UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT
Thurgood Marshall U.S. Courthouse 40 Foley Square, New York, NY 10007 Telephone: 212-857-8500

MOTION INFORMATION STATEMENT

Docket Number(s): 11-175 Caption [use short title]

Motion for: Order Authorizing Appellant to Supplement Record [etc.]

Set forth below precise, complete statement of relief sought:

Supplementation of record or judicial notice re: connections and laxity of trial judge going to ignored issues of partiality involved in intervention motion and anomalies in approved settlement

Ransmeier v. UAL Corporation, et al

MOVING PARTY: Ellen Mariani OPPOSING PARTY: John Ransmeier

☐ Plaintiff ☐ Defendant
☑ Appellant/Petitioner ☐ Appellee/Respondent

MOVING ATTORNEY: Bruce Leichty OPPOSING ATTORNEY: Jeffrey Ellis / Charles Capace / Peter Beeson

[name of attorney, with firm, address, phone number and e-mail]

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Court-Judge/Agency appealed from: U.S. District Court, Southern District of NY, Judge Hellerstein

Please check appropriate boxes:

Has movant notified opposing counsel (required by Local Rule 27.1):
☑ Yes ☐ No (explain):

Opposing counsel's position on motion:
☐ Unopposed ☑ Opposed ☐ Don't Know

Does opposing counsel intend to file a response:
☑ Yes ☐ No ☐ Don't Know

FOR EMERGENCY MOTIONS, MOTIONS FOR STAYS AND INJUNCTIONS PENDING APPEAL:

Has request for relief been made below? ☐ Yes ☐ No
Has this relief been previously sought in this Court? ☐ Yes ☐ No
Requested return date and explanation of emergency:

Is oral argument on motion requested? ☐ Yes ☑ No (requests for oral argument will not necessarily be granted)

Has argument date of appeal been set? ☑ Yes ☐ No If yes, enter date: 5/23/2012

Signature of Moving Attorney: Date: 4/17/2012 Has service been effected? ☑ Yes ☐ No [Attach proof of service]

ORDER

IT IS HEREBY ORDERED THAT the motion is GRANTED DENIED.

FOR THE COURT:
CATHERINE O'HAGAN WOLFE, Clerk of Court

Date: By:

Form T-1080

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

JOHN RANSMEIER,

Plaintiff-Appellee,

v.

UAL CORP., et al.,

Defendants-Appellees,

v.

ELLEN MARIANI,
Proposed Intervenor/
Party in Interest-
Appellant

_____/

Case No. 11-175 (11-640 CON)

MOTION FOR ORDER AUTHORIZING APPELLANT TO SUPPLEMENT RECORD OR ALTERNATIVELY, GRANTING REQUEST FOR JUDICIAL NOTICE

Appellant Ellen Mariani hereby moves pursuant to F.R.A.P. 10(e)(2)(C) and (3), and alternatively pursuant to Federal Rule of Evidence 201(b)(2), (c)(2) and (d), that the Court either authorize her to supplement the record herein with newly-discovered documentation of facts which create a reasonable doubt as to the impartiality of the District Court judge--mainly the representation by his son's law firm of affiliates of certain defendants--or alternatively take judicial notice of that documentation, since the main issue on appeal is the refusal of the District Court judge to consider whether a (different) conflict of interest supports Appellant's right to intervene.

The motion is also brought on the grounds that Appellant has challenged

approval of a settlement which now appears to have been a "sweetheart" deal[1] for the same defendants implicated in the District Court's laxity and insensitivity to partiality, namely aviation security defendants ICTS International NV and its U.S. affiliate Huntleigh USA Corporation, and defendant The Boeing Company.

This motion is supported by the attached Declaration of Ellen Mariani, with extensive exhibits filed separately, and attached Memorandum of Points and Authorities, and the Record on Appeal as extracted in the Joint Appendix on file herein (abbreviated as "JA"), and is based on these facts:

1. Federal Judge Alvin K. Hellerstein has presided over all of the proceedings arising out of the terrorist acts that befell the United States of America on September 11, 2011, including but not limited to the crashing of United Airlines Flight 175 into the South Tower of the World Trade Center in New York City, leading to the death of Appellant's husband Louis Neil Mariani. The effect of Judge Hellerstein's supervision and rulings has been that no trial has been held on any wrongful death or survivorship claim arising out of any of the 9/11 plane crashes. Consistent with pressure exerted by Judge Hellerstein at numerous points, settlements have been sought and approved as to all claims made to date, and Mariani believes that her claim and the claim of her deceased husband's Estate--settlement of which was made over her objection--are the only claims not yet the subject of an approved settlement or other final nonappealable order of the Court.

2. On 11/15/2010, Judge Hellerstein denied without elaboration the

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[1] The basis for use of that term is further explained in the accompanying Memorandum. ICTS, Huntleigh and Boeing all appear to have received something without giving anything in return, or at least without giving what would normally be expected in a settlement, namely their signatures on a settlement agreement.

motion of Mariani for an order authorizing her intervention in 03-cv-6940 in the district court (the "Mariani Action"), filed on the ground that Appellee John Ransmeier, supposedly her fiduciary, could not adequately protect Mariani's property interest in the Mariani Action, since he had a conflict of interest in that his law firm had represented aviation defendant United Airlines and other defendants during his prosecution of Mariani's claims against those same defendants, which Mariani did not discover until shortly before Ransmeier announced his intention to settle them. Judge Hellerstein in the same order (the "11/15/10 Order") approved a settlement nominally entered into between Ransmeier, United, UAL, and certain insurers, but not signed by another key defendant, aviation security provider ICTS International NV ("ICTS") or its U.S. affiliate Huntleigh USA Corporation ("Huntleigh"), even though those two entities were named beneficiaries in the proposed release that accompanied the settlement agreement. Nor was the Boeing Company ("Boeing"), also a named defendant in the Mariani Action, mentioned in the settlement agreement or a signatory thereto. The 11/15/10 Order, together with certain related orders, is the subject of the instant appeal.

