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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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IN RE SEPTEMBER 11 LITIGATION
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21 MC 97 (AKH)

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IN RE SEPTEMBER 11 PROPERTY DAMAGE:
AND BUSINESS LOSS LITIGATION
:

21 MC 101 (AKH)

SUPPLEMENTAL CASE
MANAGEMENT ORDER

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ALVIN K. HELLERSTEIN, U.S.D.J.:

WHEREAS, on July 24, 2002, I ordered the consolidation of all actions for wrongful death, personal injury and property damage or business loss currently pending or thereafter filed pursuant to the Air Transportation Safety and System Stabilization Act, 49 U.S.C. § 40101 (2002) (the "Act") against any airline and/or airline security company under the master docket 21 MC 97 (AKH) and captioned "In re September 11 Litigation";

WHEREAS, on November 1, 2002, I modified my July 24, 2002 Order such that all actions for wrongful death, personal injury and property damage or business loss currently pending or thereafter filed pursuant to the Act against any defendant, except for alleged hijackers or terrorists, are consolidated for purposes of pretrial proceedings; and

WHEREAS, on March 10, 2005, I issued an Order (the "March 2005 Order") creating a new Master Docket, 21 MC 101 (AKH) with the caption "In re September 11 Property Damage and Business Loss Litigation" and transferring the majority of the property damage and business loss actions arising out of the September 11, 2001 terrorist attack to this new Master Docket;

NOW, THEREFORE IT IS ORDERED THAT:

1. Pleadings

a. The personal injury and wrongful death plaintiffs in 21 MC 97 (the "PI/WD Plaintiffs") shall amend the Appendices to their Master Complaints to reflect all actions filed since the original Master Complaints and Appendices were filed. The amended Appendices shall be served on or before October 14, 2005.

b. The property damage and business loss plaintiffs in 21 MC 101 (the "PD/BL Plaintiffs") shall amend the Fourth Amended Master Property Complaint and Appendix to reflect all modifications to the parties named and causes of action alleged against the aviation and security company defendants since the original Master Property Complaint and Appendix were filed on or before November 1, 2005. This complaint shall be styled "Fifth Amended Master Property Complaint Against Airline and Security Company Defendants." Defendants shall serve their Master Answer to the Fifth Amended Master Property Complaint Against Airline and Security Company Defendants on or before December 1, 2005. In accordance with the terms of my January 22, 2003 Order, defendants shall serve Answers or Notices of Adoption of the Master Property Answer to the Fifth Amended Master Property Complaint Against Airline and Security Company Defendants on or before December 1, 2005.

c. The PD/BL Plaintiffs shall file a single complaint incorporating all claims asserted by any PD/BL Plaintiff against any Ground Defendant on or before November 1, 2005. This complaint shall be styled the "Master Property Complaint Against Ground Defendants." Ground Defendants other than Skilling Ward Magnusson Barkshire, Inc. (Washington) and Magnusson Klemencic Associates, Inc. ("SWMB/MKA") shall serve

their Master Answers to the Master Property Complaint Against Ground Defendants thirty (30) days after service of the Master Property Complaint Against Ground Defendants. In accordance with the terms of my January 22, 2003 Order, the Ground Defendants other than SWMB/MKA shall serve answers or Notices of Adoption of the Master Property Complaint Against Ground Defendants, or otherwise respond to the individual complaints, thirty (30) days after service of the Master Property Complaint Against Ground Defendants.

d. Cross-claim defendants shall serve Answers to the Cross-Claims filed by the WTCP Entities ("WTCP") and the Port Authority of New York and New Jersey ("PANYNJ")(together, the "Cross-Claim Plaintiffs") on or before November 18, 2005. In accordance with the terms of my January 22, 2003 Order, cross-claim defendants shall serve Answers or Notices of Adoption of the Answers to the Cross-Claims, or move as permitted by the FRCP, or otherwise respond in the individual actions by November 18, 2005.

