No. _____

In The
Supreme Court of the United States

ELLEN MARIANI,

Petitioner,

v.

JOHN C. RANSMEIER and UAL CORPORATION,

Respondents.

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

1. Where a 9/11 widow showed that her fiduciary was representing both sides of the litigation when he agreed to a $3.75 million settlement of a wrongful death/spousal loss action, did the Court of Appeals misconstrue its own prior ruling and a state court ruling to avoid confronting that and other evidence pursuant to the "law of the case" doctrine, or err by failing to consider the manifest injustice exception under the doctrine?

2. Since this Court has held that the proper way for a non-party to challenge a settlement is by seeking Rule 24 intervention, Marino v. Ortiz, 484 U.S. 30 (1988), was there any basis under the probate exception doctrine or otherwise for the appeals court to instead relegate such a challenge to a reticent state probate court, particularly after this Court limited the scope of the exception in Marshall v. Marshall, 547 U.S. 293 (2006)?

3. In light of the unprecedented acts of national terror suffered by U.S. citizens on 9/11/2001 and the inherent interest of the federal courts in assuring the public of judicial integrity in the ATSSSA "mass tort" consolidated action arising therefrom, did the appeals court err by failing to acknowledge the gravity of the lower court's errors in the context of reviewing a discretionary decision, or by declining to take any notice of the connections--in an appeal based largely on other improper connections--between the Tel Aviv-based son of the settlement judge and certain affiliates and joint venturers of settling defendants located in the State

of Israel, which claimed to be an indirect beneficiary of the 9/11 attacks?

4. Ought the Court exercise its supervisory powers to shield Petitioner and her attorney from sanctions where there is no explicit protocol allowing a fallback two-judge appellate panel to impose sanctions and where the panel has also failed after five months to act on its OSC for sanctions, and for reason of the argument herein?

LIST OF PARTIES TO PROCEEDING BELOW

The parties to the proceeding in the court of appeals, Ransmeier et al. and UAL Corporation et al v. Mariani,[1] Nos. 11-175, 11-601, were:

Ellen Mariani (Appellant)

John C. Ransmeier (Appellee)

UAL Corporation (Appellee)

[1] Caption amended per Summary Order of 2nd Circuit dated 6/26/12 (App 1a).

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Petitioner Ellen Mariani ("Petitioner") respectfully petitions the Court[1] for a writ of certiorari to review the judgment of the United States Court of Appeals for the Second Circuit.

OPINIONS BELOW

The first opinion of the district court (Hellerstein, J) relating to Petitioner Mariani, dismissing her initial filing without a hearing on November 5, 2007, is found in the Joint Appendix submitted to the court of appeals (hereinafter "JA") 12.1 (App 50a). The unpublished opinion of the court of appeals (Wesley, Straub, Miner, JJ) denying Mariani's appeal from that order can be found at 351 Fed. Appx. 461, 2009 WL 3154485, JA 31.64 (App 34a).

The opinion of the district court (Hellerstein, J) of 3/1/2010, denying the application for admission pro hac vice of Mariani's attorney, Bruce Leichty, is found at JA 21.1 (App 20a).

The opinion of the district court (Hellerstein, J) styled Order Approving Settlement, Denying Motion to Intervene and Denying Sanctions, dated 11/15/2010, is found at JA 32.1 (App 16a). The 12/17/2010 opinion of the district court (Hellerstein, J) denying Mariani's motion for order altering or amending is found at JA 45.1 (App 53a).

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[1] Petitioner respectfully submits that Justice Sonia Sotomayor should refrain from considering this petition, since she sat on a panel of the Court of Appeals for the 2nd Circuit during a predecessor appeal of Petitioner, which is implicated in the Petition.

The post-appeal opinion of the district court (Hellerstein, J) styled Compromise Order Authorizing Final Distribution of Settlement, dated 1/26/11, is found at JA 47.1 (App 11a). The handwritten opinion of the district court (Hellerstein, J) dated 2/8/2011, denying Mariani's motion for order altering or amending is found at JA 52.1 (App 52a).

The Court of Appeals (Winter, Walker, Cabranes, JJ) on 5/16/2011 denied a motion to dismiss appeal (deemed a motion for summary affirmance of appeal) filed by Respondent Ransmeier (App 30a).

The Court of Appeals (Hall, Carney, JJ) on 6/26/12 denied a motion to supplement record or take judicial notice filed by Mariani (App 27a).

The unpublished opinion of the Court of Appeals (Hall, Carney, JJ) dated 6/26/12 dismissing Mariani's appeal and ordering Mariani and her counsel to show cause why sanctions should not be imposed on them can be found at 2012 WL 2382972 (App 1a).

No opinion or order has yet been issued by the Court of Appeals on its OSC.

JURISDICTION

The judgment of the court of appeals was entered on 6/26/2012. Jurisdiction of this Court is conferred by 28 U.S.C. Section 1254(1). Petitioner was permitted an extension until 11/23/12 to file this

petition per order of 9/11/12 by Justice Ruth Bader Ginsberg.

To the extent that the Court doubts that the judgment of the court of appeals is final as long as a part of it (an Order to Show Cause within the judgment) had not yet been resolved at time of petition, Petitioner submits that Section 1254(1) nonetheless confers jurisdiction on this Court because a writ of certiorari can be granted to review a case even before rendition of judgment, and that Supreme Court Rule 11 is satisfied because of the importance of preventing a court of appeals from effectively insulating from review by its own inaction its decisions in its most politically-charged cases.

CONSTITUTIONAL, STATUTORY AND REGULATORY PROVISIONS INVOLVED

1. Victim Compensation, Air Transportation System Safety and Stabilization Act ("ATSSSA"), P. L. 107-42, 49 U.S.C. § 49101 (verbatim text set forth in Appendix)

INTRODUCTION

This petition is brought by a widow still fighting for accountability for her husband's murder during the nation's worst terrorist incident ever, on 9/11/2001. Apart from more conventional reasons for review, Petitioner poses questions of national importance.

This Court has not previously addressed any case arising from the Victim Compensation

provisions of the Air Transportation System Safety and Stabilization Act ("ATSSSA"), particularly one in which it is alleged, as here, that a fiduciary for a wrongful death victim was playing both sides of the aisle while purporting to litigate and instead obtaining an objectionable settlement. The sensitivity of the case is compounded by the fact that none of the actions filed under ATSSSA ever went to trial, thereby depriving discouraged litigants and the public of a more detailed accounting of the 9/11 terrorist incident, since all cases were cloaked in secrecy and settled under pressure from Judge Alvin K. Hellerstein whose multiple errors--and troubling connections of his own to certain defendants--are alleged here. His errors involve wrongful deference to a state probate court on the one hand and usurpation of probate court powers on the other; and errant disclaimer of jurisdiction on the one hand and ultra vires exercise of jurisdiction on the other.

The Supreme Court must determine in this case that a two-judge Second Circuit panel ignored Supreme Court authority as well as a state supreme court opinion, and committed egregious legal error in a case of high national importance, and must instruct the Court of Appeals to remand with appropriate instructions to the District Court so that widow Mariani not be subjected to fresh victimization by the federal judiciary on top of those who perpetrated or negligently caused her husband's wrongful death.

STATEMENT OF THE CASE

Louis Neil Mariani, the late husband of petitioner Ellen Mariani, was booked as a passenger on United Airlines Flight 175, which (based on official federal government reports) was flown into the South Tower of New York's World Trade Center on 9/11/2001, with none of Mr. Mariani's remains ever being recovered. Widow Mariani opened a probate case for her intestate spouse in New Hampshire and was the first plaintiff in the nation to sue various airlines, airports and security providers for a family member's death. Joint Appendix submitted to Court of Appeals ("JA") 27.1, 29.2.

Her case, in which she sued in both fiduciary and individual capacities, was subsequently consolidated with other 9/11 cases pursuant to the Victim Compensation provisions of the Air Transportation System Safety and Stabilization Act ("ATSSSA"), P. L. 107-42, 49 U.S.C. § 49101,[2] pursuant to which all such actions were assigned to the federal court for the Southern District of New York and a single judge, Judge Alvin K. Hellerstein--later discovered to have a lawyer son with connections to affiliates of certain settling defendants, as set forth below.

Mariani's claims both as fiduciary and individual were assumed by an attorney and contractually "neutral" fiduciary, John C. Ransmeier, whose law firm in fact had undisclosed

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[2] ATSSSA provides the basis for federal jurisdiction by the court of first instance.

loyalties to settling defendants including United Airlines and one or more unnamed insurers during Ransmeier's prosecution of and settlement of the claims, JA 29.1 et seq., JA 30.1 et seq., also as set forth below.

A. The First Intervention Motion

After being challenged in her role as probate administratrix for her deceased husband's estate in New Hampshire, Mariani was counseled to and did cede her role as probate administrator on 12/1/2004 to a supposedly neutral successor, thereby also allowing that successor to become a plaintiff in the 9/11 litigation. JA 9.37 (App 84a). Under the 12/1/2004 agreement successor Ransmeier was to prosecute not just the wrongful death claim of the Estate but Mariani's own claim for loss of society, consortium and similar losses, JA 9.16, 9.24. However, Mariani became convinced by 2007 that successor Ransmeier was not adequately protecting all of her acknowledged property interests in the litigation, and she filed a motion to intervene and reopen the case which had suddenly and nominally been "closed" by Judge Hellerstein,[3] JA 7.1. That motion was denied without a hearing by Judge Hellerstein, who ruled in a terse paragraph on 11/5/07 that "The matters raised in Ms. Mariani's motion must be raised before the probate court." JA 12.1 (App 50a). The denial was not annotated "with prejudice" (App 50a).

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[3] The case was never subsequently treated as closed by the District Court and numerous rulings were issued therein without further reference to its supposed "closed" status.

Although the ruling was affirmed on appeal, based on a finding that the District Court had not abused its discretion to deny "intervention, joinder as real party in interest and reopening of the case" (App 34a), it was not contested that the appellate panel of the 2nd Circuit had during oral argument required confirmation that Mariani would have a voice in any proposed settlement of the litigation by the federal court (App 54a).

In its 2009 Summary Order the 2nd Circuit panel recognized that the New Hampshire Supreme Court had issued an order, JA 34.58 (App 72a), overturning a Probate Court order holding that Ransmeier "had the authority to settle the loss of consortium claim." The panel also stated that, "If Mariani would challenge the Probate Court agreement, she must do so in the Probate Court" (App 34a).

B. The Second Intervention Motion and Objection to Settlement

Without wishing to challenge her Probate Court agreement, but on the contrary accepting its validity, Mariani determined in about October 2010 that because the agreement was limited and had been violated under its own terms, she had the right to intervene on different grounds: namely, that Ransmeier and UAL Corporation had now sought approval without her consent of a $3.75 million settlement implicating both Estate and spousal claims, without any allocation having been made to her spousal loss (loss of consortium) claim, JA 23.1, and also that Mariani had discovered only after

denial of her earlier Rule 24 motion that Ransmeier's law firm had represented UAL as well as insurers involved in the 9/11 litigation, at the same time Ransmeier was supposedly litigating and negotiating a settlement with them on her behalf. JA 27.1 et seq. The statements made in her new motion to intervene were not controverted. JA, passim.

Judge Hellerstein approved the settlement and denied Mariani's intervention motion on the ground that it was a "rehash" of her prior Rule 24 motion, JA 32.1 (App 16a). A motion to alter or amend based on the effect of the Court's failure to file her papers or at least timely file them, 36.2, was then denied. JA 45.1 (App 53a). Mariani then appealed these rulings--as well as an earlier ruling denying her attorney pro hac vice status,[4] JA 21.1 (App 20a)--to the 2nd Circuit on January 13, 2011. JA 46.1, Court of Appeals 11-175 Docket No. 1.

C. Post-Appeal Acts of District Court

Having rebuffed Mariani's challenge to the settlement, Ransmeier then asked the District Court for certain orders implementing the settlement and allocating funds thereunder, including almost $800,000 to his attorney and $25,000 to UAL as an setoff for United Airlines monies that had been paid not to Ransmeier but to Mariani. JA 48.7. He also asked for approval of a Release whereby Mariani

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[4] The denial of the pro hac vice application, which contained numerous other findings, was appealed to the 2nd Circuit which dismissed the appeal without prejudice on the grounds of absence of ripeness.

personally would be deemed to have released all claims against settling defendants notwithstanding her lack of participation in and consent to the settlement. JA 25,15. Ignoring the pendency of Mariani's appeal, Judge Hellerstein approved that motion, JA 47.1 (App 11a), and denied Mariani's motion to alter or amend, JA 52.1 (App 52a), filed on grounds that the Court had mishandled sealing, filing and docketing of relevant papers, JA 48.2, and Mariani also appealed from these orders; CA 11-175 Docket No. 47; and the two appeals were consolidated. CA 11-175 Docket No. 79.

D. Developments During Appeal

Ransmeier promptly sought to dismiss the appeal as frivolous, CA 11-175 Docket No. 38, which motion was denied by a three-judge panel of the 2nd Circuit (App 30a). Shortly before oral argument on the appeal proper, Mariani discovered that it was possible to document allegations that Judge Hellerstein, known to have deep empathy for the nation of Israel, had a Tel Aviv-based attorney son whose law firm represented affiliates or partners of settling defendants Huntleigh and Boeing. Mariani asked by motion to the 2nd Circuit that the appellate reviewers take judicial notice of these connections or augment the record. CA 11-175 Docket No. 363. After Opposition was filed, Mariani pointed out in her Reply that Israeli Prime Minister Netanyahu himself had said shortly after the 9/11 attacks that the attacks had been "very good" for the relationship of the U.S. to Israel. CA 11-175 Docket No. 379.

E. The Judgment of the Court of Appeals

After oral argument, a two-judge[5] panel of the 2nd Circuit denied the motion to augment the record or take judicial notice (without any mention of sanctions in that ruling) (App 27a), and also affirmed the lower court's rulings (App 1a). In the course of its Summary Order, the panel ordered Mariani and her attorney to show cause why they should not be assessed double costs for having filed a frivolous appeal, alluding directly to its "law of the case" ruling and then also to Mariani's motion to supplement the record. Despite the prompt filing of responses on July 5, 2012, CA 11-175 Docket No. 407, no decision has yet issued on the OSC as of this writing, some five months after issuance. Petitioner obtained an extension of time in which to file this petition, partly on the basis that the OSC was still not resolved, and has now timely petitioned for a writ of certiorari.

REASONS FOR GRANTING THE WRIT

The Court should squarely confront the grotesque spectacle of a carefully-engineered insider settlement of a widow's immense loss arising out of a national outrage.

In declaring that Petitioner Mariani had no option even to be heard on her motion to intervene in

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[5] Barrington Parker recused himself on the eve of oral argument after John Ransmeier disclosed that he knew Judge Parker based on enrollment of their daughters at the same private school, prompting a request for disqualification by Mariani. Court of Appeals 11-175 Docket Nos. 390, 393.

order to challenge an irreparably tainted settlement, the Court of Appeals effectively nullified a number of federal interests and sidestepped important precedents set by this Court, as set forth below. Even in the absence of a circuit conflict, both of the underlying courts departed so far from the accepted and usual course of judicial procedure that this Court's review and supervision are required.

Among the issues skirted by the Court of Appeals by its law of the case holding were:

--A settlement was approved even though the fiduciary plaintiff had no trial counsel and was not prepared to actually try his case;

--Allocation of settlement funds was approved after settlement approval had already been appealed;

--No allocation was made as between the wrongful death claim of the Estate and the individual spousal loss claim of the non-consenting widow;

--The settlement approved by the Court deems the non-party widow to have released all tortfeasors;

--An award of almost $800,000 in attorney fees and costs was made to the attorney for the conflicted fiduciary even though the attorney had never filed an appearance for the fiduciary and was not admitted to the bar of the District Court;

--The attorney fee award was made out of proceeds that necessarily belonged to the probate estate and were therefore part of a Probate Court "res;"

--Setoff of $25,000 was awarded to United Airlines in the absence of mutuality of debt;

--Even as he approved a settlement involving parties Boeing and ICTS/Huntleigh, the Israeli-partisan settlement judge had a lawyer son in Israel representing joint venturers and affiliates of those defendants.

Addressing these anomalies is important to the prospect that citizens of the United States can ever again have confidence in the handling by a single federal court of mass tort litigation arising out of events that are highly politically charged and security-sensitive.

More specifically, the only result that can provide Petitioner with some modicum of justice is to remand to the Court of Appeals with instructions to remand to the District Court for the Southern District of New York for a fair hearing on her motion and settlement objection.

A. The Court of Appeals Acted Inconsistently with This Court's Rulings In a Case of National Importance

The premise of the final order of the Court of Appeals (the "6/26 Order") (App 1a) is that the District Court could not have in 2010 allowed the

intervention of right under Fed. R. Civ. P. 24 of Ellen Mariani for any purpose without trampling on either a prior appellate ruling or the unique prerogatives of the New Hampshire Probate Court under an agreement approved by the Probate Court relating to prosecution of the 9/11 litigation. As shown below, that premise is fallacious, based as it must be on not just factual misstatement and circumvention of a New Hampshire Supreme Court ruling, but misunderstandings both of the probate exception doctrine discussed in Marshall v. Marshall, supra, and the propriety of non-party intervention to challenge a settlement, Marino v. Ortiz, supra, and also on the "law of the case" doctrine which this Court has frequently addressed. The 6/26 Order also is inconsistent with the appellate court's own prior endorsement of Mariani's right to some degree of participation in any settlement phase of the case.

1. The "Law of the Case" Doctrine Was Misapplied

There was no "law of the case" barring Mariani's new motion to intervene, as argued in more detail in Parts 1.b. and 2 below, but even if the doctrine had been properly invoked, the Court of Appeals ("CA") failed to apply both Supreme Court precedent and its own precedent to analyze whether Mariani's motion fell within a recognized exception that is part of the doctrine.

a. The Manifest Injustice Exception Applies

Assuming arguendo that the law of the case doctrine applied, the decision of the Court of Appeals cannot be allowed to stand because the court failed to analyze whether the preclusion element of the doctrine would work a manifest injustice to the moving party by barring a motion and an objection that otherwise raised extremely significant issues.

The CA repeatedly faulted Mariani in the 6/26 Order for proceeding notwithstanding the law of the case effect of its own prior order of 2009 (App 1a). Law of the case is the only ground cited for affirmance of the decision of the District Court ("DC").[6]

Under the law of the case doctrine, when a court decides upon a rule of law, that decision should continue to govern the same issues in subsequent stages in the same case. Arizona v. California, 480 U.S. 39 (1987), citing Southern Railway Co. v. Clift, 260 U.S. 316 (1922) (the difference between "law of the case" and "res judicata" doctrines is the difference between the discretion to honor a prior ruling under the former doctrine, and the compulsion to enter judgment in submission to the prior ruling under the latter doctrine).

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[6] There is a curious reference to "res judicata" in the portion of the order explaining the Order to Show Cause. However, only "law of the case" is invoked in the text appearing prior to the Court's order affirming the District Court's judgment (App 1a).

