary White Benhardt R. Wainio	Honor Elizabeth Wainio	02-Civ-6361 02-Civ-7225
Charles O'Neal Snyder	Christine Ann Snyder	02-Civ-6362
Amy Nacke	Louis J. Nacke	02-Civ-7231 03-Civ-7019
Lorne Lyles	Ceecee Louise Lyles	02-Civ-7243
Adelaide Maureen Driscoll John M. Driscoll	Patrick Joseph Driscoll	02-Civ-7252 02-Civ-7912
Laura Brough	Georgine Rose Corrigan	02-Civ-7258
Eileen Bertorelli-Zangrillo	John Talignani	02-Civ-7259
Jerry Guadagno	Richard Guadagno	02-Civ-7260
Allison Vadhan	Kristin Gould White	02-Civ-7261
Lourdes LeBron Juan R. Martinez, Jr.	Waleska Martinez	02-Civ-7262 02-Civ-7314
Alice Hoglan	Gerald Mark Bingham	02-Civ-7272
Margaret Ann Cashman	William Cashman	02-Civ-7608
Lisa Beamer	Todd Beamer	03-Civ-6104
Sandra V. Felt	Edward P. Felt	03-Civ-6206
D. Hamilton Peterson David M. Repetto	Donald A. Peterson	03-Civ-6805

APPENDIX A

Flight 93 First Amended Master Complaint

DEFENDANTS:

AMR Corporation
American Airlines, Inc.
Air Tran Airways, Inc.
America West Airlines, Inc.
Continental Airlines, Inc.
National Airlines, Inc.
TEM Enterprises, Inc. d/b/a Casino Express
UAL Corporation
United Airlines, Inc.
US Airways, Inc.
US Airways Group d/b/a US Airways Express
The Boeing Company
Port Authority of New York and New Jersey
Argenbright Security, Inc.
Securicor PLC