2. Plaintiffs' Master Discovery (First Set)

a. Plaintiffs' Master Discovery (First Set) shall be deemed served in 21 MC 101 as of the date herein. Aviation Defendants and Cross-Claim Plaintiffs shall produce a copy of their Responses and Objections to Plaintiffs' Master Discovery (First Set) and a copy of all documents previously produced to any Plaintiff in 21 MC 97 to all Liaison Counsel no later than seven (7) days from the date of this Order. Such production shall be deemed a production in 21 MC 101.

b. On or before November 11, 2005, the PI/WD Plaintiffs' Liaison Counsel, the PD/BL Plaintiffs' Liaison Counsel, counsel for Cross-Claim Plaintiffs, and counsel

for American Airlines, Inc., United Air Lines, Inc., Argenbright Security, Inc., Huntleigh USA Corp., Globe Aviation Services, Inc., and their affiliated entities who are named defendants in 21 MC 97 and 21 MC 101 ("Certain Aviation Defendants") shall meet and confer to resolve any outstanding objections by Certain Aviation Defendants to Plaintiffs' Master Discovery (First Set). The date and time of this meet and confer shall be coordinated through Liaison Counsel and counsel for Cross-Claim Plaintiffs. On or before January 11, 2006, Certain Aviation Defendants shall produce responsive documents to all document requests in Plaintiffs' Master Discovery (First Set) for which objections are resolved to the PI/WD Liaison Counsel and the PD/BL Liaison Counsel. (These document productions shall generally be known as the "third wave document production."). If the parties are unable to resolve all objections to the document requests in Plaintiffs' Master Discovery (First Set), the parties shall submit a joint letter describing any unresolved disputes in accordance with Rule 2(E) of my Individual Rules on or before November 25, 2005. Nothing in this paragraph shall be interpreted to preclude plaintiffs from seeking a meet and confer with respect to discovery propounded against any Aviation Defendant other than Certain Aviation Defendants.

c. To the extent the responsive documents contain or may contain Sensitive Security Information, as that term is defined by 49 U.S.C. § 40119 and 49 C.F.R. Part 1520 ("SSI"), Certain Aviation Defendants shall forward such responsive documents to the Transportation Security Administration for review on or before January 11, 2006.

d. Plaintiffs' Master Discovery (First Set) is hereby deemed served on all Ground Defendants. Ground Defendants (except for PANYNJ and WTCP, who already responded to Plaintiffs' Master Discovery (First Set) and SWMB/MKA) shall serve

written responses and objections to the Plaintiffs' Master Discovery (First Set) on or before January 6, 2006. Thirty (30) days after serving such written responses, all Liaison Counsel (or their designees) shall meet and confer to resolve any outstanding objections to Plaintiffs' Master Discovery (First Set). Thirty (30) days after the meet and confer, the participating Ground Defendants shall serve answers to interrogatories to which no objection has been raised and produce documents to which no objection has been raised to the PI/WD Plaintiffs' Liaison Counsel and the PD/BL Plaintiffs' Liaison Counsel. If the parties are unable to resolve objections to any of the document requests, the aforementioned parties shall submit a joint letter describing the dispute in accordance with Rule 2(E) of my Individual Rules thirty (30) days after the meet and confer.

e. Pursuant to the October 24, 2003 Supplemental Case Management Order, the Airport Operator Defendants have engaged in limited discovery related to dispositive motion practice. All such discovery requests and responses shall be served on Ground Defendants' Liaison Counsel on or before November 1, 2005.

f. Pursuant to the October 24, 2003 Supplemental Case Management Order, the Non-Carrier Defendants were not required to produce documents responsive to Plaintiffs' Master Discovery (First Set) because these defendants were engaged in separate limited discovery relating to potential motions for summary adjudication. On or before November 3, 2005, the PI/WD Plaintiffs and Cross-Claim Plaintiffs shall serve demands for document production on the Non-Carrier Defendants limited in scope to information necessary to oppose potential motions by these defendants. The Non-Carrier Defendants shall serve written responses and objections to the discovery demands by December 5, 2005. The Non-Carrier Defendants shall produce responsive documents to

which no objection has been raised on or before January 18, 2006. To the extent the responsive documents contain or may contain SSI, the Non-Carrier Defendants shall forward such responsive documents to the Transportation Security Administration for review on or before January 18, 2006.