Even as to this descriptive rather than proscriptive "law of the case" rule, however, there are exceptions, among which is an exception referred to as the "manifest injustice" exception. Thus, for example, in Dobbs v. Zant, 506 U.S. 357 (1993), the Court noted that reflexive adherence to "law of the case" led to a reversible "refusal to review the transcript" in a capital appeal, which in turn left the court "unable to apply the manifest injustice exception to the law of the case doctrine, and hence unable to determine whether its prior decision [rendered a year earlier] should be reconsidered." See also Castro v. United States, 540 U.S. 375 (2003) (law of the case doctrine cannot pose an insurmountable obstacle to repudiation of an earlier holding if necessary in order to reach a just conclusion in an appropriate case); Lawlor v. National Screen Service Corp., 352 U.S. 992 (1957) [in the federal courts the law of the case is "not a legal principle," but "a bogey that has been exposed, a ghost that has been laid," citing Messenger v. Anderson, 225 U.S. 436, 444 (1912)].

Dobbs v. Zant, supra is compelling precedent for the grant of this petition because in that case there was new information brought forward by the petitioner on a second approach to the court, and that information was found by the Court to be indubitably relevant since it "calls into serious question the factual predicate on which the District Court and Court of Appeals relied in deciding petitioner's [initial] ineffective assistance claim." Mariani asserts that the conflict of interest of her fiduciary also calls into question, even if implicitly, the predicate on which her first intervention motion

was decided,[7] but her main point for now is that, regardless of what the CA believed about the otherwise preclusive effect of the law of the case doctrine, the court owed Mariani at least a duty to analyze whether the application of the doctrine would work a manifest injustice. The court engaged in no such analysis at all.

The CA also had no business doubting the evidence of the fiduciary's conflict of interest, JA 20.7 et seq., 30.4 et seq. (the CA disparagingly referred to the "alleged discovery" of the conflict and an "alleged conflict" in the 6/26 Order, App 1a). Rather, the appellate reviewers were obliged to accept Mariani's evidence as true at least for the purposes of determining whether there was any procedural or jurisdictional impediment to Mariani's right to move to intervene, since none of the factual assertions showing Ransmeier's representation of United Airlines and insurers were controverted.

Based on those premises, there was no excuse for the 2nd Circuit to have disregarded not only this Court's holdings but its own. In Johnson v. Holder, 564 F.3d 95 (2d Cir. 2009), the court stated:

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[7] Indeed this Court has stated that it may consider questions raised in a first appeal as well as those that were placed before the appellate court on the occasion of a second appeal, notwithstanding a decision by the appellate court on the latter of the appeals that the district court did not err in ruling that it was bound by the first decision of the appellate court. Mercer v. Theriot, 377 U.S. 152 (1964).

> We are mindful that the law of the case doctrine does "not rigidly bind a court to its former decisions, but is only addressed to its good sense" [citation omitted]. We may depart from the law of the case for "cogent" or "compelling" reasons including...availability of new evidence, or "the need to correct a clear error or prevent manifest injustice" [citing United States v. Quinteri, 306 F.3d 1217 (2d Cir. 2002)].

While the CA cited Quinteri in its 6/26 Order (App 1a), it did not quote all of the above language, and it undertook no analysis of whether Mariani had presented cogent or compelling reasons for any perceived departure from the doctrine.

The only case cited by the CA for the proposition that it could apply the law of the case doctrine by drawing "necessary implication" from its 2009 ruling is DeWeerth v. Baldinger, 38 F.3d 1266 (2nd Cir. 1994). That case supports Mariani's position since in that case the 2nd Circuit found "equities" based on new circumstances, and ruled that a Rule 60 motion was not precluded even though the court of appeals had rejected a motion to recall the mandate brought after an earlier unsuccessful appeal. In the "absence of a statement of reasons by the circuit court for the denial of DeWeerth's recall motion," said the panel, "the district court [correctly] determined that the panel did not necessarily reject [certain arguments on the merits]."

DeWeerth narrows, therefore, what can be considered "necessary implications" of an earlier decision, but at a minimum stands for the proposition that a party's equities must be taken into account before applying law of the case.

Accordingly, whether to test for manifest injustice or other exceptional grounds, the CA failed to adhere to important precedent of this Court, as well as its own precedent, in cutting off consideration of all the facts recited in support of the filings by Mariani in 2010, not to mention the grounds for Mariani's subsequent objection to the proposal for allocating settlement funds made by Ransmeier and his undisclosed client, UAL Corporation; and the 6/26 Order must be reversed for that reason.

b. It Was Not Even Necessary to Reach The Manifest Injustice Exception

Mariani also submits that this Court should find that it was not even necessary for the CA to apply the law of the case doctrine, much less test for exceptions.

(1) The Court of Appeals Misstated the Conclusions Of the 2009 Panel Order

As a threshold matter, the CA in 2012 misstated the conclusions in its own prior order, and Mariani submits that only by such misstatement

could the CA believe that its prior ruling had law of the case effect by "necessary implication."

In the 6/26 Order, the CA stated that "the New Hampshire Supreme Court had raised some doubt regarding whether Mariani even had an individual loss of consortium claim," and that "we held...that Mariani's probate court agreement with Peters demonstrated her clear intention and commitment to abandon all her claims, including her loss of consortium claims, and to let Ransmeier pursue them on her behalf in the Peters litigation" (App 1a). Those statements are both demonstrably inaccurate.

The import of the New Hampshire Supreme Court decision, in fact, was quite the opposite: that Court held flatly that Ransmeier did not have the authority to unilaterally settle Mariani's claim for loss of consortium (App 72a). By necessary implication, therefore, the New Hampshire Supreme Court recognized that there was such a claim and that it survived the 12/1/04 agreement of Mariani to allow Ransmeier to prosecute it.[8] Mariani does not dispute that the probate agreement did indeed--subject to certain conditions--allow a successor to

[8] Indeed, in rulings which were placed before the District Court as part of Mariani's second motion, JA 29.60-61, 31.122, the Probate Court had ruled in 2008 that Ransmeier had to protect this claim and in 2010 (however improperly) that it had "deferred a ruling on the loss of consortium claim to the federal court in New York." Contrast this with the oblivious statement of the two-judge panel in the 6/26 Order that, "any arguments [Mariani] had regarding her individual loss of consortium claim needed to be made to the New Hampshire probate court" (App 1a).

prosecute her claim (App 79a), but she never conceded therein that she was giving up her right to participate in the settlement of that claim, let alone to participate in the prosecution of that claim if it proved that her interests were not being adequately protected by Ransmeier.

With regard to the second of these two inaccurate statements, there are simply no words in the first 2nd Circuit order (App 34a) to support the following statement in the second 2nd Circuit order (App 1a): "by handing over her claims to Ransmeier, Mariani no longer possessed a sufficient interest to justify intervention as of right under Fed. R. Civ. P. 24(a)(2). To gain such an interest, she had somehow to dissolve the agreement she had reached in the probate court...."

Nowhere did the 2009 appellate panel issue a holding of "abandonment." The 2009 panel stated only, "With these facts in mind, we cannot conclude that the district court abused its discretion in denying Mariani's motion to reopen and for intervention and joinder." That is its only holding. The antecedent "facts" referred to in that holding at no point contain the word "abandon" which is the critical word for the purpose of the law of the case rationale relied on by the CA in 2012, nor do they contain even the words "hand over" which are already somewhat less than categorical (App 34a).

Mariani submits that once this nonsequitur is identified, the logic of the 6/26 Order collapses. If Mariani never abandoned her individual claim (as recognized by the New Hampshire Supreme Court,

App 27a), and it was memorialized in the complaint prosecuted by Ransmeier (which it concededly was), JA 9.16, 9.24, then it was a property interest that Mariani retained that was at stake in the federal litigation, and the mere fact that the DC had exercised discretion not to allow her to intervene to protect that interest in 2007 (App 34a and 50a)--without prejudice--did not mean that the interest had disappeared, as the 6/26 Order has it. In so holding the CA dishonored the New Hampshire Supreme Court order.

The terse statement of the 11/5/07 Order of the DC (App 50a) certainly does not literally state and does not have to be read as a declaration that Mariani had no cognizable interest in the litigation. Thus there is no basis for concluding that the affirmation of the ruling in 2009 (App 34a) so signified. Instead of positing that meaning in the 11/5/07 Order, therefore (in conflict with the intervening New Hampshire Supreme Court decision, App 27a), the CA ought to have concluded in its 6/26 Order that the DC necessarily had other grounds in mind for saying (App 50a), that Mariani had no "legal status" and that "the matters raised in Mrs. Mariani's motion must be raised before the probate court."

It was improper for the 2nd Circuit to use the summation found in the second of Judge Hellerstein's denial orders (App 16a), or its order denying pro hac vice status to Mariani's counsel (App 20a), the very orders on appeal, the very orders alleged to be erroneous, to characterize the nature of the 11/5/07 order. Yet that is effectively what the

2nd Circuit did: "[H]e explained that he had already ruled that Ms. Mariani has *no interest to justify intervention* because her complaints belong before the New Hampshire Probate Court" (App 1a). No, that is not what Judge Hellerstein did on 11/5/2007 (App 50a), and moreover had he done so (and to the extent he belatedly did so in reaching issues not even before him in 2010, as urged on appeal), he would have been wrong, and should not have been upheld, for the reasons set forth above and in Part 2 below.

(2) The Court of Appeals Failed To Distinguish Between Two Bases Cited for Intervention

There is a problem going even beyond the language of the 6/26 Order, however, and that is the failure of the 2nd Circuit to account for the fact that not only did Mariani have a property interest implicated in the litigation, she had a beneficial interest in the Estate's recovery from the litigation. For that reason alone she was entitled to at least be heard on a motion for intervention to challenge the settlement, both conceptually and based on what had actually happened in the prior appeal.

Stated differently, the DC could no longer conclude in November 2010 (as it necessarily did by using the word "rehash") (App 16a) that Mariani's only interest in intervening had to arise from the four corners of what was preserved or not preserved in the 12/1/04 probate court agreement (App 79a). If the DC was not allowed to conclude that, then even

if one were to accept the premises of the 6/26 Order applying the "law of the case" doctrine, the CA decision would still be erroneous because it mishandles the "property interest" analysis necessarily implicated by Fed. R. Civ. P. 24.

There had been no motion for settlement approval pending at the time of Mariani's first motion to intervene filed in 2007. JA 7.9. Indeed, it is clear that the 2nd Circuit in 2009, while upholding the DC in its exercise of discretion to deny that motion, was troubled by the prospect that Mariani might be left without a voice at the time Judge Hellerstein considered approval of any settlement (App 54a). The 2009 panel went to the extraordinary lengths of requiring confirmation from Ransmeier's attorney that Mariani indeed would have a voice, and encouraged Mariani's counsel not to be a "shrinking violet" to the extent that the process for giving her a voice was not meaningful (App 54a).

There is nothing in the 2009 Order (App 34a) that obviates or negates the concern noted during oral argument, or that implies that Mariani could not seek to intervene again to the extent that she objected to the settlement reached. After all, the New Hampshire Supreme Court had already overturned the probate court on the issue of whether the administrator himself had the authority to settle her spousal loss claim unilaterally (App 72a), and regardless of that Mariani would have a beneficial interest in whatever recovery the administrator obtained for the estate.

Mariani made it clear in her 2010 motion to intervene, JA 27.1 et seq., that it was based on two different grounds: Ransmeier's obvious conflict of interest which changed the calculus as to the adequacy of protection of her property interest for purposes of Rule 24, and her interest in objecting to a settlement already disclosed in redacted form, which she tied to the colloquy at the time of oral argument in front of the 2nd Circuit 9/30/09 (App 54a), but which in reality inheres irrespective of whether explicitly recognized.

A beneficial interest is a species of interest that can be vindicated by Fed. R. Civ. P. 24. Smith v. Sherwood Oil Field Contractors, et al, 457 F.2d 1339 (5th Cir. 1972). That case is particularly instructive since it involved a beneficiary whose interests were adverse to other classes of interest in a wrongful death case, similar to the situation here. The court of appeals reversed the judgment of the district court denying intervention, holding that whatever the statutory intent of the Jones Act under which the personal representative had sued, a widow and her children asserting claims in competition with another set of dependents qualified for "intervention of right under the literal terms of Rule 24(a)(2) of the Federal Rules of Civil Procedure."

Of like import is Security Pacific Mortgage and Real Estate Services, Inc. v. The Republic of The Philippines, et al., 962 F.2d 204 (2d Cir. 1992). In that case the court denied intervention of right to a prospective intervenor who could not show under a constructive trust theory that the beneficial interest in the subject real property did not remain with the

legal owner, but the obvious implication of the holding is that someone with a genuine beneficial interest would indeed qualify to intervene of right.

Mariani's independent right to seek intervention in a settlement context is also abundantly clear from precedent of this Court. This Court has recognized that when a non-party has an objection to a settlement, a motion for intervention is the vehicle by which that objection should be pursued. Marino v. Ortiz, 484 U.S. 30 (1988). Thus when Mariani sought intervention in 2010 she was only following Supreme Court precedent, which the Supreme Court should enforce here. The two judges issuing the 6/26 Order (App 1a), made no mention of the implications of a pending settlement as a potential separate and independent basis for intervening, but relied only on the (defective) analysis of the putative loss by Mariani of her interest under the probate court agreement.

If Mariani had in her agreement of 12/1/04 waived her right to object to any settlement obtained, or if somehow the making of an agreement in a probate court context by itself restricts the party from ever litigating an issue outside of the probate court or from establishing a right to intervene under Fed. R. Civ. P. 24, then perhaps there would still be a basis for upholding the 6/26 Order, but it is obvious that there is no express waiver in the agreement at issue (App 79a). Nor may a waiver be implied. United States v. He, 94 F.3d 782 (2d Cir. 1996) (no implied waiver of right to counsel from cooperation agreement); Gianola v. Continental Casualty Co., 817 A.2d 306 (N.H. 2003) (no implied waiver by

insurer in absence of explicit language indicating either the intent to forego a known right or conduct from which abandonment can be inferred); McElroy v. B. F. Goodrich, 73 F.3d 722 (7th Cir. 1996) (rejecting implied waiver theory in contract setting where reliance was not induced nor waiver clearly inferable from the circumstances); In re Lone Star Industries, Inc., 19 F.3d 1429 (4th Cir. 1994) (statements implying election of remedy of indemnification rather than contribution cannot be read as implied waiver of latter remedy); U.S. v. Chichester, 312 F.2d 275 (9th Cir. 1963) (for implied waiver of a legal right there must be a clear, unequivocal and decisive act of the obligor showing a purpose to abandon or waive the legal right, or acts amounting an estoppel on his part).

There is no conduct of Mariani independent of the 12/1/04 agreement by which it could be inferred that she waived a right not expressly waived or discussed in the Probate Court agreement (App 79a); indeed, her conduct immediately following execution of the agreement has to be interpreted to mean that she wished to at least reserve all rights not expressly waived. JA 9.61 et seq. Indeed there is nothing inconsistent about a role for Mariani as intervenor with any of the literal terms agreed to by Mariani in the 12/1/04 agreement, which the Court of Appeals appears simply to have failed to analyze or realize.

In the absence of any legal basis for necessarily implying a prior finding of implied waiver, either Judge Hellerstein in 2007 or the first reviewing panel would have had to have expressly found an "implied waiver" for the 2nd Circuit to say

in 2012 that Mariani had "abandoned" all her rights. That obviously did not happen (App 34a) (App 50a). It is also apparent from this Court's prior rulings that the so-called "probate exception" to federal court jurisdiction did not shut off Mariani's right to move to intervene--to which argument Petitioner now turns.

2. The "Probate Exception" Doctrine Does Not Support the Lower Courts

There is only one possible remaining explanation for why the CA would believe that it was a "necessary implication" of its prior ruling in 2009 that Mariani had "no interest to justify intervention because her complaints belong in the Probate Court" (App 1a), and thus there could be only one basis for now upholding the 6/26 Order even if this Court agrees that the CA wrongly applied the law of the case doctrine as shown above: the application to the above facts of the so-called "probate exception" to federal court jurisdiction notwithstanding this Court's decision in Marshall v. Marshall, 547 U.S. 293 (2006). This Court must assure that the federal courts understand the reach of Marshall v. Marshall by declining to let the CA decision go unreviewed on this ground.

Mariani understands that the scope of the probate exception is irrelevant if she was bound by the law of the case doctrine even to a flawed ruling by Judge Hellerstein on 11/5/2007. But to the extent this Court agrees that the 2nd Circuit was not bound in 2010 (and it is not bound now) to the 2007 ruling under one of the "law of the case" exceptions, or that

the 2nd Circuit was simply wrong in applying law of the case as urged above, the question still remains: was Judge Hellerstein nevertheless correct the second time around in ruling that the aggrieved widow effectively have to get relief from the Probate Court before she could protest the administrator's conflicts and his tainted settlement through a new motion to intervene?

In other words, can Mariani in this Petition rule out the prospect that this Court should uphold the ruling of the 2nd Circuit on a different ground?

The main authority on that question is found in Marshall v. Marshall, supra, where this Court last considered the "probate exception" to its jurisdiction, i.e., the extent to which a federal court must defer to a probate court on issues that might normally be associated with a probate proceeding. The conclusion stated in Marshall is as valid for this proceeding as it was there: A federal court is indeed not hamstrung by the existence of a parallel probate proceeding except as to a very narrow class of claims: "the administration of an estate, the probate of a will, or any other purely probate matter." Marshall, supra.

The Marshall Court distinguished from those matters a tort claim for interference with a gift or inheritance, and Mariani submits that the Court must also distinguish her claim. Her claim is that the probate administrator is, by himself, not adequately protecting the interest of a beneficiary or claimant if he proposes a settlement of a claim being pursued in another court without a necessary

approval of the claimant, or if he is revealed to have been representing defendants in that action at the same time he was ostensibly representing only the interests of Estate and its beneficiaries, or if the settlement is tainted in some other way. That claim irrespective of the nuance attending is not among the narrow class of claims that must be adjudicated only in a probate court.

Indeed the 2nd Circuit has already applied Marshall consistent with Mariani's interpretation. In Lefkowitz v. The Bank of New York, 528 F.3d 102 (2d Cir. 2007), the Court ruled that the "probate exception" as announced in Marshall "precludes federal courts from endeavoring to dispose of property that is in the custody of a state probate court," but does not "bar federal courts from adjudicating [probate-related] matters outside those confines and otherwise within federal jurisdiction." The Bank of New York in that case, like Ransmeier here, was the fiduciary for a probate estate being administered in an unspecified (presumably New York) state court.

"We now hold that so long as a plaintiff is not seeking to have the federal court administer a probate matter or exercise control over a res in the custody of the state court...then the federal court may, indeed must, exercise it." Id. [also citing two more cases where an administrator was sued outside of probate court, Jones v. Brennan, 465 F.3d 304 (7th Cir. 2006), and McAninch v. Wintermute, 478 F.3d 882 (8th Cir. 2007)].

