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March 15, 2006

By Hand

Hon. Alvin K. Hellerstein
United States District Judge
500 Pearl Street
New York, New York 10007

Re: ***In re September 11 Property Damage and
Business Loss Litigation, No. 21 MC 101 (AKH)***

Dear Judge Hellerstein:

We write to call to the Court's attention facts that have just surfaced that raise serious questions about what appears to be an incestuous and inappropriate relationship between Intervenor Transportation Security Administration (the "TSA") and certain of the Aviation Defendants. The Property Damage and Business Loss Plaintiffs are gravely concerned about the impact that this relationship may be having on discovery in the September 11 Actions.

Documents made public in the last few days in connection with the sentencing trial of Zacarias Moussaoui reveal attempts by counsel to certain of the Aviation Defendants in the September 11 Actions to shape the government's case in *United States v. Moussaoui* — through the TSA — in a manner that will assist them in the defense of the September 11 Actions. Counsel for United and American Airlines contacted the TSA to express major concerns with the prosecution's opening statement in *Moussaoui*, clearly because it laid them open to civil liability in the September 11 Actions. TSA was so responsive to these concerns that a TSA attorney attempted to coach government witnesses and to alter their prospective testimony — in violation of a Court order and in a manner that the Government itself has described as "reprehensible."

Specifically, in its opening statement on March 6, 2006, the Government took the position that the hijackings were *completely preventable* and that gate security measures *could have been implemented* to prevent the 9/11 hijackers from boarding the planes had security been on the look out for short bladed knives and boxcutters. (This stands in stark

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contrast to the position that has been repeatedly articulated by counsel to the Aviation Defendants in the September 11 Actions.) Given the devastating significance of this admission to the September 11 Actions, counsel to the Aviation Defendants took action — they contacted the TSA.

The attached emails reveal that on March 7, 2006, counsel to American Airlines forwarded a copy of the Government's opening statement to United's counsel, who in turn forwarded a copy to an attorney for the TSA. The TSA lawyer then forwarded the transcripts and sent multiple emails to Government witnesses in a clear effort to shape their testimony in a manner that would be beneficial to the Aviation Defendants in the September 11 Actions. One such email to a Government witness on March 8 recounts the TSA lawyer's communications with her "friends" — counsel to United and American in this case — and coaches the witness as to certain testimony that "MUST" be elicited from her and other witnesses at trial:

Lynne-let me put it this way: my friends Jeff Ellis and Chris Christenson, NY lawyers rep. UAL and AAL respectively in the 9/11 civil litigation, (and rep. Ed S. and Larry W. here) all of us aviation lawyers, were stunned by the opening. The opening has created a credibility gap that the defense can drive a truck through. There is no way anyone could say that the carriers could have prevented all short bladed knives from going through--Dave MUST elicit that from you and the airline witnesses on direct....

See Exhibit A at 10 (emphasis added).

These developments reveal far more than appearance of impropriety. The TSA is the administrative body charged with adjudicating the critical Sensitive Security Information ("SSI") issues in the September 11 Actions. These developments cast doubt on the impartiality of TSA in each and every matter concerning the SSI issues in this litigation. Given the importance of TSA's role in the September 11 Actions, evidence of defense counsel having *ex parte* communications with a TSA lawyer, resulting in the coaching of witnesses and the shaping of testimony in this manner, is deeply disturbing.

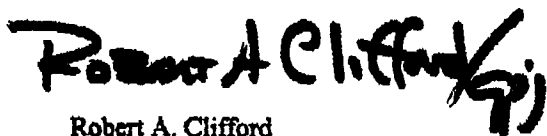
We request the opportunity to take immediate discovery into all communications between counsel for United and American Airlines and the TSA. We are not, through this discovery, seeking access to SSI. But it is imperative that the Plaintiffs have the opportunity to determine the extent of Defendants' influence with the TSA and potentially over the SSI

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determinations, to inquire into the mutual back-scratching relationship that appears to exist between the Defendants and the TSA, and to ascertain the extent to which that may have affected discovery before Your Honor. We request a hearing at the Court's earliest convenience to address the matters discussed in this letter.

Respectfully submitted,



Robert A. Clifford



Gregory P. Joseph

cc: All Liaison Counsel
TSA Counsel

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