3. Production of PD/BL Plaintiffs' Damage Documents

a. Subrogation Plaintiffs. Within sixty (60) days of the entry of this Order, the subrogation plaintiffs in 21 MC 101 shall produce their claim/adjustment files for each claim, with the exception of the following:

- (i) Privileged Documents—documents or portions thereof protected by an attorney-client, work product, or other applicable privilege.
- (ii) Open Claim Files—the entirety of the claim/adjustment file for any claim which has not been finally resolved.
- (iii) Disputed Coverage Issue Documents—documents or portions thereof containing information relevant to a coverage issue in dispute.
- (iv) Prohibited Disclosure Documents—claim/adjustment files or any portion thereof which are prohibited from disclosure by written agreement.

Each subrogation plaintiff shall provide all Defense Liaison Counsel with the name of the insured for any Open Claim File not being produced pursuant to subsection (ii) above. Each subrogation plaintiff shall also provide all Defense Liaison Counsel with a list (including name of the insured, basis for withholding, and document number if available) of any claim/adjustment files and/or specific documents being withheld from production pursuant to subsections (iii) and (iv) above.

Upon notification of claim/adjustment files and/or specific documents being withheld from production pursuant to subsections (ii), (iii), or (iv) above, Defense Liaison Counsel shall contact the subrogation plaintiff and attempt to reach agreement as to a limited production of documents sufficient to substantiate the damage figure set forth in the subrogation plaintiff's damage disclosure form.

Any Open Claim Files withheld from production pursuant to subsection (ii) above shall be produced no later than sixty (60) days after the claim is finally resolved and subject to subsections (i), (iii), and (iv) above.

Nothing in the foregoing shall be interpreted to prevent the parties from discussing the appropriate time and manner of the exchange of privilege logs pursuant to Federal Rule of Civil Procedure 26(b)(5) and Rule 26.2 of the Local Rules of the Southern District of New York.

b. Uninsured Loss Plaintiffs. Within sixty (60) days of the entry of this Order, the uninsured loss plaintiffs shall produce all nonprivileged documents in their possession relevant to the damage figure set forth in their damage disclosure form.

4. Supplemental Discovery

a. PI/WD Plaintiffs' Liaison Counsel, the PD/BL Plaintiffs' Liaison Counsel and/or counsel for Cross-Claim Plaintiffs shall have the right to serve supplemental discovery. Nothing in this paragraph shall preclude any plaintiff or Cross-Claim Plaintiff from serving appropriate individual discovery to the extent consistent with the March 2005 Order.

b. Defendants shall serve written responses and objections to Plaintiffs' supplemental discovery thirty (30) days after service, and shall serve supplemental

documents to which no objection has been raised (or, to the extent such documents contain SSI, shall forward such documents to the Transportation Security Administration) thirty (30) days after service or sixty days from the date of this Order, whichever is later.

c. Document requests previously served by American Airlines, Inc. and United Air Lines, Inc. shall be deemed served by all Defendants. Plaintiffs shall serve written responses and objections to those requests on or before November 30, 2005. Plaintiffs shall produce documents to which no objection has been raised on or before January 11, 2006.

d. Defendants will have the right to serve supplemental discovery after November 30, 2005. Each sub-group of defendants (*i.e.*, the Aviation Defendants and the Ground Defendants) shall serve joint supplemental discovery requests through their respective Liaison Counsel. Nothing in this paragraph shall preclude any defendant from serving appropriate individual discovery to the extent consistent with paragraph IV H of the March 2005 Order.

e. Plaintiffs shall serve written responses and objections to Defendants' supplemental discovery thirty (30) days after service, and shall serve supplemental documents to which no objection has been raised thirty (30) days after service.

5. Non-party Discovery

a. Non-party discovery may commence forthwith. No non-party depositions shall commence prior to November 4, 2005.

6. Expert Discovery

a. Expert discovery, including document discovery and depositions, shall not commence until after fact discovery is completed or further order of the Court.