Mariani, of course, was not even seeking to sue the estate administrator in federal court, she was simply alleging that the federal court had the jurisdiction to decide whether she deserved to be allowed to intervene on the ground that the administrator by himself could not adequately protect her interests in litigation and/or a settlement of that litigation.

And it is also noteworthy that the Probate Court itself had declined to promptly rule on the fitness of a conflicted Ransmeier for his duties, instead deferring to the DC, after being asked to remove Ransmeier (App 67a), JA 29.61 (noted in motion, JA 29.7). There is a hollow ring to any suggestion, then, that somehow Mariani had to get relief from the Probate Court regarding the conflicts of interest of her fiduciary before seeking to intervene on that basis. She tried, and she was left in limbo.

Perhaps it could be protested, however, that an agreement made in Probate Court is different from another type of probate-related matter, and that such agreements can only be enforced in probate court. Mariani can only repeat what she has consistently maintained--she has no need or desire to "enforce" the agreement, and she is also not challenging the agreement, nor did she require its "dissolution" as stated by the 2nd Circuit (App 1a). For the purpose of all her federal proceedings she has accepted the agreement. But that does not mean that when a condition precedent of the agreement fails, or when a term becomes impossible, namely the "neutrality" of administrator Ransmeier (App

79a), JA 9.37, that her only remedy is to replace Ransmeier by getting relief from agreement. With no showing made that she ever waived any right, she needs no such relief from the probate court in order to be allowed a voice in the federal action and/or in the settlement of that action.

B. Even Assuming That the District Court Had Discretion to Deny the Motion, the Court of Appeals Could Not Have Found A Lawful Use of Discretion Based on the National Significance of the Case and The Egregiousness of Settlement Errors Alleged By the Prospective Intervenor

There is yet another tempting path to take leading away from the granting of this petition, to the same degree that the reviewer holds that the intervention of Mariani was subject to the discretion of the DC "anyway." That path should be resisted in a case of unprecedented national significance, presenting the only chance for this Court to comment on the handling of victim compensation litigation commenced under the legislation passed in the wake of the 9/11 terror attacks, where no cases went to trial and where a "rush to settlement" in this case led to errors of a very basic nature.

Compounding the need for review is the fact that these errors were made by a settlement judge who had troubling connections (through his son's law firm) to foreign affiliates and joint venturers of multiple defendants in the 9/11 litigation, and to that same foreign nation and the main state beneficiary of the 9/11 terror attacks, in a case where

the settlement proponent had troubling connections to defendants of a different nature. Thus there is more than the usual cause for this Court to restore dignity to Congressional intent, to the tort claim process and to the individual widow claimant here by resisting the temptation to elevate the role of discretion beyond all reasonable constraints.

Mariani reminds this Court that the DC did not exercise its discretion whether for good or for ill; it engaged in no analysis involving discretionary factors whatsoever because it believed Mariani had no right to any analysis, or a hearing (App 16a).

Mariani believes that the recitation of errors thereafter made by the Court, appearing in the preamble of this section derived from Joint Appendix documents 28, 33 and 48, needs little elaboration. However, there can be no question that Judge Hellerstein had lost jurisdiction to allocate funds from an approved settlement by the time of his order January 26, 2011 (App 11a), when the approval of the settlement was already on appeal as of January 13, 2011, Court of Appeals 11-175 Docket No. 1. Griggs v. Provident Consumer Discount Co., 459 U.S. 56 (1982). This is basic appellate law, and that error by itself was sufficient for the 2nd Circuit to have taken a closer look at the motives of the lower court.

Judge Hellerstein's usurpation of power of the probate court, in awarding from a probate "res" almost $800,000 to Charles Capace, an attorney who had never entered an appearance for settlement proponent Ransmeier and was not admitted in Judge

Hellerstein's court, JA 1.6 et seq., 50.13, 50.14, also should have set off alarm bells. As noted above, Marshall v. Marshall, supra, makes it quite clear that a federal court has no power to affect a Probate Court res, and the proceeds of a claim of the probate estate certainly qualify as that. Moreover, one will look in vain in the applicable ATSSSA provisions (App 84a), for any authorization for a federal judge to award attorney fees.

Discretion to prevent intervention is one thing; discretion to prevent an intervention which would ultimately expose one's own *ultra vires* acts is quite another.

Ellen Mariani is a litigant who always wanted to get to the truth, by having a trial and seeing what the evidence really showed in regard to the events leading to the death of her husband, unfiltered by news media interests and now-discredited 9/11 Commission statements. It is hardly a secret that the tide of discontent with the "official" version of the 9/11 incident is growing in the United States, akin to the skepticism that accompanied the assassination of John F. Kennedy and the Warren Commission report that followed it.

And yet Mariani has in this case always proceeded responsibly with her skepticism. The two-judge panel of the 2nd Circuit reacted angrily to Mariani's mild suggestion that, in a case involving a conflict of interest of the administrator of her deceased husband's estate, it ought to take judicial notice or supplement the record with evidence of the unusual connections of the settlement judge himself.

Yet in pointing out that Defendants Boeing and airport security providers ICTS/Huntleigh had affiliates or joint venturers represented by the judge's son situated in a foreign nation, Court of Appeals Docket No. 363, and the judge's own empathy for that foreign nation,[9] Mariani did nothing more than present facts to the Court.

A genuinely dispassionate court of appeals should have asked itself, like Mariani did, whether those ties might have rendered Judge Hellerstein less sensitive to even more obvious conflicts of interest on the part of the settlement proponent before him, Ransmeier, or even whether these ties might have influenced the Court's rush to judgment (settlement approval) in the Mariani case just like all other cases brought under ATSSSA, and just like the ties of Ransmeier with United Airlines and insurers presumably influenced the consummation of a settlement that required no testimonial accountability at all and little enough financial accountability for any of the alleged wrongdoers for their actions.

For those reasons, this Court should not decline to grant the petition on the grounds that the Court of Appeals could have simply held in the alternative that the District Court had properly exercised its discretion in refusing to even consider the merits of Mariani's bid for intervention.

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[9] It was also pointed out by Mariani that the prime minister of that nation, Israel, blurted out after the 9/11 attacks that the attacks were "very good" for the relationship of the United States to Israel. Reply, Court of Appeals 11-175 Docket No. 379.

C. The Court Should Exercise Its Supervisory Authority to Prevent the Court of Appeals From Imposing Any Costs on Petitioner and Her Counsel Based on an OSC Still Pending

Finally, the Court should also grant the Petition because the 2nd Circuit has threatened to impose double costs on Petitioner and her counsel for doing nothing more than advancing good faith arguments, however provocative--but not just for that reason, but because to do so two appellate judges ventured outside the explicit authority conferred on them by their own court, and because they have inexplicably left their threat hanging over the heads of Petitioner and her counsel for well over five (5) months after the issues were ripe. This Court should shield Petitioner and her counsel from imposition of any costs.

First and foremost the Court should make it clear that charges of "frivolousness" should be reserved and have necessarily been reserved by the 2nd Circuit to a panel of three judges, not to a panel reduced to two judges after an 11th hour disqualification especially where the disqualification had to be requested by the party who ended up being subjected to the OSC based on an 11th hour disclosure by another party, CA 11-175 Docket No. 390, 393.

The idea that two judges should have decided Mariani's appeal is anomalous enough, although permitted under Second Circuit Internal Operating Procedure E(2), which allows two judges to "decide

the matter" after there has been a recusal. However, there is no authority in the appeals court's Operating Procedures for two judges to issue an OSC or to impose sanctions (i.e. go beyond "deciding the matter"), especially nostra sponte which is already irregular per 2nd Circuit case law. CA Docket 11-175 No. 407.

Ostensibly the Court issued an Order to Show Cause why double costs should not be imposed for a frivolous appeal because Mariani and her counsel should have known that the appeal was barred by "law of the case."[10] Even if this Court disagrees with Mariani's argument on that point above, however, presumably this Court can still see from this very Petition that Mariani's position is well-founded in a way that the two reviewing judges on the CA apparently could not (even though their brethren on the court also could, App 30a). Mariani briefed her good faith reasons for appealing to the court of appeals within the constraints imposed on her by the OSC, CA 11-175 Docket No. 407, but was met with silence.

As pointed out in that briefing, Mariani was deterred from seeking rehearing or en banc review from the CA because of the OSC (and therefore should not be faulted for not attempting such review), and Mariani was made uneasy enough

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[10] In the next breath, however, the Court of Appeals faulted Mariani for asking it to take notice of Judge Hellerstein's connections to Defendants via his son's law firm (App 1a). This Court should take due notice of the anomaly since in the order denying the request to supplement the record or take judicial notice (App 27a), there is no finding of frivolousness.

about the pendency of the OSC that she felt she had to ask this Court for additional time to petition for a writ of certiorari. When still nothing had happened during the extra days she obtained, she had to proceed with this petition still not knowing the outcome of the OSC, and not able to brief as part of this Petition any putative errors of the CA in following up the OSC. This Court should exercise its supervisorial powers to rebuke conduct of a court of appeals that has any of those understandably deleterious effects.

CONCLUSION

Wherefore, the petition of Ellen Mariani for a writ of certiorari should be granted.

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Counsel for Petitioner

APPENDIX

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[ENTERED: JUNE 26, 2012]

11-175-cv(L)
Ransmeier v. UAL Corporation, et al.

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

SUMMARY ORDER

Rulings by summary order do not have precedential effect. Citation to a summary order filed on or after January 1, 2007, is permitted and is governed by Federal Rule of Appellate Procedure 32.1 and this court's Local Rule 32.1.1. When citing a summary order in a document filed with this court, a party must cite either the Federal Appendix or an electronic database (with the notation "summary order"). A party citing a summary order must serve a copy of it on any party not represented by counsel.

At a stated term of the United States Court of Appeals for the Second Circuit, held at the Daniel Patrick Moynihan United States Courthouse, 500 Pearl Street, in the City of New York, on the 26th day of June, two thousand twelve.

PRESENT:

PETER W. HALL,
SUSAN L. CARNEY,[1]

Circuit Judges.

JOHN C. RANSMEIER, ADMINISTRATOR OF THE ESTATE OF LOUIS NEIL MARIANI, DECEASED,
Plaintiff-Appellee,

and

COLGAN AIR INC., A VIRGINIA CORPORATION, US AIRWAYS, INC., A DELAWARE CORPORATION, L 3 COMMUNICATIONS CORPORATION SECURITY AND DETECTION SYSTEMS, A DELAWARE CORPORATION, L 3 COMMUNICATIONS CORPORATION, A DELAWARE CORPORATION, L 3 COMMUNICATIONS HOLDINGS, INC., A DELAWARE CORPORATION, INVISION TECHNOLOGIES, INC., STATE OF INCORPORATION UNKNOWN, QUANTUM MAGNETICS, INC., STATE OF INCORPORATION UNKNOWN, HEIMANN SYSTEMS CORP., STATE OF INCORPORATION UNKNOWN, AIR FRANCE, A FRENCH CORPORATION, DELTA AIRLINES, A CORPORATION, SWISS, A SWISS CORPORATION, AIR JAMAICA, A

[1] Hon. Barrington D. Parker, Jr., originally assigned to this panel, recused himself from consideration of this appeal. The appeal was decided by the panel's remaining two judges, who are in agreement as to the disposition, pursuant to Internal Operating Procedure E(b), formerly § 0.14(b) of the Local Rules of the United States Court of Appeals for the Second Circuit.

JAMAICAN CORPORATION, CAPE AIR, AIR TRANSPORT ASSOCIATION, A TRADE ORGANIZATION,

Defendants,

UAL CORPORATION, AN ILLINOIS CORPORATION, UNITED AIRLINES, INC., AN ILLINOIS CORPORATION, HUNTLEIGH USA CORPORATION, A MISSOURI CORPORATION, ICTS INTERNATIONAL NV, A NETHERLANDS BUSINESS ENTITY OF UNKNOWN FORM, GLOBAL AVIATION SERVICES, A DELAWARE CORPORATION, BURNS INTERNATIONAL SECURITY SERVICES CORP., A DELAWARE CORPORATION, SECURITAS AB, A SWEDISH BUSINESS ENTITY OF UNKNOWN FORM, MASSACHUSETTS PORT AUTHORITY, A GOVERNMENT ENTITY, THE BOEING COMPANY, AN ILLINOIS CORPORATION, MIDWEST EXPRESS AIRLINES, INC., A WISCONSIN CORPORATION, CONTINENTAL AIRLINES, INC., A CORPORATION, DOES, 1 THROUGH 100, INCLUSIVE, MIDWEST AIRLINES, INC.,

Defendants-Appellees,

v. Nos. 11-175-cv(L); 11-640-cv(Con)

ELLEN MARIANI, Proposed Intervenor,

Appellant.[2]

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[2] The Clerk of the Court is requested to amend the caption as set forth above.

FOR APPELLANT:

BRUCE LEICHTY, Clovis, California.

FOR PLAINTIFF-APPELLEE:

PETER G. BEESON (Charles R. Capace, Zimble & Brettler, Boston, Massachusetts, *on the brief),* Devine Millimet & Branch, Professional Association, Concord, New Hampshire.

FOR DEFENDANTS-APPELLEES:

JEFFREY J. ELLIS (Michael R. Feagley, Mayer Brown, LLP, Chicago, Illinois, *on the brief),* Quirk and Bakalor, P.C., New York, New York.

Appeal from a judgment of the United States District Court for the Southern District of New York (Hellerstein, J.). **UPON DUE CONSIDERATION, IT IS HEREBY ORDERED, ADJUDGED, AND DECREED** that the judgment of the district court is **AFFIRMED.**

Appellant Ellen Mariani appeals from the district court's November 15, 2010, order denying her motion to intervene and the March 1, 2010, order denying (once again) her attorney's motion for admission *pro hac vice*.[3] We assume the parties'

[3] Mariani also purports to appeal from the district court's January 26, 2011, compromise order authorizing the final distribution of the settlement, and from the district court's February 8, 2011, order denying her motion to reconsider the January order. Because we affirm the district court's order denying Mariani leave to intervene, she has no standing as a non-party to challenge the settlement.

familiarity with the facts, procedural history, and issues on appeal.

A thorough examination of the record demonstrates that Mariani has only one true argument on appeal–that she was entitled to intervene as of right under Fed. R. Civ. P. 24(a)(2). Rule 24(a)(2), of course, was the very basis for Mariani's first motion to intervene. The district court denied that motion, and we affirmed that decision on appeal. *See N.S. Windows, LLC v. Minoru Yamasaki Associates, Inc.,* 351 F. App'x 461, 467 (2d Cir. 2009) (summary order). Mariani's renewed attempt to intervene is foreclosed by the doctrine of the law of the case.

This doctrine, in reality, consists of two closely-related rules. The first, the so-called mandate rule, *"requires* a trial court to follow an appellate court's previous ruling on an issue in the same case." *United States v. Quintieri,* 306 F.3d 1217, 1225 (2d Cir. 2002) (emphasis added). Under the second rule, which is somewhat more flexible, a court–be it a district court or an appeals court–will generally follow its own earlier ruling on an issue in later stages of a litigation unless "cogent and compelling reasons militate otherwise." *Id.* (internal quotation marks omitted).

Mariani argues that her second motion to intervene does not implicate the law of the case doctrine because it presented a brand-new reason for intervening, to wit, her alleged discovery that Ransmeier was operating under a conflict of interest. The flaw in that assertion, however, is that the

district court did not rely on this new argument when it determined to deny Mariani's second motion to intervene. Rather, the court denied the motion for the same reason as the first time around–that Mariani did not have an interest in the litigation.

The first time Mariani tried to intervene, her chief argument was that a so-called "individual loss of consortium" claim constituted a sufficient "interest" to give her the absolute right, under Rule 24(a)(2), to intervene in the proceedings below.[4] The district court definitively rejected that argument in its November 5, 2007, order denying intervention, holding that, by virtue of her agreement with Peters, Mariani had "no legal status" in the federal action and that any arguments she had regarding her individual loss of consortium claim needed to be made in New Hampshire probate court. As the district court explained, federal courts "do[] not sit to review decisions of the probate court."

On appeal, this court expanded on Judge Hellerstein's analysis. Between the time the district court denied Mariani's motion and the time we decided her first appeal, the New Hampshire Supreme Court had raised some doubt regarding whether Mariani even had an individual loss of consortium claim, and, if so, whether Ransmeier had the authority to settle that claim. *See N.S. Windows,* 351 F. App'x at 466-67. We held, however, that Mariani's probate court agreement with Peters demonstrated her clear intention and commitment to

[4] Mariani also asserted at one time that she was a "real party in interest" as defined by Fed. R. Civ. P. 17(a), but she abandoned that position long ago.

abandon all her claims, including her loss of consortium claims, and to let Ransmeier pursue them on her behalf in the Peters litigation. *Id.* Like Judge Hellerstein, we explained that for the purposes of the federal litigation Mariani was bound by her agreement in New Hampshire probate court. *Id.* at 467. If she wanted to challenge that agreement, she had to do so in the probate court. *Id.*

The necessary implication of our decision in *N.S. Windows* is that, by handing over her claims to Ransmeier, Mariani no longer possessed a sufficient interest to justify intervention as of right under Fed. R. Civ. P. 24(a)(2). To gain such an interest, she had somehow to dissolve the agreement she had reached in the probate court, which is why we pointed her back there. Consequently, in deciding Mariani's second motion to intervene, Judge Hellerstein was not just *permitted,* he was *required* to follow our prior ruling. *See De Weerth v. Baldinger,* 38 F.3d 1266, 1271 (2d Cir. 1994) (law of the case doctrine applies to issues previously decided by necessary implication). And that is exactly what he did, denying the motion on the basis of his own prior ruling and our decision in *N.S. Windows.* Crucially, although Mariani had briefed her new argument regarding Ransmeier's alleged conflict in great detail, Judge Hellerstein did not at all rely on this new argument, which arguably goes to the "adequate representation" prong of Rule 24(a)(2). Instead, he explained that he had "already ruled that Ms. Mariani has *no interest to justify intervention* because her complaints belong before the New Hampshire Probate Court," and that, despite

Mariani's new arguments, there was "no basis to reconsider" his prior decision. (Emphasis added.)

Mariani may have a right to have *a* court hear her concerns regarding Ransmeier's representation. For example, to the extent Ransmeier's alleged conflict of interest compromised his obligations to her as administrator of her husband's estate, she may be able to pursue those claims in New Hampshire probate court. We express no view in that regard. We are firm in our holding, however, that such claims simply do not give rise to an "interest" sufficient to give her the right to intervene in these proceedings.

The district court's decision to apply correctly the law of the case doctrine and to deny Mariani's second motion to intervene was not an abuse of discretion. *See United States v. City of New York,* 198 F.3d 360, 364 (2d Cir. 1999). Having properly determined for the second time that Mariani was not permitted to intervene, the district court again did not abuse its discretion in denying Mariani's attorney's application for admission *pro hac vice* on the grounds that Mariani was a non-party.

We have considered the remainder of Mariani's arguments and find them to be without merit, and therefore **AFFIRM** the judgment of the district court.

Further, "we cannot help but register our concern with appellant['s] frivolous conduct in pursuing this appeal." *Smith v. Silverman* (*In re Smith*), 645 F.3d 186, 190 (2d Cir. 2011). Despite

the clear *res judicata* effect of *N.S. Windows*, Mariani and her attorney, Bruce Leichty,[5] chose to return to the district court and file a series of vexatious motions whose lack of legal merit is matched only by their discreditable tone. Beyond specious arguments, including that *N.S. Windows* had actually *given* Mariani standing, *contra* 351 F. App'x at 464, their briefs feature an escalating series of *ad hominem* attacks on opposing counsel and bombastic challenges to the integrity of the district court. All this has continued on appeal, culminating with Mariani's and Leichty's defiant motion to supplement the record, which supposedly identifies "newly discovered" evidence of the district court's partiality, but is in fact nothing more than a vehicle for asserting deeply troubling personal slurs against Judge Hellerstein and his family.[6]

Under Federal Rule of Appellate Procedure 38, 28 U.S.C. § 1927, and our own inherent authority "to consider sanctions on parties who pursue patently frivolous appeals" and force us to consider and the appellees to defend vexatious litigation, "we may, with adequate notice and opportunity to be heard, impose sanctions *nostra sponte*." *Gallop v. Cheney*, 642 F.3d 364, 370 (2d Cir. 2011) (alterations and punctuation omitted). Appellant Mariani and her counsel Leichty are therefore each ordered to

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[5] Because Judge Hellerstein denied Leichty's application to appear *pro hac vice,* Mariani's briefing below was allegedly filed *pro se.* We agree with the district court's assessment that the briefs were obviously written by Leichty. In any event, Leichty's behavior has continued during this appeal, now that he officially represents Mariani.

[6] This motion will be denied by separate order.

show cause, no later than fourteen days following entry of this order, why they should not be sanctioned in the form of double costs, for which Mariani and Leichty would be jointly and severally liable. Their responses shall each be no more than ten pages, double-spaced. Any appellee wishing to respond may file a supplemental letter brief, not longer than fifteen pages, double-spaced, within fourteen days of the date by which the responses of appellant Mariani and her counsel Leichty are due.

FOR THE COURT:
Catherine O'Hagan Wolfe, Clerk

/s/

[ENTERED: JANUARY 26, 2011]

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

IN RE SEPTEMBER 11 LITIGATION	:
LAUREN E. PETERS, individually and as intestate Heir and Putative Personal Representative of the Estate of Louis Neil Mariani, deceased,	:
Plaintiff,	:
-against-	:
UNITED AIRLINES, INC., UNITED CONTINENTAL HOLDINGS, INC., and HUNTLEIGH USA CORP.,	:
Defendants.	:

21 MC 101 (AKH)

03 Civ. 6940

COMPROMISE ORDER AUTHORIZING FINAL DISTRIBUTION OF SETTLEMENT

ALVIN K. HELLERSTEIN, U.S.DJ.:

WHEREAS, by Order of Final Judgment dated November 15, 2010, this Court approved as

fair and reasonable the $3,760,000.00 settlement of this action; and

WHEREAS, the Court has now reviewed and granted the Administrator's Under Seal Motion for Compromise Order for Final Distribution of Settlement, and all of its attachments, submitted on January 24, 2011; and

WHEREAS, the Court has further reviewed the "Declaration of Charles R. Capace to be Filed Under Seal and *In Camera",* filed in support of a contingency fee in the amount of 20% in the case; and

WHEREAS, the Court has given due consideration to these submissions as well as the submissions of Ellen Mariani and her counsel, and the prior pleadings and proceedings in this action, see Order Approving Settlement, Denying Motion to Intervene, and Denying Sanctions, Peters v. United Airlines, 03 Civ. 6940 (21 MC 101), Doc. No. 84 (S.D.N.Y. Nov. 15, 2010); and

WHEREAS, the continuous litigation of the various aspects of this lawsuit has rendered the public's interest in full disclosure more significant that the privacy interests of the parties; it is hereby ORDERED that plaintiff John C. Ransmeier, Administrator of the Estate of Louis Neil Mariani, deceased, is hereby authorized and empowered to compromise and settle all causes of action brought against all defendants named in this action (hereinafter "defendants"), for the total sum of $3,760,000.00; and it is further

ORDERED that the aforementioned settlement amount shall count against the limits of liability established by Section 408(a)(1) of the Air Transportation Safety and System Stabilization Act and applicable to said defendants; and it is further

ORDERED that plaintiff John C. Ransmeier, as Administrator of the Estate of Louis Neil Mariani, deceased, is authorized to sign and deliver to the defendants, in the form of the Confidential General Release attached as Exhibit A to the parties' Confidential Stipulation of Settlement, a confidential general release of the defendants and any other person or entity who may have contributed to the death of Louis Neil Mariani; and it is further

ORDERED that $25,000.00 for repayment to defendants United Air Lines and/or UAL Corporation for their September 2001 disbursement shall be credited against, and deducted from, the gross settlement proceeds; and it is further

ORDERED that upon review of the Administrator's Motion for Compromise Order and the Declaration of Charles R. Capace filed therewith and the exhibit attached thereto itemizing expenses, Charles R. Capace and all associated counsel shall receive attorneys' fees totaling $738,098.00, which equals 20 percent of the net settlement proceeds in this action, and $44,510.00 for reimbursement of litigation expenses, which shall both be deducted from the settlement proceeds; and it is further

ORDERED, at the request of plaintiff John C. Ransmeier, as Administrator of the Estate of Louis

Neil Mariani, deceased; and upon execution of the general release in the form attached as Exhibit A to the parties' Confidential Stipulation of Settlement, and after considering the objections of Ellen Mariani and her counsel; that the Court hereby approves the following distribution of the settlement proceeds in the present case:

(a)	Gross Settlement Proceeds:	$3,760,000.00
(b)	Reimbursement of litigation expenses:	$44,510.00
(c)	Credit for payment to Ellen Mariani by United Airlines and/or UAL Corp.	$25,000.00
(d)	To attorneys' fees	$738.098.00
(e)	Remaining settlement proceeds for transfer to N.H.	$2,952,392.00

and it is further

ORDERED that the settlement funds in the amount of $3,735,000.00 shall be forwarded by defendants to plaintiff's attorney Donald Migliori, Esq, and the law firm of Motley, Rice, 28 Bridgeside Boulevard, Mt. Pleasant, South Carolina 29464 -- in accordance with paragraph 8 of the parties' Confidential Stipulation of Settlement and paragraph 2 of the Confidential Release attached as Exhibit A thereto - - for payment of attorneys fees and expenses in accordance with this Order; and it is further

ORDERED, in accordance with paragraph 5 of the parties' Confidential Stipulation of Settlement and paragraph 2 of the Confidential Release

attached thereto, that the remaining settlement proceeds in the amount of $2,952,392.00 will be transferred from Motley Rice to Administrator Ransmeier, who will secure these funds in an estate account pending distribution in the manner determined by the New Hampshire Probate Court; and it is further

ORDERED that no bond is required; and it is further

ORDERED that upon the payments aforesaid being made and the said confidential general release being executed, and upon full compliance with the provisions of this Order, the defendants are hereby discharged from any and all further liability as to all matters embraced in and determined by this Order; and it is further

ORDERED that the full record of this litigation shall be unsealed and made part of the public record.

SO ORDERED.

Dated: January 26, 2011
New York, New York

/s/
ALVIN K. HELLERSTEIN
United States District Judge

[ENTERED: NOVEMBER 15, 2010]

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

IN RE SEPTEMBER 11 LITIGATION	:
LAUREN E. PETERS, individually and as intestate Heir and Putative Personal Representative of the Estate of Louis Neil Mariani, deceased,	:
Plaintiff,	:
-against-	:
UNITED AIRLINES, INC., UNITED CONTINENTAL HOLDINGS, INC., and HUNTLEIGH USA CORP.,	:
Defendants.	:

21 MC 101 (AKH)
03 Civ. 6940

ORDER APPROVING SETTLEMENT, DENYING MOTION TO INTERVENE, AND DENYING SANCTIONS

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

Defendants United Airlines, Inc., United Continental Holdings, Inc., and Huntleigh USA Corp., (collectively "Defendants") move for approval

of a settlement agreement reached with John C. Ransmeier acting in his capacity as Administrator of the Estate of Louis N. Mariani (Ransmeier"). Defendants also seek (i) an entry of final judgment under Federal Rule of Civil Procedure 54(b); (ii) a ruling that the settlement amount applies to Defendants' liability cap under § 408(a)(1) of the Air Transportation Safety and System Stabilization Act ("ATSSSA"), 49 U.S.C. § 40101 et seq. and (iii) a dismissal of the complaint in Peters v. United Airlines, 03 Civ. 6940. Seeking to oppose approval, Ellen Mariani moves to intervene under Federal Rule of Civil Procedure 24(a). Her motion, obstensibly *pro se,* is obviously made by her attorney, Bruce Leichty, Esq., who has twice been denied admission *pro hac vice.* Ransmeier opposes the motion to intervene and simultaneously moves under Federal Rule of Civil Procedure 11 for sanctions against Leichty, and an injunction barring him from further filings. I rule as follows.

I have reviewed the terms of the settlement agreement and I find them to be fair and reasonable. Also, the other parties with standing to object to the settlement, the WTCP Plaintiffs and the collective Property Damage Plaintiffs, have consented to it. I therefore approve the settlement. The settlement amount shall apply to Defendants' liability cap under ATSSSA § 408(a)(1). The Clerk shall issue final judgment dismissing the case.

Ellen Mariani's motion to intervene under Federal Rule 24(a) is denied. I have already ruled that Ms. Mariani has no interest to justify intervention because her complaints belong before

the New Hampshire Probate Court. Order Denying Motion of Ellen Mariani to Reopen and Intervene and for Joinder as Co-Plaintiff, 03 Civ. 6940 (21 MC 91), Doc. No. 38 (S.D.N.Y. Nov. 5, 2007). The Second Circuit affirmed. N.S. Windows, LLC v. Minoru Yamasaki Assocs., Inc., 351 F. App'x 461, 467-68 (2d Cir. 2009). Ms. Mariani's new motion suffers the same fatal flaw. There is no basis to reconsider my previous determination.

Ransmeier's motion under Federal Rule 11 is denied. Ransmeier rightly notes that Leichty has submitted papers on Ellen Mariani's behalf after I twice denied him admission *pro hac vice,* and that his papers rehash arguments that have been squarely rejected, both here and in the Second Circuit. But sanctions are strong medicine and are not needed at this time, especially since the lawsuit is now over. If subsequent developments render reconsideration appropriate, Ransmeier may bring this motion again.

In 03 Civ. 6940, the Clerk shall mark the motions (Doc. Nos. 68, 74, 79) terminated and the case closed. In 21 MC 101, the Clerk shall mark the motion (Doc. No. 1316) terminated.

SO ORDERED.

Dated: November 15, 2010
New York, New York

/s/
ALVIN K. HELLERSTEIN
United States District Judge

[ENTERED: MARCH 1, 2010]

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

LAUREN E. PETERS, *individually and as intestate Heir and Putative Personal Representative of the Estate of Louis Neil Mariani, deceased*,	:
Plaintiff,	:
-against-	:
UAL CORPORATION, et al..	:
Defendants.	:

21 MC 101 (AKH)
03 Civ. 6940 (AKH)

ORDER DENYING APPLICATION FOR ADMISSION PRO HAC VICE AND DENYING MOTION FOR SANCTIONS

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

On January 29, 2010, Bruce Leichty filed an application for admission pro hac vice. Mr. Leichty seeks to represent Ellen Mariani, a beneficiary of the estate of Louis Neil Mariani, in proceedings to approve the settlement reached between Defendants and Plaintiff John C. Ransmeier, the Administrator

of Mr. Mariani's estate. The parties have not yet filed a motion to approve the settlement. On February 10, 2010, Mr. Ransmeier opposed the motion and moved for sanctions and an injunction preventing future filings under Rule 11 of the Federal Rules of Civil Procedure. Mr. Ransmeier argues that the motion to admit Mr. Leichty is vexatious and duplicative. Mr. Leichty previously sought admission pro hac vice on September 17, 2007. The Court denied the motion on the ground that Ms. Mariani lacks legal status as a party. See Order Denying Counsel's Application for Admission Pro Hac Vice, Peters v. UAL Corp., 21 MC 97 (AKH), 03 Civ. 6940 (AKH) (S.D.N.Y. Oct. 29, 2007).

Louis Neil Mariani was a passenger on United Airlines Flight 175 when terrorists took control of the plane and crashed it into the World Trade Center on September 11, 2001, killing Mr. Mariani and thousands of others. In the aftermath of the attack, two beneficiaries of his estate, his widow, Ellen Mariani, and his daughter (Ellen Mariani's step-daughter), Lauren Peters, filed wrongful death and survival suits, individually and on behalf of Louis Mariani's estate.

On December 1, 2004, Ms. Mariani and Ms. Peters entered into an agreement in New Hampshire Probate Court in which Ms. Mariani agreed to resign as administrator of Mr. Mariani's estate and to allow a neutral administrator to replace her. John C. Ransmeier was appointed as administrator pursuant to the procedure that the agreement established. Under the agreement, he was to dismiss Ms. Mariani's action with prejudice, and pursue the

remaining suit with the cooperation of both Ms. Mariani and Ms. Peters.

On March 22, 2005, Ms. Peters filed a motion with the New Hampshire Probate Court alleging that Ms. Mariani was refusing to cooperate with the estate's attorney because she believed that under the agreement she could remain as plaintiff in her action with respect to her individual claims. The Probate Court held that the agreement explicitly permitted counsel for the estate to dismiss Ms. Mariani's action with prejudice. It also indicated that under New Hampshire law, the wrongful death action encompassed Ms. Mariani's loss of consortium claim.

On April 1, 2005, counsel for the estate submitted a letter to the Court requesting that Ms. Mariani's action be dismissed with prejudice and Mr. Ransmeier be substituted as Administrator of Mr. Mariani's estate. The Court granted the request on April 5, 2005.

On September 17, 2007, after Defendants and counsel for the estate indicated that they had reached a settlement agreement, the Court issued an order closing the case. Following this order, Bruce Leichty sought admission pro hac vice to represent Ms. Mariani. The Court denied the motion on the ground that Ms. Mariani lacks legal status as a party. See Order Denying Counsel's Application for Admission Pro Hac Vice, Peters v. UAL Corp., 21 MC 97 (AKH), 03 Civ. 6940 (AKH) (S.D.N.Y. Oct. 29, 2007). Subsequently, Ms. Mariani retained local counsel and moved to intervene, reopen the case, and be joined as a co-plaintiff. The Court denied the

motion, holding that Ms. Mariani lacks legal standing and that this Court is not the proper forum for adjudication of issues regarding administration of Mr. Mariani's estate. Rather, those issues must be brought before the Probate Court. See Order Denying Motion of Ellen Mariani to Reopen and Intervene and for Joinder as Co-Plantiff, Peters v. UAL Corp., 21 MC 97 (AKH), 01 Civ. 11628 (AKH), 03 Civ. 6940 (AKH) (S.D.N.Y. Nov. 5, 2007).

Ms. Mariani appealed. The Court of Appeals, on September 30, 2009, upheld the denial of her motion. See N.S. Windows, LLC v. Minoru Yamasaki Assocs., Inc., No. 07-5442-cv, 2009 WL 3154485 (2d Cir. Sept. 30, 2009). In its opinion, the Court noted that the New Hampshire Supreme Court had issued an order on July 28, 2009, vacating a portion of a 2008 order by the Probate Court that permitted Mr. Ransmeier to settle all claims in Ms. Peters' action. Id. at *2. The New Hampshire Supreme Court held that although a wrongful death action encompassed a loss of consortium claim under New Hampshire law, the Air Transportation Safety and System Stabilization Act ("ATSSSA"), 49 U.S.C. § 40101, provides a federal cause of action premised on the substantive law of the state where the crash occurred. Id. As such, the New Hampshire Supreme Court held that it could not rule on the applicability of New Hampshire law to Ms. Mariani's loss of consortium claim because it is an issue of New York's choice of law rules. Id.

Notwithstanding the New Hampshire Supreme Court's opinion, the Court of Appeals held that the December 1, 2004, agreement explicitly

authorized counsel for the estate to dismiss Ms. Mariani's action with prejudice, and required Ms. Mariani to cooperate in the prosecution of Ms. Peters' action. Id. The Court also noted that paragraph 53 of Ms. Peters' complaint included a claim for loss of consortium on behalf of the beneficiaries of Mr. Mariani's estate. Id. at *2.

Mr. Leichty's pending application for admission pro hac vice states that three factors give rise to the renewed need for independent representation of Ms. Mariani's interests: (1) this Court's invitation to Mr. Leichty to participate in a telephone conference in March 2009 regarding Mr. Ransmeier's request for the Court to hold settlement funds in an escrow account, (2) the Second Circuit's questions at oral argument regarding whether Ms. Mariani would have a voice at any hearing regarding approval of the settlement, and (3) certain conflicts of interest that Mr. Leichty has discovered regarding Mr. Ransmeier's administration of the estate.

These factors do not justify Mr. Leichty's admission. Mr. Leichty's participation in the telephone conference was a courtesy extended by the Court during the pendency of Ms. Mariani's appeal and was not intended to suggest that Ms. Mariani should be represented independently. The comments at oral argument before the Court of Appeals do not constitute a ruling nor do they suggest any opinion on the issue that might be persuasive. The panel's written opinion makes clear that the Probate Court agreement obligates Ms. Mariani to cooperate with Mr. Ransmeier. Finally, any issues regarding Mr. Ransmeier's status as administrator of the estate

must be decided by the Probate Court. When the parties file a motion to approve the settlement, Mr. Ransmeier shall notify Ms. Mariani and express to the Court any objections she has. Mr. Leichty's application for admission pro hac vice is denied.

Although Mr. Leichty's application does not provide sufficient justification for admission, it does not warrant sanctions or an injunction under Rule 11. To determine whether to issue an injunction preventing further litigation under Rule 11, the court must consider a number of factors:

> (1) the litigant's history of litigation and in particular whether it entailed vexatious, harassing or duplicative lawsuits; (2) the litigant's motive in pursuing the litigation, e.g., does the litigant have a good faith expectation of prevailing?; (3) whether the litigant is represented by counsel; (4) whether the litigant has caused needless expense to other parties or has posed an unnecessary burden on the courts and their personnel; and (5) whether other sanctions would be adequate to protect the courts and other parties.

Safir v. U.S. Lines Inc., 792 F.2d 19, 24 (2d Cir.l986). "Ultimately, the question the court must answer is whether a litigant who has a history of vexatious litigation is likely to continue to abuse the judicial process and harass other parties." Id. Although this is Mr. Leichty's second unsuccessful application for admission pro hac vice in this matter, it does not appear that his application was filed in bad faith or

was intended to harass. The factors he outlined in the application led him to believe—albeit incorrectly— that admission was now warranted.

Finally, Mr. Leichty's request for attorney's fees as the prevailing party on Mr. Ransmeier's Rule 11 motion, and for an order to show cause why Mr. Ransmeier should not be independently sanctioned, is denied. The issues raised by Mr. Leichty's application and Mr. Ransmeier's motion for sanctions were not frivolous, and both parties appear to have proceeded in good faith.

For the reasons stated above, I deny Mr. Leichty's application for admission pro hac vice and Mr. Ransmeier's motion for Rule 11 sanctions. The Clerk shall mark the motions (Doc. Nos. 55 and 58) as terminated.

SO ORDERED.

Dated: New York, New York
March 1, 2010

/s/
ALVIN K. HELLERSTEIN
United States District Judge

[ENTERED: JUNE 26, 2012]

UNITED STATES COURT OF APPEALS
FOR THE
SECOND CIRCUIT

At a Stated Term of the United States Court of Appeals for the Second Circuit, held at the Daniel Patrick Moynihan United States Courthouse, 500 Pearl Street, in the City of New York, on the 26th day of June, two thousand twelve.

Present:

Peter W. Hall,
Susan L. Carney,[1]
Circuit Judges.

ORDER

Docket Numbers: 11-175(L)
11-640(Con)

John C. Ransmeier, administrator of the Estate of Louis Neil Mariani, deceased,

Plaintiff-Appellee,

and

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[1] Hon. Barrington D. Parker, Jr., originally assigned to this panel, recused himself from consideration of this appeal. This motion was decided by the panel's remaining two judges, who are in agreement as to the disposition, pursuant to Internal Operating Procedure E(b), formerly § 0.14(b) of the Local Rules of the United States Court of Appeals for the Second Circuit.

Colgan Air Inc., a Virginia corporation, US Airways, Inc., a Delaware corporation, L 3 Communications Corporation Security and Detection Systems, a Delaware corporation, L 3 Communications Corporation, a Delaware corporation, L 3 Communications Holdings, Inc., a Delaware corporation, Invision Technologies, Inc., state of incorporation unknown, Quantum Magnetics, Inc., state of incorporation unknown, Heimann Systems Corp., state of incorporation unknown, Air France, a French corporation, Delta Airlines, a corporation, Swiss, a Swiss corporation, Air Jamaica, a Jamaican corporation, Cape Air, Air Transport Association, a trade organization,

Defendants,

UAL Corporation, an Illinois corporation, United Airlines, Inc., an Illinois corporation, Huntleigh USA Corporation, a Missouri corporation, ICTS International NV, a Netherlands business entity of unknown form, Global Aviation Services, a Delaware corporation, Burns International Security Services Corp., a Delaware corporation, Securitas AB, a Swedish business entity of unknown form, Massachusetts Port Authority, a government entity, The Boeing Company, an Illinois corporation, Midwest Express Airlines, Inc., a Wisconsin corporation, Continental Airlines, Inc., a corporation, Does, 1 through 100, inclusive, MidWest Airlines, Inc.,

Defendants-Appellees,

v.

Ellen Mariani, Proposed Intervenor,

Appellant.

Appellant's motion to supplement the record is DENIED. Appellant seeks to introduce materials not part of the record on appeal. *See* Fed. R. App. P. 10(e). "Absent extraordinary circumstances, this Court will not enlarge the record on appeal to include evidentiary material not presented to the district court." *Okoi v. El Al Isr. Airlines,* 378 F. App'x 9, 11 n.1 (2d Cir. 2010) (summary order) (citing *IBM Corp. v. Edelstein,* 526 F.2d 37, 45 (2d Cir. 1975)). To the extent that Appellant requests that this Court take judicial notice of documents not presented to the district court, we decline to do so. *See Eli Lilly & Co. v. Gottstein,* 617 F.3d 186, 196-97 (2d Cir. 2010). In any event, the documents Appellant seeks to introduce do not reasonably call the district judge's impartiality into question.

For The Court:

Catherine O'Hagan Wolfe,
Clerk of Court

/s/

[ENTERED: MAY 16, 2011]

S.D.N.Y.-N.Y.C.
03-cv-6940
Hellerstein, J.

United States Court of Appeals
FOR THE
SECOND CIRCUIT

At a stated term of the United States Court of Appeals for the Second Circuit, held at the Daniel Patrick Moynihan United States Courthouse, 500 Pearl Street, in the City of New York, on the 16th day of May, two thousand eleven,

Present:

Ralph K. Winter,
John M. Walker, Jr.,
José A. Cabranes,
Circuit Judges.

John C. Ransmeier, administrator of the Estate of Louis Neil Mariani, deceased,

Plaintiff Appellee,

Lauren Peters,

Plaintiff,

Colgan Air Inc., *et al.,*

Defendants,

UAL Corporation, *et al.,*

Defendants-Appellees,

v.

Ellen Mariani,

Appellant.

11-175-cv(L)
11-640-cv(Con)

SECOND AMENDED ORDER

Appellee, John C. Ransmeier, through counsel, moves to dismiss the appeal filed under docket number 11-175-cv(L) and for expedited consideration of that motion. Appellant, Ellen Mariani, through counsel, moves to submit documents that are missing from the record on appeal and requests, with regard to those documents, that this Court excuse compliance with the requirement, under Local Rule 25.2(b), that counsel submit text-searchable PDF versions of all documents.

John C. Ransmeier's motion is construed as a motion for summary affirmance of the district court orders under appeal. Upon due consideration, it is hereby ORDERED that the motion for summary

affirmance is DENIED. Appellee has not demonstrated that the appeal "lacks an arguable basis either in law or in fact." *See United States v. Davis,* 598 F.3d 10, 13 (2d Cir. 2010). Furthermore, in addition to all other issues the parties wish to present, they are directed to address the following issues in their briefs: (1) whether, under either New York or New Hampshire law, Ellen Mariani can assert a claim for loss of consortium that is independent of the claims that can be asserted on behalf of Louis Mariani's estate (hereinafter referred to as an "independent loss of consortium claim"); (2) whether the laws of New York and New Hampshire treat an independent loss of consortium claim differently, and, if so, which state's law should apply to this case; (3) whether John C. Ransmeier asserted an independent loss of consortium claim on behalf of Ellen Mariani in the district court; (4) whether the December 2004 agreement between Lauren Peters and Ellen Mariani gave John C. Ransmeier the authority to settle Ellen Mariani's independent loss of consortium claim; (5) whether the settlement agreement that was approved by the district court in November 2010 precludes Ellen Mariani from now asserting, or reasserting, a independent loss of consortium claim; and (6) whether the District Court erred in declining to address the question of whether John C. Ransmeier was laboring under a conflict of interest or an apparent conflict of interest when he was representing the estate in the settlement.

It is further ORDERED that the request for expedited consideration is DENIED as moot, and Ellen Mariani's motion to submit certain documents

is GRANTED. The parties are to proceed with briefing under applicable rules, including Local Rule 25.2(b).

FOR THE COURT:
Catherine O'Hagan Wolfe, Clerk

/s/

[ENTERED SEPTEMBER 30, 2009]

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

SUMMARY ORDER

RULINGS BY SUMMARY ORDER DO NOT HAVE PRECEDENTIAL EFFECT. CITATION TO SUMMARY ORDERS FILED AFTER JANUARY 1, 2007, IS PERMITTED AND IS GOVERNED BY THIS COURT'S LOCAL RULE 32. 1 AND FEDERAL RULE OF APPELLATE PROCEDURE 32. 1. IN A BRIEF OR OTHER PAPER IN WHICH A LITIGANT CITES A SUMMARY ORDER, IN EACH PARAGRAPH IN WHICH A CITATION APPEARS, AT LEAST ONE CITATION MUST EITHER BE TO THE FEDERAL APPENDIX OR BE ACCOMPANIED BY THE NOTATION: "(SUMMARY ORDER)." A PARTY CITING A SUMMARY ORDER MUST SERVE A COPY OF THAT SUMMARY ORDER TOGETHER WITH THE PAPER IN WHICH THE SUMMARY ORDER IS CITED ON ANY PARTY NOT REPRESENTED BY COUNSEL UNLESS THE SUMMARY ORDER IS AVAILABLE IN AN ELECTRONIC DATABASE WHICH IS PUBLICLY ACCESSIBLE WITHOUT PAYMENT OF FEE (SUCH AS THE DATABASE AVAILABLE AT HTTP://WWW.CA2.USCOURTS.GOV/). IF NO COPY IS SERVED BY REASON OF THE AVAILABILITY OF THE ORDER ON SUCH A DATABASE, THE CITATION MUST INCLUDE REFERENCE TO THAT DATABASE AND THE DOCKET NUMBER OF THE CASE IN WHICH THE ORDER WAS ENTERED.

At a stated Term of the United States Court of Appeals for the Second Circuit, held at the Daniel Patrick Moynihan United States Courthouse, 500

Pearl Street, in the City of New York, on the 30th day of September, two thousand and nine.

Present:

ROGER J. MINER,
CHESTER J. STRAUB,
RICHARD C. WESLEY,
Circuit Judges.

N. S. WINDOWS, LLC, SERKO & SIMON, LLP, A PARTNERSHIP, DEENA BURNETT, APRIL D. GALLOP, LORNE LYLES, MARGARET ANN CASHMAN, ADELAIDE DRISCOLL, CATHERINE POWELL, ESTATE OF PORT AUTHORITY, PORT AUTHORITY OF NEW YORK, POLICE LT. ROBERT D. CIRRI, BY EILEEN CIRRI, AS ADMINISTRATOR, EILEEN CIRRI, INDIVIDUALLY, CINDY RODRIGUEZ, INDIVIDUALLY AND AS REPRESENTATIVE OF THE ESTATE OF PORT AUTHORITY OF NEW YORK & NEW JERSEY, POLICE OFFICER RICHARD RODRIGUEZ, ELAINE TEAGUE, MICHAEL SWEENEY, FELICITA MARIA SANCHEZ, THOMAS H. ROGER, D. HAMILTON PETERSON, MARGARET M. OGONOWSKI, MARGARET M. NASSANEY, PATRICK JOHN NASSANEY, SR., SUZANNE S. MLADENIK, JACQUELINE E. LYNCH, GARY MICHAEL LOW, DANIELLE LEMACK, SHEILA A. KIERNAN, NANCY KELLY, FRANCINE KAPLAN, MARILYN R. TRUDEAU, ARAM P. JARRET, CATHERINE JALBERT, KAREN HOMER, ELIZABETH GAIL HAYDEN, RITA HASHEM, MICHAEL FLAGG, LORETTA FILIPOV, JOHN J. CREAMER, DIANN

L. CORCORAN, CHRISTINE COOMBS, SHARON O. CAHILL BEVERLY BURNETT, KATHERINE BAILEY, GEORGE O. TAYLOR, KIA PAVLOFF PECORELLI, STACEY MONTOYA, MICHAEL W. CASEY, DAVID BRANDHORST, DEBORAH BORZA, DERRILL G. BODLEY, LESLIE R. BLAIR, MARY G. ALAGERO, TERESA MATHAI, BEVERLY ECKERT, ANN WILSON, SHIRLEY N. WILLCHER, JULIA P. SHONTERE, IRENE M. GOLINSKI, CHRISTINE K. FISHER, BUNDESVERSICHERUNGSANSTALT FUR ANGESTELLTE, BERUFSGENOSSENSCHAFT DER CHEMISCHEN INDUSTRIE, GROSSHANDELS -UND LAGEREI-BERUFSGENOSSENSCHAFT, CERTAIN UNDERWRITERS AT LLOYD'S COMPRISING SYNDI, KOUDIS INTERNATIONAL, INC., SEAN PASSASANTI, VICTOR UGOLYN, DIANE M. WALSH, PAUL R. MARTIN, JOHN A. MARTIN, CARIE LEMACK, ANNE E. LEWIN, VICE ROSE ARESTEGUI, CLIFFORD TEMPESTA. CHRISTINA BAKSH, KATHLEEN ASHTON, MICHAEL KEATING, PERRY S. ORETZKY, EDWARD RADBURN, JESUS SANCHEZ, MADELEINE A. ZUCCALA, PATRICIA QUIGLEY, GLADYS SALVO, MONICA GABRIELLE, JOHN TITUS, LAUREN A. PETERS, BARBARA RACHKO, WILLIAM F. HUNT, JR., JEAN M. HUNT, MIKE EDWARDS, DONALD F. KENNEDY, EDUARDO E. BRUNO, AMY NEWTON, GEOFFREY J. JUDGE, CYNTHIA M. DROZ, ROSEMARY DILLARD, RENA G. SPEISMAN, SHEILA MARIE G. ORNEDO, SANDRA V. FELT, JUAN R. MARTINEZ, JOHN DRISCOLL, AMY NACKE, BERNHARDT R. WAINIO, MARY LOU LEE, JEANETTE WALKER,

W/D PL PLAINTIFFS LIAISON COUNSEL, INDUSTRIAL RISK INSURERS, ROYAL INDEMNITY COMPANY, CERTAIN UNDERWRITERS AT LLOYD'S LONDON, COMPRISING SYDICATES NO. 33, 1003, 2003, 1208, 1243, 0376, GREAT LAKES REINSURANCE [UK] PLC, INDIVIDUALLY AND COLLECTIVELY AS SUBROGEES OF SILVERSTEIN PROPERTIES, INC., MAYORE ESTATES, LLC, 80 LAFAYETTE ASSOCIATES, LLC, ALLIANZ INSURANCE COMPANY, FEDERAL INSURANCE COMPANY, ESSEX INSURANCE COMPANY, GREAT LAKES REINSURANCE UK PLC, SUMITOMO MARINE & FIRE INSURANCE CO., CITICORP INSURANCE USA INC., ALL PROVIDING CITIGROUP, INC. PROPERTY INSURANCE FOR 7 WORLD TRADE CENTER, WHICH WAS IN EFFECT SEPTEMBER 11, 2001, AS SUBROGEES OF CITIGROUP, SALOMON SMITH BARNEY HOLDINGS, INC., AEGIS INSURANCE SERVICES, INC., LIBERTY INTERNATIONAL UNDERWRITERS INC., NATIONAL UNION INSURANCE COMPANY OF PITTSBURGH, NUCLEAR ELECTRIC INSURANCE LIMITED, UNDERWRITERS AT LLOYD'S, CONSOLIDATED EDISON COMPANY OF NEW YORK INC., KAROON CAPITAL MANAGEMENT, INC., WALL STREET REALTY CAPITAL, INC., BRACLEY DWYER CO. INC., TOWER COMPUTER SERVICES, INC. AND US FIRE INSURANCE CO., RUTH FALKENBERG, AS PERSONAL REPRESENTATIVE OF THE ESTATE OF LESLIE WHITTINGTON, DECEASED, RUI ZHENG, INDIVIDUALLY, AND AS PERSONAL REPRESENTATIVE OF THE ESTATES OF SHUYIN YANG AND YUGUANG ZHENG, DECEASED, CLAIRE MILLER, INDIVIDUALLY,

AND AS SUCCESSOR-IN-INTEREST TO DAVID ANGELL, RICHARD BOOMS, INDIVIDUALLY, NANCY BOOMS, INDIVIDUALLY, AND AS SUCCESSOR-IN-INTEREST TO KELLY BOOMS, ALLEN HACKEL, INDIVIDUALLY, AND AS SUCCESSOR-IN-INTEREST TO PAIGE FARLEY HACKEL, DECEASED, ALBERT CUCCINELLO, INDIVIDUALLY, CHERYL O' BRIEN, INDIVIDUALLY, AND AS CO- PERSONAL REPRESENTATIVES OF THE ESTATE OF THELMA CUCCINELLO, DECEASED, STEPHEN K. HOLLAND, INDIVIDUALLY, AND AS PERSONAL REPRESENTATIVE OF THE ESTATE OF CORA H. HOLLAND, DECEASED, P.A KEATING, LINDA LEBLANCE, INDIVIDUALLY, AND AS PERSONAL REPRESENTATIVE OF THE ESTATE OF NATALIE JANIS LASDEN, DECEASED, KELLIE B. LEE, INDIVIDUALLY, AND AS PERSONAL REPRESENTATIVE OF THE ESTATE OF DANIEL J. LEE, DECEASED, AMANDA D. CASTRILLON, INDIVIDUALLY, AND AS PERSONAL REPRESENTATIVE OF THE ESTATE OF ANTONIA J. MONTOAY, JORGE I. MONTOYA, INDIVIDUALLY, AND AS PERSONAL REPRESENTATIVE OF ANOTONYA, DECEASED, MICHAEL WAHLSTROM, INDIVIDUALLY AND AS PERSONAL REPRESENTATIVE OF THE ESTATE OF MARY ALICE WAHLSTROM, DECEASED, MARY BAVIS, NEDA BOLOURCHI, INDIVIDUALLY, AS SURVIVING DAUGHTER & SUCCESSOR IN INTEREST OF TOURI BOLOURCHI, DECEASED, BEV TITUS, INDIVIDUALLY, AND AS PERSONAL REPRESENTATIVE OF THE ESTATE OF ALICIA TITUS, DECEASED, JULIE SWEENEY, INDIVIDUALLY, AND AS PERSONAL REPRESENTATIVE OF THE ESTATE OP BRIAN SWEENEY, DECEASED, RHONDA LOPEZ, INDIVIDUALLY AND AS PERSONAL REPRESENTATIVE OF THE ESTATE OF MACLOVIO LOPEZ, DECEASED, SUSANNE WARD BAKER, DOYLE RAYMOND WARD, INDIVIDUALLY,

AND AS CO-PERSONAL REPRESENTATIVES OF THE ESTATE OF TIMOTHY WARD, DECEASED, MARIA KOUTNY, INDIVIDUALLY, AND AS PERSONAL REPRESENTATIVE OF THE ESTATE OF MARIA PAPPALARDO, DECEASED, MARY JONES, MIKAEL CARSTANJEN, INDIVIDUALLY, AND AS PERSONAL REPRESENTATIVE OF THE ESTATE OF CHRISTOPHER CARSTANJEN, DECEASED, MARIA LUSIA POCASANGRE, ALFREDO POCASANGRE, INDIVIDUALLY, AND AS PERSONAL REPRESENTATIVE OF THE ESTATE OF GLORIA DE BARRERA, DECEASED, JERRY GUADAGNO, INDIVIDUALLY, AND AS PERSONAL REPRESENTATIVE OF THE ESTATE OF RICHARD GUADAGNO, ALICE HOGLAN, INDIVIDUALLY, AND AS PERSONAL REPRESENTATIVE OF THE ESTATE OF GERALD MARK BINGHAM, DECEASED, MARY WHITE, INDIVIDUALLY AND AS ADMINISTRATRIX OF THE ESTATE, ALLISON VADHAN, INDIVIDUALLY, AND AS PERSONAL REPRESENTATIVE OF THE ESTATE OF KRISTIN GOULD WHITE, DECEASED, CHARLES O' NEAL SNYDER, INDIVIDUALLY, AND AS PERSONAL REPRESENTATIVE OF THE ESTATE OF CHRISTINE ANN SNYDER, DECEASED, CAROLE O' HARE, ELIZABETH KEMMERER, INDIVIDUALLY, AND AS PERSONAL REPRESENTATIVES OF THE ESTATE OF HILDA MARCIN, DECEASED, DAVID JAMES MILLER, CATHERINE STEFANIE, INDIVIDUALLY, AND AS CO- PERSONAL REPRESENTATIVES OF THE ESTATE OF NICOLE CAROL MILLER, DECEASED, LAURA BROUGH, INDIVIDUALLY AND AS PERSONAL REPRESENTATIVE OF THE ESTATE OF GEORGINE ROSE CORRIGAN, LOURDES LEBRON, INDIVIDUALLY, AND AS SURVIVING SISTER AND SUCCESSOR IN INTEREST OF WALESKA MARTINEZ, DECEASED, EILEEN BERTORELLI-ZANGRILLO, AS

PERSONAL REPRESENTATIVE OF THE ESTATE OF JOHN TALIGNANI, DECEASED, SHARON AMBROSE, KENNETH PAUL AMBROSE, INDIVIDUALLY, AND AS CO- PERSONAL REPRESENTATIVES OF THE ESTATE OF PAUL AMBROSE, DECEASED, BERNARD CURTIS BROWN, SINITA BROWN, INDIVIDUALLY AND AS CO-PERSONAL REPRESENTATIVES OF THE ESTATE OF BERNARD CURTIS BROWN II, DECEASED, JACQUES DEBEUNEURE, JALIN DEBEUNEURE, INDIVIDUALLY, AND AS CO-PERSONAL REPRESENTATIVES OF THE ESTATE OF JAMES DEBEUNEURE, DECEASED, EARL DORSEY, INDIVIDUALLY, AND AS PERSONAL REPRESENTATIVE OF THE ESTATE OF DORA MENCHACA, DECEASED, JUNGMI LEE, INDIVIDUALLY, AND AS PERSONAL REPRESENTATIVE OF THE ESTATE OF DONG LEE, DECEASED, KIMBERLY JACOBY, INDIVIDUALLY AND AS PERSONAL REPRESENTATIVE OF THE ESTATE OF STEVEN JACOBY, DECEASED, ANA RALEY, INDIVIDUALLY, AND AS PERSONAL REPRESENTATIVE OF THE ESTATE OF IAN GRAY, DECEASED, LASHAWN DICKENS, INDIVIDUALLY AND AS PERSONAL REPRESENTATIVE OF THE ESTATE OF RODNEY DICKENS, DECEASED, CLIFTON COTTOM, INDIVIDUALLY, AND AS CO-PERSONAL REPRESENTATIVES OF THE ESTATE OF ASIA COTTOM, DECEASED, FRANK JENSEN, AS PERSONAL REPRESENTATIVE OF THE ESTATE OF SUZANNE CALLEY, DECEASED, AND WADE B. GREEN, BY THE ADMINISTRATRIX OF HIS ESTATE, ROXANNE ELIZABETH GREEN, DANIELLE TIFFANY GREEN, BY HER DULY APPOINTED GUARDIAN, ROXANNE ELIZABETH GREEN,

Plaintiffs,

ELLEN MARIANI,

Appellant,

- v. - NO. 07-5442-CV

MINORU YAMASAKI ASSOCIATES, INC., SILVERSTEIN PROPERTIES INC., TISHMAN REALTY & CONSTRUCTION COMPANY, LESLIE E. ROBERTSON ASSOCIATES, SKILLIN WARD MAGNUSSON BARKSHIRE INC., EMERY ROTH AND PARTNERS LLC, BOEING CO., MAGNUSSON KLEMENCIC ASSOCIATES, EMERY ROTH & SONS, P.C., US AIR GROUP, US AIRWAYS GROUP, INC., A DELAWARE CORPORATION, CITY OF PORTLAND, MAINE, A GOVERNMENTAL ENTITY ORGANIZED UNDER THE LAWS OF MAINE, METROPOLITAN WASHINGTON AIRPORT AUTHORITY, ARGENBRIGHT SECURITY INC., TEM ENTERPRISES, D/B/A CASINO EXPRESS, ARAB BANK PLC,

Defendants-Appellees,

ATLANTIC COAST AIRLINES, INC.,

Movant-Appellee,

JOHN RANSMIEIER, AMR CORPORATION, A DELAWARE CORPORATION, COLGAN AIR, INC., A VIRGINIA CORPORATION, SECURITAS AB, A FOREIGN CORPORATION ORGANIZED UNDER THE LAWS OF SWEDEN, MASSACHUSETTS PORT AUTHORITY, D/B/A LOGAN INTERNATIONAL AIRPORT, A BODY

POLITIC AND CORPORATE CREATED BY THE STATE OF MASSACHUSETTS, US AIRWAYS, INC., A DELAWARE CORPORATION, HUNTLEIGH USA CORPORATION, A MISSOURI CORPORATION, ICTS INTERNATIONAL NV, A FOREIGN CORPORATION ORGANIZED UNDER THE LAWS OF THE NETHERLANDS, AND GLOBE AVIATION SERVICES CORP., A DELAWARE CORPORATION, PINKERTON'S INC., CONTINENTAL AIRLINES, INC. AND DELTA AIR LINES INC.,

Defendants-Cross-Defendants-Appellees,

UAL CORPORATION, A DELAWARE CORPORATION,

Defendant-Counter-Defendant-Appellee,

UNITED AIRLINES, INC., A DELAWARE CORPORATION, AND AMERICAN WEST AIRLINES, INC.,

Cross-Defendants-Appellees,

US AIRWAYS SHUTTLE, INC., SECURICOR PLC, NATIONAL AIRLINES, INC., PORT AUTHORITY TRANS-HUDSON CORPORATION AND NORTHWEST AIRLINES CORPORATION,

Defendants,

MIDWAY AIRLINES CORPORATION, AMERICAN TRANS AIR, INC., AIR TRAN AIRWAYS, INC., MIDWEST EXPRESS AIRLINES, INC., DELTA EXPRESS, INC., CAPE AIR, INC., A VIRGINIA

CORPORATION, AMERICAN AIRLINES, INC., A DELAWARE CORPORATION, ALSO KNOWN AS AMERICAN EAGLE, BURNS INTERNATIONAL SECURITY SERVICES CORPORATION AND BURNS INTERNATIONAL SERVICES CORP., A DELAWARE CORPORATION,

Defendants-Cross-Defendants,

1 WORLD TRADE LLC, 2 WORLD TRADE CENTER LLC, 4 WORLD TRADE CENTER LLC, 5 WORLD TRADE CENTER, LLC, 7 WORLD TRADE COMPANY, AND PORT AUTHORITY OF NEW YORK AND NEW JERSEY, AMERICA,

Cross-Claimants,

UNITED STATES OF AMERICA,

Intervenor,

AIRTRAIN AIRLINES, EUGENIA S. SINGER AND BOEING COMPANY,

Movants,

WORLD TRADE CENTER PROPERTIES LLC,

Defendant-Cross-Claimant-Appellee.

FOR APPELLANT ELLEN MARIANI:

BRUCE LEICHTY, Law Offices of Bruce Leichty, Clovis, CA.

FOR APPELLEE JOHN RANSMEIER:

CHARLES R. CAPACE, Zimble & Brettler, LLP, Boston, MA.

UPON DUE CONSIDERATION, IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that the order denying Appellant's motion to reopen, intervene, or be joined as a party in interest be **AFFIRMED.**

Appellant Ellen Mariani's ("Mariani") husband, Louis Mariani, was a passenger on one of the planes flown into the World Trade Center on September 11, 2001. In 2001, Mariani filed a wrongful death and survival suit in the Southern District of New York against a number of parties, individually and on behalf of her husband's estate. *Mariani v. United Air Lines,* No. 01-cv-11628 (AKH) (S.D.N.Y. filed Dec. 20, 2001). In 2003, Louis Mariani's daughter (Mariani's step-daughter), Lauren Peters ("Peters"), filed her own wrongful death and survival action in the Southern District of New York, individually and on behalf of Louis Mariani's estate (the "Peters suit" or "Peters action"). *Peters* v. *UAL Corp.,* No. 03-cv-6940(AKH) (S.D.N.Y. filed Sept. 10, 2003). Both suits were assigned to Judge Hellerstein in the Southern District.

On December 1, 2004, Mariani and Peters entered into an agreement in New Hampshire Probate Court in which Mariani agreed to resign as administrator of Louis Mariani's estate and to allow a neutral administrator to replace her. The new

administrator according to the agreement, was to act to dismiss with prejudice the suit filed by Mariani in the Southern District and to continue the Peters suit. The agreement also provided that both Mariani and Peters agreed to cooperate with the estate's counsel in the remaining New York action. John C. Ransmeier was appointed administrator pursuant to the procedure set forth in the agreement.

On March 22, 2005, the New Hampshire Probate Court held a hearing on an emergency motion by Peters to enforce the Probate Court agreement. Peters alleged that Mariani was not cooperating with the estate attorneys because, according to Peters, Mariani believed that under the agreement Mariani could remain as plaintiff with respect to her own individual claims in the Southern District suit that she had commenced. The Probate Court noted that, at the time of the Probate Court agreement, Mr. Peters action included a claim personal to Mariani, namely for loss of consortium, which fact "substantiates the proposition that all claims in the first [Mariani's] suit would be dismissed so that the same claims could be pursued in the second [Peters] suit." The Probate Court explicitly held that the estate administrator was authorized to dismiss with prejudice Mariani's Southern District suit in its entirety. The Probate Court also indicated that, under New Hampshire law, Mariani's loss of consortium claim was encompassed by the wrongful death claim asserted in the Peters action. On April 1, 2005, counsel in the Peters action wrote a letter to the district court requesting dismissal of the Mariani suit and substitution of Ransmeier as administrator in the

Peters suit. On April 4, 2005, the district court dismissed the Mariani action with prejudice and substituted Ransmeier as administrator. Mariani did not appeal the dismissal.

More than two years later, on September 17, 2007, the New York district court ordered the case brought by Mariani closed, noting in the Order that the Peters suit was brought on behalf of Louis Mariani's estate. On the same day, the district court ordered the Peters action closed pursuant to a settlement agreement among the parties to the consolidated September 11th litigation. Shortly thereafter, counsel representing the September 11th plaintiffs wrote to the district court asking for clarification: "While none of the legal representatives of the fourteen estates seeks restoration to your trial calendar, I have been made aware of one beneficiary in the matter of Ransmeier vs. United Airlines et al., 03 civ. 6940 (AKH) [the Peters suit] who may wish to seek relief from this Court's Order. I would like to afford that beneficiary, if so desired and if that beneficiary has standing to do so, the opportunity to seek any relief before the court removes this matter from the trial docket." The district court granted the enlargement counsel requested for this purpose.

On October 29, 2007, the district court denied an application by Bruce Leichty for pro hac vice status as counsel for Mariani, because, "[p]ursuant to [the] order of April 4, 2005, the person for whom the attorney seeks admission lacks legal status as a party." On October 31, 2007, Mariani filed a motion "to intervene in and reopen Case No. 03 civ 6940 [the Peters suit], or alternatively . . . reopen that case

plus 01 Civ 11628 [the original Mariani suit]." In her motion, Mariani alleged she entered into the 2004 Probate Court agreement with Peters because she was advised to do so by her attorneys, but that she was unaware of its details, did not read it, and would not have signed it had she understood her own action would be dismissed. On November 5, 2007, the district court denied the motion to reopen and intervene, noting that Mariani's counsel's pro hac vice motion had been denied and stating that, "[a]s noted in ... Orders of April 4, 2005, and October 29, 2007, Ms. Mariani has no legal status in this action. The matters raised in Ms. Mariani's motion must be raised before the probate court. This Court does not sit to review decisions of the probate court." Mariani appealed.

Following briefing by the parties, the New Hampshire Supreme Court, on July 28, 2009, issued an unpublished order vacating a portion of a 2008 Probate Court's order authorizing Ransmeier to settle all claims asserted in the Peters action. The New Hampshire Supreme Court held that an administrator has authority to settle a wrongful death case, but that the Air Transportation Safety and System Stabilization Act ("ATSSSA"), 49 U.S.C. § 40101 note et 16 seq., provides a federal cause of action for damages from the September 11th airplane crashes premised upon the law of the state where the crash occurred - here, New York. The New Hampshire Supreme Court said that it could not rule on the applicability of New Hampshire law to Mariani's loss of consortium claim, which she argues is individual to her and independent of the estate claims, because it is for the Southern District of New

York to apply New York choice-of-law rules to determine what state's law applies in determining the scope of the 2004 New Hampshire Probate Court agreement.[1] The New Hampshire Supreme Court vacated the Probate Court order only to the extent it held that the administrator had the authority to settle the loss of consortium claim along with those claims indisputably under the estate's control.

The December I, 2004 Probate Court agreement between Mariani and Peters is clear, however. Mariani agreed that the neutral administrator would "take the necessary actions to dismiss with prejudice the lawsuit brought by Ellen Mariani against United Airlines, et al., now pending in the U.S. District Court for the Southern District of New York...[No.] 01 Civ. 11628 (AKH)." She also agreed that the administrator would pursue the Peters action in its entirety, and that she would "cooperate fully with the Estate's counsel in pursuit of the New York [Peters] action." Paragraph 53 of the Complaint in the Peters action, dated September 9, 2003, clearly indicates Peters's intent to recover damages for loss of consortium on behalf of the beneficiaries of Louis Mariani's estate. With these facts in mind, we cannot conclude that the district court abused its discretion in denying Mariani's motion to reopen and for intervention and joinder. If

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[1] Curiously, while New Hampshire law appears to provide that an administrator can pursue a loss of consortium claim as part of a spouse's wrongful death action, subject to a $150,000 cap on the award, N.H. Rev. Stat. § 556:12(11); *Tanner* v. *King,* 102 N.H. 401 (1960), New York law does not allow loss of consortium claims as part of a wrongful death action in most cases, *Liff v. Schijdkrout,* 49 N.Y.2d 622, 633 (1980)

Mariani would challenge the Probate Court agreement, she must do so in the Probate Court.

Accordingly, the district court's order denying Appellant Mariani's motion to reopen, intervene, or be joined as a plaintiff in interest is hereby AFFIRMED. Appellee's motion under Federal Rule of Appellate Procedure 38 for a finding of frivolousness is DENIED. Any other outstanding motions are DENIED as moot.

For the Court:
Catherine O'Hagan Wolfe, Clerk

By: /s/_____

[ENTERED: NOVEMBER 5, 2007]

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

ELLEN MARIANI,

Plaintiff,

-against-

UAL CORPORATION, ET AL.,

Defendant.

LAUREN PETERS,

Plaintiff,

-against-

UAL CORPORATION, ET AL.,

Defendant.

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

21 MC 97 (AKH)
01 Civ 11628
03 Civ 6940

ORDER DENYING MOTION OF ELLEN MARIANI TO REOPEN AND INTERVENE AND FOR JOINDER AS CO-PLAINTIFF

On October 29, 2007, I entered an Order denying the motion for the admission of Bruce Leichty pro hac vice as counsel for Ellen Mariani. Despite my ruling, on October 31, 2007, Ms. Mariani, through her counsel, filed a motion to reopen and for intervention and for joinder as a co-plaintiff real party in interest in 03 Civ. 6940. As noted in my Orders of April 4, 2005, and October 29, 2007, Ms. Mariani has no legal status in this action. The matters raised in Ms. Mariani's motion must be raised before the probate court. This Court does not sit to review decisions of the probate court. See Duboys v. Bomba, 199 F. Supp. 2d 166 (S.D.N.Y. 2002). The motion is DENIED.

SO ORDERED.

Dated: New York, New York
November 5, 2007

/s/
ALVJN K. HELLERSTEIN
United States District Judge

Case: 1-21-MC-00101-AKH Document 1387
Filed 2/08/2011 Page 1 of 3

[HANDWRITTEN ON 2/3/11
COVER LETTER FOR MOTION]

* * *

The motion for reconsideration is denied. I was aware, before I decided, of all the papers and issues raised in these papers. Since nothing new is shown, there is no basis to grant her motion and it is denied.

2-8-11
Alvin K. Hellerstein
[signature]

* * *

Case 1:03-cv-6940-AKH Document 105
Filed 12/20/10 Page 1 of 6

[HANDWRITTEN ON FACE PAGE OF MOTION]

Denied. I received and reviewed all submissions before issuing my ruling.

SO ORDERED

Alvin K. Hellerstein
[signature]
December 17, 2010

* * *

[DATED: SEPTEMBER 30, 2009]

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

* * * * * * * * * * * * *

In re: :
September 11 Litigation :
07-5442-cv :
:
Transcription of Hearing :
of September 30, 2009 :

* * * * * * * * * * * * *

B E F O R E: Panel of Second Circuit Justices

Hon. Roger G. Miner
Hon. Chester J. Straub
Hon. Richard C. Wesley

A P P E A R A N C E S:

Law Offices of Bruce Leichty
625A Third Street
Clovis, CA 93612
By: Bruce Leichty, Esq.
For Appellant Ellen Mariani.

Zimble & Brettler, LLP
21 Custom House Street
Boston, MA 02110
By: Charles R. Capace, Esq.
For Appellee John Ransmeier.

Transcribed by:
Deanna J. Dean, LCR, RPR, CRR
NH LCR No. 87 (RSA 310-A)

* * *

rebuttal time, and I've given -- I had given you five extra minutes already.

MR. LEICHTY: Thank you, your Honor.

JUDGE WESLEY: Have a seat, Mr. Leichty. We'll hear from your opponent.

MR. CAPACE: May it please the court, my name is –

JUDGE WESLEY: Mr. Capace?

MR. CAPACE: "Capace," your Honor.

JUDGE WESLEY: "Capace."

Mr. Capace, has Mrs. Mariani been informed of the settlement?

MR. CAPACE: Yes, your Honor.

JUDGE WESLEY: Has she been informed of any portion of the settlement that's attributable to her?

MR. CAPACE: There has not been an allocation, but she has been informed of what the

statutory cap is in New Hampshire for a consortium claim.

JUDGE STRAUB: Well, does that statutory cap apply in this case?

MR. CAPACE: Yes, your Honor, because --

JUDGE STRAUB: How does it apply in that respect?

MR. CAPACE: I think the whole choice of law question is something that is probably not going to be decided by the Federal District Court, because the Federal District Court takes the position -- I say correctly -- that this is a settled case as a whole. And whatever factors went into that, including choice of law principles, were properly taken account of.

JUDGE WESLEY: But where is that memorialized, so that someone has an understanding of whose choice of -- what the choice of law dictated?

MR. CAPACE: It's --

JUDGE WESLEY: I mean, the seminal case in New York is Newbourne, and the Newbourne choice of law principles say that you look at the respective interests of the various jurisdictions. This is a New Hampshire resident flying on a plane that wasn't even intended to go to New York, as I understand it, who dies in New York. He has absolutely no connection to New York whatsoever. His distributees

all live in New Hampshire, or don't live in New York, as I understand it.

Does the daughter live in New York?

MR. CAPACE: No.

JUDGE WESLEY: And so the entire distribution and the estate, its locus is really in New Hampshire, is it not?

MR. CAPACE: It is.

JUDGE WESLEY: But, now, the New Hampshire Supreme Court seems to be looking to the federal judge to give him -- them some understanding of whose law you apply.

Are you telling me that the settlement and the procedure will be is that there will be just a settlement number and that settlement number will be conveyed to the New Hampshire Probate Court? Will the funds then be transferred to the New Hampshire Probate Court?

MR. CAPACE: Yes -- the answer is yes, your Honor, but before that happens, it has to return to Judge Hellerstein to determine whether the amount is fair and reasonable.

JUDGE WESLEY: All right. Now, let's stop there for a second.

Does Judge Hellerstein's rules -- and if they're not set forth in the record, I'm directing you to apply them. Does Judge Hellerstein's rules require that

Ms. Mariani have notice with regard to when he intends to approve the settlement?

MR. CAPACE: I don't know what Judge Hellerstein's procedures in that regard are, but I would imagine they would be --

JUDGE WESLEY: Well --

MR. CAPACE: -- through the administrator. Through the administrator.

JUDGE WESLEY: Certainly if she does not receive notice, if this were in state court, it would violate New York law, because New York law requires all the distributees to be given notice with regard to the settlement. I don't know what New Hampshire law does, because I didn't look at that.

But it would seem odd, would it not, that the distributees, even though the administrator is prosecuting this lawsuit, that the administrator would not give notice to the distributees?

MR. CAPACE: Oh, I'm sure Mr. Ransmeier will.

JUDGE WESLEY: You represent the administrator, sir?

MR. CAPACE: I do.

JUDGE WESLEY: Well, then, is it your representation, sir, that you'll provide notice by certified mail to Ms. Mariani of when you intend to

appear in front of Judge Hellerstein for final approval of this settlement?

MR. CAPACE: We'll be glad to.

JUDGE STRAUB: And will that give her the opportunity to object to the settlement?

MR. CAPACE: I can't speak for Judge Hellerstein, because right now he --

JUDGE STRAUB: Well, then, perhaps a motion to intervene is the proper remedy in this case.

MR. CAPACE: No, I don't think so, your Honor. I think he may wish to hear from her through counsel. Already, there's been a phone call since he has held her to have no legal status, and the phone call include Mr. Leichty.

JUDGE STRAUB: Well, she has an interest in the -- some of the money in the settlement, at least, and she has an interest in what law is to be applied. Why isn't intervention a proper remedy?

MR. CAPACE: Because her interests are adequately represented here through the administrator, and any complaints that she has raised in the District Court -- and she has raised an array of them -- are all the kinds of complaints that should be directed to New Hampshire. And, in fact, she's done that.

JUDGE WESLEY: When the settlement order is entered, certainly her interests are strong enough that she might be able to fall within the bounds of those people who have the right to seek review, even though they're not parties to the litigation of the -- of the settlement, wouldn't she?

MR. CAPACE: Well, she wouldn't have any independent status. Her rights are in New Hampshire. If she objects to either Mr. Ransmeier as the admini --

JUDGE STRAUB: Well, wait a minute. You're presuming New Hampshire here. Has that been settled, that New Hampshire -- we're looking at New Hampshire law? Don't forget the Supreme Court, as Judge Wesley mentioned, New Hampshire says New York's got to get the first crack at what choice of law there is, before we move any further.

MR. CAPACE: My understanding of the tail end of that decision was that the New Hampshire Supreme Court, before it decided the question of whether or not she has a freestanding claim or whether or not her consortium claim comes under the death statute, before they decided that -- if they even have to decide -- they wanted to get a call from the New Hamp -- from the Federal District Court as to what law might apply. That's the only way I read that decision. They just stayed their hand. That's all.

JUDGE MINER: Did I understand you to represent to us just a moment ago that the proceeds of this settlement will not be distributed to anyone

or anything until there is held before Judge Hellerstein a fairness hearing?

MR. CAPACE: I don't know about a fairness hearing.

JUDGE MINER: Well, what is it you're telling us will happen?

MR. CAPACE: My understanding from liaison counsel, who presents these matters, Mr. Meliori, is that these settlements, once they're reached, are presented to Judge Hellerstein for approval as to their fairness and reasonableness.

Now, I don't know --

JUDGE MINER: And those affected by the various settlements, are they given any opportunity in that process to be heard with respect to the settlement amount?

MR. CAPACE: I believe -- I don't -- I don't know what the hearings have consisted of so far. I have not been there. I am not liaison counsel. These have all been conducted by liaison counsel.

JUDGE MINER: Well, I assume -- I assume you have some understanding of what the process is, because your client and your client's settlement and parties affected by it will be presented to the presiding judge, Judge Hellerstein, for approval.

So, now, I'm asking you to tell me, what is that process?

MR. CAPACE: The process, as I understand it and envision it, your Honor, is that Judge Hellerstein will be presented, after notification to all the -- both the beneficiaries, will be presented by Mr. Ransmeier with the settlement amount. And if Mr. Ransmeier is told by either of the beneficiaries that either one has a problem with any aspect of that settlement, either as to amount or some other feature of it, that that is then expressed to the court by the administrator. And that's --

JUDGE MINER: And that will be done, you represent to us?

MR. CAPACE: I am -- yes. I can't imagine it not being done.

JUDGE MINER: Well, that being the case, why don't we simply hold this appeal in abeyance or remand it to Judge Hellerstein until such time as that step is taken?

MR. CAPACE: I think Judge Hellerstein's position is that he's not going to do anything until this court rules.

JUDGE WESLEY: Or we tell him to do something.

MR. CAPACE: Well, that's right, unless you do that. But right now, that's, I believe, his position.

JUDGE WESLEY: Well, you -- but you're not --you're not into the house of certainty, are you? I

mean, you're telling us you're supposing what you think counsel, liaison counsel will do?

MR. CAPACE: Well, I'm not in the house of certainty, but I'm not poking in the dark, either. I am familiar with liaison counsel as to how it's been done in other cases, and I've given you my understanding of it.

JUDGE WESLEY: All right. What I want from you, then, is, I want a letter brief from you no later than Wednesday, close of business, from liaison counsel, laying out the settlement procedures before Judge Hellerstein and the right of Ms. Mariani to appear before Judge Hellerstein or to make her wishes known with regard to the settlement, and either her acceptance thereof or her rejection thereof. No more than five pages. You'll fax a copy to your opponent Wednesday, close of business, 5 p.m. Eastern Daylight Savings Time, to Mr. Leichty. And you can respond by 5 p.m. Eastern Daylight Savings Time on Thursday.

MR. CAPACE: I will convey this to Mr. Meliori immediately.

JUDGE STRAUB: One question. Do you perceive that Judge Hellerstein now has to make a new ruling in light of the Supreme Court of New Hampshire decision?

MR. CAPACE: I do not. I think Judge Heller -- I am speculating to a degree, but I have some reason to believe, based on my conversation with liaison counsel, that Judge Hellerstein takes the position

that this case is settled and that all matters, including choice of law matters, were taken account of already. That's the --

JUDGE WESLEY: I'm certainly hopeful that part of his letter will assure us that there will be some indication of Judge Hellerstein's view on choice of law.

MR. CAPACE: Yes. Absolutely.

JUDGE WESLEY: Because I don't know how Judge Hellerstein can judge whether a settlement is fair or not, because under New York -- if he applies New York law, Mrs. Mariani has no claim for loss of consortium. That's -- there's no doubt about that under New York law. It's been the law for 29 years.

If her claim is governed by New Hampshire law, then she has a claim for loss of consortium. Mr. Leichty feels that there are other claims available; I'm sure I'm going to hear that. But -- and it's capped at $150,000.

MR. CAPACE: In New Hampshire it is.

JUDGE WESLEY: Correct. Fair enough. Thank you.

MR. CAPACE: Now--

JUDGE MINER: May I --

JUDGE WESLEY: Oh, I'm sorry. No, I apologize.

JUDGE MINER: And if there is a formal procedure in writing which liaison counsel is following in this entire litigation, would you append that to your letter?

JUDGE WESLEY: Yes.

MR. CAPACE: Sure. Oh, yes.

JUDGE WESLEY: Absolutely. Please. Thank you, Mr. Capace.

MR. CAPACE: We will gladly do that, your Honor.

JUDGE WESLEY: Thank you.

MR. CAPACE: Thank you very much.

JUDGE WESLEY: Mr. Leichty, you've got one minute, but I'll give you two, and you'll be out of here before your --

MR. LEICHTY: I appreciate it very much. Thank you for moving this.

If I could mention first that, with all due respect, I appreciate the opportunity for the letters to come in, but I don't believe that whatever procedure is described that will take place before Judge Hellerstein will be adequate. For example, I will not have the opportunity to brief the choice of law questions. I know -- and I would like Judge Hellerstein to know, if I ever have the opportunity --

that the issue of whether any state law controls this issue of whether there's a freestanding --

JUDGE MINER: Well, why is that the case? If you're given -- if your client's given the opportunity to comment on the settlement, why do you tell us that you are foreclosed from including therein legal argument?

MR. LEICHTY: Well, that's a big "if," your Honor. And up to this point, Mrs. Mariani has not been recognized as a party by Judge Hellerstein and has not -- and I have not been --

JUDGE MINER: You haven't been a shrinking violate to date. I see no reason why you should change your approach at that next step.

MR. LEICHTY: Well, perhaps Judge Hellerstein will be more inclined to let me speak on behalf of Mrs. Mariani from this point. But up to this point, that hasn't happened.

JUDGE WESLEY: Well, the pro hac vice thing, let's set aside.

But the reality is is that we can't make a decision. We can't -- there are several things that it's obvious that the panel needs to know, and some of those things relate to some of the concerns you have, and -- and so -- I don't know if your client's here or not, but there will be more certainty by Wednesday at 5 p.m. than there has been to date.

* * *

[ENTERED: MARCH 19, 2010]

IN THE STATE OF NEW HAMPSHIRE

ROCKINGHAM COUNTY PROBATE COURT

IN THE ESTATE OF: LOUIS NEIL MARIANI
DOCKET NUMBER: 2002-0051

ORDER ON MOTION OF ELLEN MARIANI FOR ORDER REMOVING AND REPLACING JOHN RANSMEIER AS ADMINISTRATOR, FOR CAUSE

Ellen Mariani's motion filed on July 7, 2009, states at page 2, "In summary, this motion relates to claims of the Estate and its Administrator in Ransmeier vs. UAL, et al., No. 03-6940, an action pending in Federal Court in the Southern District of New York (emphasis added) which claims are the only remaining assets in the case. Neither this Court nor the New York Federal Court has approved any settlement regarding that action."

On July 28, 2009, the New Hampshire Supreme Court issued an order affirming this Court's order of March 7, 2008, in which this Court found that John Ransmeier, as Administrator of the Estate of Louis Neil Mariani, has authority to settle the wrongful death law suit, including the loss of consortium claim.

The New Hampshire Supreme Court also found "that Congress enacted the Air Transportation Safety and System Stabilization Act, 49 USC,

Section 40101 (Act) which creates a federal cause of action for damages arising from, or in connection with, the terrorist-related aircraft crashes of September 11, 2001, and confers exclusive jurisdiction on the United States District Court of the Southern District of New York to hear such actions." In Re: September 11, 2001 Litigation 494 Federal Supplement 2d 232, at 237 (SDNY 2007). "The Act provides aggregate monetary limits of recovery, limiting recoveries against the various aviation defendants to their aggregate insurance coverage. The Act further provides that although the cause of action is federal, the law of the state in which the crash occurred shall be the law for decision, in both its choice of law and its substantive aspects, except to the extent that such law is inconsistent with, or preempted by federal law."

"Given that United Airlines Flight 175 crashed in New York City, New York law applies, including its choice of law of principles. It would thus be premature for us to rule upon the applicability, if any, of New Hampshire law to the appellant's loss of consortium claim contained within the wrongful death action. <u>"Such determination is, in the first instance, for the United States District Court based upon New York choice of law principles</u>." (emphasis added)

Ellen Mariani's motion at page 1, states "This motion to remove and replace John Ransmeier as Administrator of the Estate, for cause, for multiple reasons and on the <u>principle ground</u> (emphasis added) that Ransmeier has admitted that before and during his tenure as Administrator of this Estate,

his law firm performed legal work for some of the very defendants the Estate is suing in the New York Federal Court, and with whom Ransmeier wants to settle, which constitutes an unwaivable conflict of interest on Ransmeier's part and which constitutes a breach of his fiduciary duty owed to the Estate and to Mariani."

On January 28, 2010, during the course of the Structuring Conference held by this Court, counsel for Ellen Mariani stated that it was his intention to intervene in the New York Federal Court and to assert Mr. Ransmeler's conflict of interest in procuring the settlement.

RSA 553:10 sets forth the grounds for removal of an Executor/Administrator as follows. "If an executor or an administrator, by reason of absence, or infirmity of body or mind, or by wasteful or fraudulent management in his trust, becomes unfit for discharge thereof, or unsafe to be trusted therewith, the judge upon due notice, may revoke the administration."

In September 2007, pursuant to the authority granted to him, Attorney Ransmeier reached a settlement with regard to the action pending in the New York Federal Court in the Southern District of New York. On September 17, 2007, Judge Hellerstein, the presiding Justice of the Southern District of New York, entered an order in 21-MC-97 (AKH) noting that an agreement of settlement had been made in 14 cases, including the case of Peters vs. UAL, Corp., 03-CIV-6940 (AKH) and ordered that each of the 14 cases be marked by the Clerk as

closed. The order also stated the Clerk shall mark as closed civil action No. 01-CIV-11628 (AKH) which was previously filed on behalf of Louis Neil Mariani and dismissed on April 7, 2007.

The Court rules and finds that if the settlement is approved by Judge Hellerstein, his approval and his rulings on the issues set forth below will be material in assessing the claims made by Ellen Mariani in her Motion for Removal.

In as much as our Court has deferred a ruling on the loss of consortium claim to the Federal Court in New York, and whereas Ellen Mariani's attorney has stated that he intends to raise the issues of conflict of interest in the Southern District Court of New York, and whereas the Southern District Court of New York has not ruled on the appropriateness of the settlement reached by John Ransmeier, the Court defers ruling on Ellen Mariani's Motion for Order Removing and Replacing John Ransmeier as Administrator until such time as the Federal District Court of New York has issued a ruling on:

1. The appropriateness of the settlement;

2. The issues of conflict of interest;

3. The applicable law to be applied to Ellen Mariani's loss of consortium claim.

SO ORDERED

Dated: March 19, 2010

/s/
Peter G. Hurd, Judge

[ENTERED: JULY 31, 2009]

THE STATE OF NEW HAMPSHIRE
SUPREME COURT

In Case No. 2008-0294, In Re Estate of Louis Neil Mariani, the court on July 28, 2009, issued the following order:

Having considered the record on appeal, the parties' briefs, and the oral arguments, we conclude that a formal written opinion is not necessary for the disposition of this appeal. The appellant, Ellen Mariani, wife of the decedent, Louis Neil Mariani, appeals an order of the Rockingham County Probate Court allowing the administrator of her deceased husband's estate to settle a wrongful death claim pending in the United States District Court for the Southern District of New York. We affirm in part and vacate in part.

Louis Mariani died intestate on September 11, 2001, when United Airlines Flight 175, on which he was a passenger, was hijacked and flown into the South Tower of the World Trade Center in New York City. At the time of his death, Mariani and his wife were New Hampshire residents.

The appellant was initially appointed administratrix of her deceased husband's estate on May 29, 2002, and in September 2002, she filed a wrongful death action against United Airlines, et al., in the United States District Court for the Southern District of New York. Mariani's daughter, Lauren

Peters, also filed a wrongful death action against the same defendants in the same court.

On December 1, 2004, the appellant and Peters entered into an agreement concerning the pending litigation that was promptly approved by the probate court. The agreement provided, among other things, that the appellant would resign as administratrix of the estate and that a neutral person would be appointed to replace her. The agreement also provided that the new administrator would take the necessary actions to dismiss the appellant's lawsuit with prejudice and would then pursue the lawsuit brought by Peters. The appellant and Peters agreed to cooperate fully with the Estate's counsel in pursuit of Peters' action. On December 9, 2004, the probate court granted Peters' assented-to motion to appoint the appellee, John Ransmeier, "as the Administrator of [Mariani's] Estate, pursuant to the December 1, 2004 agreement that was approved by the Court."

On December 14, 2007, Ransmeier filed a motion in the probate court seeking clarification whether the December 1, 2004 order provided him with the authority to settle the pending wrongful death action brought by Peters. Following a hearing in February 2008, the probate court ruled that he had the authority to settle. This appeal followed.

"The findings of fact of the judge of probate are final unless they are so plainly erroneous that such findings could not be reasonably made." RSA 567-A:4 (2007). "Consequently, we will not disturb the probate court's decree unless it is unsupported

by the evidence or plainly erroneous as a matter of law." In re Estate of Treloar, 151 N.H. 460, 462 (2004) (quotation omitted).

As an initial matter, the appellant argues that the probate court's order should be reversed because the February hearing was held in Belknap County rather than Rockingham County where the petition for administration of the estate was filed. Citing RSA. 547:9 (2007), the appellant argues that the statute's "literal terms... require that proceedings affecting the administration of a decedent's estate be held in the county in which administration of a decedent was first provided for." (Emphasis added.) However, the statute actually provides that "[a]ll proceedings in relation to the settlement of the estate of a person deceased shall be had in the probate court of the county in which ... the administration on his estate was granted," (Emphasis added.) Pursuant to RSA 547:3, the probate court has "exclusive jurisdiction over…. [t]he granting of administration and all matters and things of probate jurisdiction relating to the composition, administration, sale, settlement, and final distribution of estates of deceased persons." RSA 547:3, 1(b) (2007). Thus, the legislature views the "administration" of an estate as different from the "settlement" of an estate.

The probate court made clear several times that the sole issue before it was to clarify whether, pursuant to the agreement entered into by the parties and approved by the court on December 1, 2004, Ransmeier had the authority to settle the wrongful death action pending in the United States

District Court in New York. As such, the proceeding was in relation to the administration of the estate. Accordingly, RSA 547:9 is not applicable to the limited hearing held by the probate court for the purposes of clarifying its previous order and we hold that the court did not err in proceeding in Belknap County. See RSA 547:21 (2007) (the judge of probate "may adjourn his court for the transaction of any business to any convenient time and place").

The appellant next argues that the probate court committed reversible error when it ruled that Ransmeier had the authority to settle the New York wrongful death action, including the loss of consortium claim. Pursuant to the parties' December 1, 2004 agreement, the United States District Court dismissed the appellant's wrongful death action with prejudice and ordered that "John C. Ransmeier, the new Administrator of the Estate of Louis Mariani is the sole plaintiff" in the wrongful death lawsuit brought by Peters. Accordingly, the administrator proceeded to participate in mediation sessions and negotiations, which resulted in a settlement proposal. The administrator then sought an order from the probate court "[c]onfirming that under the Agreement and the Court's Orders relating to the Agreement [he] ha[d] authority to settle the now ongoing [Peters] litigation ... and to sign any related releases of claims stated in the now ongoing case (to include a release of any possible consortium interests [pled] in the complaint), notwithstanding [appellant's] objections to settlement and her insistence upon a trial of the case."

There is no question that a New Hampshire administrator has authority to settle a wrongful death case, and to give a release binding upon the estate, provided that the settlement is reasonable and beneficial to the estate, and the administrator acts in good faith. See Burtman v. Butman, 94 N.H. 412, 416 (1947); Cogswell v. Railroad, 68 N.H. 192, 195 (1894), superseded by statute on other grounds, Pike v. Adams, 99 N.H. 221 (1954); cf. RSA 556:27 (2007) ("The probate court may authorize administrators ... to adjust by compromise or arbitration any controversy between them and persons making claims against the estates in their hands." (emphasis added)). Accordingly, the probate court did not err in finding that "an administrator indeed has the authority to settle a wrongful death case."

Incorporated in paragraph fifty-three of the wrongful death action is a loss of consortium claim, which states: "As a direct and proximate result of the conduct of defendants, and each of them, Decedent died and his beneficiaries, survivors, and heirs have suffered, and continue to suffer, noneconomic damages which include, among other things, loss of comfort, care, society, love, affection, guidance, presence, attention, companionship, and protection, according to proof." The probate court ruled that: "As to the issue of whether or not the loss of consortium claim is a part of the wrongful death suit and therefore can be settled by the administrator, RSA 556:12 clearly defines this claim as an element of the wrongful death suit brought by the administrator of an estate, therefore allowing for the said administrator to settle that claim…." The

appellant argues that the consortium claim is an independent rather than derivative claim and, therefore, RSA 507:8-a is the applicable New Hampshire statute controlling this issue.

Eleven days after the events of September 11, 2001, Congress enacted The Air Transportation Safety and System Stabilization Act, 49 U.S.C. § 40101 (Act), which "creates a federal cause of action for damages arising from, or in connection with the terrorist-related aircraft crashes of September 11, 2001, and confers exclusive jurisdiction on the United States District Court of the Southern District of New York to hear such actions." In re September 11th Litigation, 494 F. Supp. 2d 232, 237 (S.D.N.Y. 2007). "The Act provides aggregate monetary limits of recovery, limiting recoveries against the various aviation defendants to their aggregate insurance coverage." Id. "The Act further provides that although the cause of action is federal, the law of the state in which the crash occurred shall be the law for decision, in both its choice of law and its substantive aspects, except to the extent that such law is inconsistent with, or preempted by, federal law." Id.

Given that United Airlines Flight 175 crashed in New York City, New York law applies, including its choice of law principles. Id. at 239. It would thus be premature for us to rule upon the applicability, if any, of New Hampshire law to the appellant's loss of consortium claim contained within the wrongful death action. Such a determination is, in the first instance, for the United States District Court, based upon New York choice of law principles. See Greene-

Wotton v. Fiduciary Trust Co. Intern., 324 F. Supp. 2d 385, 390 (S.D.N.Y. 2003). Accordingly, we vacate the probate court's ruling that the administrator can settle the loss of consortium claim.

After reviewing all of the materials submitted by the parties, we conclude that the remaining arguments made by the appellant either raise issues that exceed the limited scope of the probate court's order, or, under the circumstances of this case, lack merit and warrant no further discussion, see Vogel v. Vogel, 137 N.H. 321, 322 (1993).

Affirmed in part: vacated in part.

Broderick, C.J., and Dalianis, Duggan and Hicks, JJ., concurred.

Eileen Fox,
Clerk

Distribution:
Register, Rockingham County
Probate Court 2002-0051
Honorable Christina M. O'Neill
Honorable David D. King
Bruce Leichty, Esquire
Patrick W. Fleming, Esquire
Philip Berg, Esquire
William L. Chapman, Esquire
Janine N. Gawryl, Esquire
Jon H. Levenstein, Esquire
Harleysville Mutual Insurance Company
Marcia McCormack, Supreme Court
Lorrie Platt, Supreme Court
Irene Dalbec, Supreme Court

[ENTERED: DECEMBER 1, 2004]

[ENTIRE ORIGINAL DOCUMENT IN HANDWRITING]

The State of New Hampshire

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Rockingham County

Probate Court
2002-0051 No.

AGREEMENT

In Re: Estate of Louis Neil Mariani

The parties agree as follows:

1) Ellen Mariani shall resign as the Administratix of the Estate, effective as of the date of this Agreement.

2) Ellen Mariani and Lauren Peters agree that a neutral person shall be appointed as the Administrator of the Estate, under the following procedure:

   (a) Lauren Peters shall nominate a neutral person to serve as Administrator. Ellen Mariani shall consent or not consent to the nominee.

(b) If Lauren Peters nominates 3 persons to serve as Administrator, and Ellen Mariani does not consent to any of the 3 persons, then Lauren Peters shall nominate 3 additional persons and ask the Court to select one of the 3 additional persons to serve as Administrator.

3) The Administrator shall post a $33,000 personal bond to serve as administrator.

4) The Administrator shall take the necessary actions to dismiss with prejudice the lawsuit brought by Ellen Mariani against United Airlines, et al, now pending in the U.S. District Court for the Southern District of New York, captioned Mariani et al v. UAL, et al, 01 CIV 11625 (AKH)

5) The Administrator shall pursue the lawsuit brought by Lauren Peters against United Airlines et al, now pending in the U.S. District Court for the Southern District of New York, captioned Peters et al v. UAL et al, 03 CIV 6940 (AKH). The Administrator shall continue to employ Attorney Anton Reinart, Attorney Charles Capace, and associated local counsel, as legal counsel ~~in said actions~~ to the

Estate in said action, pursuant to written retainer agreement on the same terms as agreed to by Lauren Peters. If the Administrator believes that new counsel is necessary in the New York action, the Administrator shall seek permission from the Court to change counsel, for good cause, with notice to all interested parties.

6) Any legal fees or expenses incurred by any counsel for Ellen Mariani in the New Hampshire Probate action shall be paid by Ellen Mariani, or shall be paid from Ellen Mariani's proceeds from the Probate Estate. Lauren Peters shall have no obligation for the payment of any said fees or expenses.

7) Any legal fees or expenses incurred by any counsel for Lauren Peters in the New Hampshire Probate action shall be paid by Lauren Peters, or shall be paid from Lauren Peters' proceeds from the Probate Estate. Ellen Mariani shall have no obligation for the payment of any said fees or expenses.

8) Niether the Estate nor Lauren Peters shall be obligated to pay for any legal fees or expenses incurred in the New York action brought by Ellen Mariani, or incurred in the lawsuit brought by Ellen Mariani against the United States of America et al, that was filed in

the U.S. District Court for the Eastern District of Penn. and captioned Mariani v. United States of America et al, Civ:1 Docket No. 2:03-CV-05273-ER.

9) From any proceeds from the New York action brought by Lauren Peters, Ellen Mariani shall pay to Lauren Peters the sum of $20,000, which amount shall be subtracted from Ellen Mariani's distribution of the Estate and added to Lauren Peters' distribution of the Estate.

10) Ellen Mariani and Lauren Peters agree to cooperate fully with ~~illegible~~ the Estate's counsel in pursuit of the New York action against United Airlines et al, and they further agree that they will not discuss the lawsuit with the news media, unless authorized in writing by legal counsel or the Administrator, and that they will refer all inquiries about said lawsuit to Legal counsel or the Administrator.

December 1, 2004
[signature] Lauren Peters
[signature] [illegible] Pappas, Attorney for Lauren Peters
[signature] Ellen M. Mariani
[signature] Paul MacEachern
atty For Mariani

12/1/04
Approved and ordered
[signature]
Christina M. O'Neill
[stamped]

TITLE IV – VICTIM COMPENSATION

SEC. 401. SHORT TITLE.

This title may be cited as the "September 11th Victim Compensation Fund of 2001."

SEC. 402. DEFINITIONS.

In this title, the following definitions apply:

(1) AIR CARRIER.–The term "air carrier" means a citizen of the United States undertaking by any means, directly or indirectly, to provide air transportation and includes employees and agents of such citizen.

(2) AIR TRANSPORTATION.–The term "air transportation" means foreign air transportation, interstate air transportation, or the transportation of mail by aircraft.

(3) CLAIMANT.–The term "claimant" means an individual filing a claim for compensation under section 405(a)(1).

(4) COLLATERAL SOURCE.–The term "collateral source" means all collateral sources, including life insurance, pension funds, death benefit programs, and payments by Federal, State, or local governments related to the terrorist-related aircraft crashes of September 11, 2001.

(5) ECONOMIC LOSS.–The term "economic loss" means any pecuniary loss resulting from harm (including the loss of earnings or other benefits related to employment, medical expense loss, replacement services loss, loss due to death, burial costs, and loss of business or employment opportunities) to the extent recovery for such loss is allowed under applicable State law.

(6) ELIGIBLE INDIVIDUAL.–The term "eligible individual" means an individual determined to be eligible for compensation under section 405(c).

(7) NONECONOMIC LOSSES.–The term "noneconomic losses" means losses for physical and emotional pain, suffering, inconvenience, physical impairment, mental anguish, disfigurement, loss of enjoyment of life, loss of society and companionship, loss of consortium (other than loss of domestic service), hedonic damages, injury to reputation, and all other nonpecuniary losses of any kind or nature.

(8) SPECIAL MASTER.–The term "Special Master" means the Special Master appointed under section 404(a).

SEC. 403. PURPOSE.

It is the purpose of this title to provide compensation to any individual (or relatives of a deceased individual) who was physically injured or killed as a result of the terrorist-related aircraft crashes of September 11, 2001.

SEC. 404. ADMINISTRATION.

(a) IN GENERAL.–The Attorney General, acting through a Special Master appointed by the Attorney General, shall-

(1) administer the compensation program established under this title;

(2) promulgate all procedural and substantive rules for the administration of this title; and

(3) employ and supervise hearing officers and other administrative personnel to perform the duties of the Special Master under this title.

(b) AUTHORIZATION OF APPROPRIATIONS.–There are authorized to be appropriated such sums as may be necessary to pay the administrative and support costs for the Special Master in carrying out this title.

SEC 405. DETERMINATION OF ELIGIBILITY FOR COMPENSATION.

(a) FILING OF CLAIM.–

(1) IN GENERAL.–A claimant may file a claim for compensation under this title with the Special Master. The claim shall be on the form developed under paragraph (2) and shall state the factual basis for eligibility for compensation and the amount of compensation sought.

(2) CLAIM FORM.–

(A) IN GENERAL.–The Special Master shall develop a claim form that claimants shall use when submitting

claims under paragraph (1). The Special Master shall ensure that such form can be filed electronically, if determined to be practicable.

(B) CONTENTS.–The form developed under subparagraph (A) shall request–

(i) information from the claimant concerning the physical harm that the claimant suffered, or in the case of a claim filed on behalf of a decedent information confirming the decedent's death, as a result of the terrorist-related aircraft crashes of September 11, 2001;

(ii) information from the claimant concerning any possible economic and noneconomic losses that the claimant suffered as a result of such crashes; and

(iii) information regarding collateral sources of compensation the claimant has received or is entitled to receive as a result of such crashes.

(3) LIMITATION.–No claim may be filed under paragraph (1) after the date that is 2 years after the date on which regulations are promulgated under section 407.

(b) REVIEW AND DETERMINATION.–

(1) REVIEW.–The Special Master shall review a claim submitted under subsection (a) and determine–

(A) whether the claimant is an eligible individual under subsection (c);

(B) with respect to a claimant determined to be an eligible individual–

(i) the extent of the harm to the claimant, including any economic and noneconomic losses; and

(ii) the amount of compensation to which the claimant is entitled based on the harm to the claimant, the facts of the claim, and the individual circumstances of the claimant.

(2) NEGLIGENCE.–With respect to a claimant, the Special Master shall not consider negligence or any other theory of liability.

(3) DETERMINATION.–Not later than 120 days after that date on which a claim is filed under subsection (a), the Special Master shall complete a review, make a determination, and provide written notice to the claimant, with respect to the matters that were the subject of the claim under review. Such a determination shall be final and not subject to judicial review.

(4) RIGHTS OF CLAIMANT.–A claimant in a review under paragraph (1) shall have–

(A) the right to be represented by an attorney;

(B) the right to present evidence, including the presentation of witnesses and documents; and

(C) any other due process rights determined appropriate by the Special Master.

(5) NO PUNITIVE DAMAGES.–The Special Master may not include amounts for punitive damages in any compensation paid under a claim under this title.

(6) COLLATERAL COMPENSATION.–The Special Master shall reduce the amount of compensation determined under paragraph (1)(B)(ii) by the amount of the collateral source compensation the claimant has received or is entitled to receive as a result of the terrorist-related aircraft crashes of September 11, 2001.

(c) ELIGIBILITY–

(1) IN GENERAL.–A claimant shall be determined to be an eligible individual for purposes of this subsection if the Special Master determines that such claimant–

(A) is an individual described in paragraph (2); and

(B) meets the requirements of paragraph (3).

(2) INDIVIDUALS.–A claimant is an individual described in this paragraph if the claimant is –

(A) an individual who–

(i) was present at the World Trade Center, (New York, New York), the Pentagon (Arlington, Virginia), or the site of the aircraft crash at Shanksville. Pennsylvania at the time, or in the immediate

aftermath, of the terrorist-related aircraft crashes of September 11, 2001; and

(ii) suffered physical harm or death as a result of such an air crash;

(B) an individual who was a member of the flight crew or a passenger on American Airlines flight 11 or 77 or United Airlines flight 93 or 175, except that an individual identified by the Attorney General to have been a participant or conspirator in the terrorist-related aircraft crashes of September 11, 2001, or a representative of such individual shall not be eligible to receive compensation under this title; or

(C) in the case of a decedent who is an individual described in subparagraph (A) or (B), the personal representative of the decedent who files a claim on behalf of the decedent.

(3) REQUIREMENTS.–

(A) SINGLE CLAIM.–Not more than one claim may be submitted under this title by an individual or on behalf of a deceased individual.

(B) LIMITATION ON CIVIL ACTION.–

(i) IN GENERAL.-Upon the submission of a claim under this title, the claimant waives the right to file a civil action (or to be a party to an action) in any

Federal or State court for damages sustained as a result of the terrorist-related aircraft crashes of September 11, 2001. The preceding sentence does not apply to a civil action to recover collateral source obligations.

(ii) PENDING ACTIONS.–In the case of an individual who is a party to a civil action described in clause (i), such individual may not submit a claim under this title unless such individual withdraws from such action by the date that is 90 days after the date on which regulations are promulgated under section 407,

SEC. 406. PAYMENTS TO ELIGIBLE INDIVIDUALS.

(a) IN GENERAL.–Not later than 20 days after the date on which a determination is made by the Special Master regarding the amount of compensation due a claimant under this title, the Special Master shall authorize payment to such claimant of the amount determined with respect to the claimant.

(b) PAYMENT AUTHORITY.–This title constitutes budget authority in advance of appropriations Acts and represents the obligation of the Federal Government to provide for the payment of amounts for compensation under this title,

(c) ADDITIONAL FUNDING.–

(1) IN GENERAL.–The Attorney General is authorized to accept such amounts as may be contributed by individuals, business concerns, or other entities to carry out this title, under such terms and conditions as the Attorney General may impose.

(2) USE OF SEPARATE ACCOUNT.– In making payments under this section, amounts contained in any account containing funds provided under paragraph (1) shall be used prior to using appropriated amounts.

SEC. 407. REGULATIONS.

Not later than 90 days after the date of enactment of this Act, the Attorney General, in consultation with the Special Master, shall promulgate regulations to carry out this title, including regulations with respect to–

(1) forms to be used in submitting claims under this title;

(2) the information to be included in such forms;

(3) procedures for hearing and the presentation of evidence;

(4) procedures to assist an individual in filing and pursuing claims under this title; and

(5) other matters determined appropriate by the Attorney General.

SEC. 408. LIMITATION ON AIR CARRIER LIABILITY.

(a) IN GENERAL.–Notwithstanding any other provision of law, liability for all claims, whether for compensatory or punitive damages, arising from the terrorist-related aircraft crashes of September 11, 2001, against any air carrier shall not be in an amount greater than the limits of the liability coverage maintained by the air carrier.

(b) FEDERAL CAUSE OF ACTION.–

(1) AVAILABILITY OF ACTION.–There shall exist a Federal cause of action for damages arising out of the hijacking and subsequent crashes of American Airlines flights 11 and 77, and United Airlines flights 93 and 175, on September 11, 2001. Notwithstanding section 40120(c) of title 49, United States Code, this cause of action shall be the exclusive remedy for damages arising out of the hijacking and subsequent crashes of such flights.

(2) SUBSTANTIVE LAW.–The substantive law for decision in any such suit shall be derived from the law, including choice of law principles, of the State in which the crash occurred unless such law is inconsistent with or preempted by Federal law.

(3) JURISDICTION.–The 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.

(c) EXCLUSION.–Nothing in this section shall in any way limit any liability of any person who is a knowing participant in any conspiracy to hijack any aircraft or commit any terrorist act.

SEC. 409. RIGHT OF SUBROGATION.

The United States shall have the right of subrogation with respect to any claim paid by the United States under this title.

TITLE V – AIR TRANSPORTATION SAFETY

SEC. 501. INCREASED AIR TRANSPORTATION SAFETY.

Congress affirms the President's decision to spend $3,000,000,000 on airline safety and security in conjunction with this Act in order to restore public confidence in the airline industry.

SEC. 502 CONGRESSIONAL COMMITMENT.

Congress is committed to act expeditiously, in consultation with the Secretary of Transportation, to strengthen airport security and take further measures to enhance the security of air travel.

TITLE VI – SEPARABILITY

SEC. 601. SEPARABILITY

If any provision of this Act (including any amendment made by this Act) or the application thereof to any person or circumstance is held invalid, the remainder of this Act (including any amendment made by this Act) and the application thereof to other persons or circumstances shall not be affected thereby.

Approved September 22, 2001.

LEGISLATIVE HISTORY–H.R. 2926 (S. 1450):
CONGRESSIONAL RECORD, Vol. 147 (2001):
Sept. 21, considered and passed House and Senate.
WEEKLY COMPILATION OF PRESIDENTIAL DOCUMENTS, Vol. 37 (2001):
Sept. 22, Presidential statement