3. The operative complaint in which the claims of the Louis Neil Mariani Estate and of Ellen Mariani are pled includes without limitation the following allegations directed specifically at ICTS, Huntleigh and Boeing:

--At all times pertinent, defendants Huntleigh [and] ICTS [] owned, operated, controlled, manned, supervised and oversaw the security system through which the terrorists penetrated....

--Before and on September 11, 2011, defendant Boeing designed, manufactured, assembled, inspected, tested, distributed, serviced, maintained, monitored, repaired, marketed and introduced into the stream of commerce the

aircraft, and its component parts, including, but not limited to, the aircraft's cockpit security system, along with instructions and warnings for the aircraft and its component parts which it approved, wrote, prepared, provided, monitored and which were sold, delivered and provided to defendant United, and thereafter, Boeing monitored the aircraft for service and mechanical reliability and airworthiness.

--[D]efendants [], Huntleigh [and] ICTS []...breached the duty owed and engaged in conduct which was reckless, negligent [], wrongful, unlawful, careless and willful and wanton misconduct in conscious disregard for the rights and safety, which were the direct and proximate cause of the loss of control of the aircraft and ultimate crash of United Airlines flight 175....

--[] Huntleigh [and] ICTS [] have demonstrated incompetent and careless operation and maintenance of their contracted security services over many years....

--Defendants [] had exclusive management and control of the aircraft and airport security systems through which the terrorists penetrated and whose actions resulted in damages and death to plaintiff's decedent.

4. The complaint also includes a count for strict liability and negligence against Boeing alleging, among other things, that "the aircraft and its component parts...were defective and unreasonably dangerous by reason of defective design, manufacture, or [] failure of defendants to give adequate and proper warnings of the dangers existing therein and adequate instructions regarding the avoidance of such dangers...."

5. Boeing notified the Court on or about May 14, 2004 and both ICTS and Huntleigh notified the Court on or about May 17, 2004 that they had respectively answered the complaint in 03-cv-6940 with their Master Answer.

The docket report for the case does not show that any of these three defendants were ever dismissed as parties.

6. Mariani has now uncovered documentation showing connections of the law firm of Judge Hellerstein's son, Joseph Z. Hellerstein, with close affiliates or partners of Boeing and ICTS (and therefore necessarily with Huntleigh), all of which connections were in existence during Judge Hellerstein's handling of the 9/11 litigation and many of them since when Joseph Z. Hellerstein was known to have been employed by the law firm Amit, Pollak, Matalon and Company, based in Tel Aviv, Israel ("Amit"). These connections are as follows.

7. Amit represents a defense aviation contractor who is a joint venturer (effectively a partner) with Boeing as of July 2010. Amit represents Aeronautics Defense Systems, an Israeli company which (according to its website) specializes in providing "comprehensive defense solutions [] and has established itself as a primary global provider of security consulting services and defense applications," including with clients such as the Israeli Air Force and United States Navy. In July 2010 the relationship of Aeronautics and Boeing was formalized when Amit's client signed a Memorandum of Understanding with Boeing for marketing of the "Dominator DA42" unmanned aerial vehicle, i.e. a plane that can be flown by remote control.

8. Amit (and thus Joseph Hellerstein) also represented at all times pertinent to the settlement of this action what was effectively a sister security company to ICTS, a provider of "radio frequency identification" ("RFID") devices and "supply chain solutions" with the name Better Online Solutions ("BOS"). (The U.S. Department of Defense is the largest user of active RFID devices including in "supply chain management." RFID technology is also used

in logistics, transportation and immigration control[2].) The links of BOS--and thus Amit and the younger Hellerstein--to ICTS are to be found in the effective control by ICTS of one Boaz Harel, who is the president and managing partner of Catalyst Investments, owned by Cukierman and Company, an Israeli investment advisor and private equity firm with numerous governmental and defense ties ("CAC"). Edouard Cukierman is the chairman of the Board of both CAC and BOS, and Catalyst Investments is a major holder of BOS. Boaz Harel sat openly on the board of BOS in 2003-04. Boaz Harel has effective control of ICTS by virtue of assuming control over the majority interest in ICTS in approximately 2003. That majority interest was held by his brother Ezra Harel until Ezra's unexpected death in 2003 at age 53, and then passed to the Ezra Harel Family Estate in the form of its control over the nominal majority holder of ICTS, Harmony Ventures NV, a Dutch-registered company. Harel is acknowledged to have had a consulting relationship with ICTS, and to have served as chairman of ICTS USA, Inc. (in 1994). Both Edouard Cukierman (CEO) and Boaz Harel (Partner) were listed as principals of Catalyst Fund at a "Go4Europe" conference in 2001.

9. For at least 10 years Amit and CAC have co-sponsored or been featured at annual European investment conferences under the name "Go4Europe" featuring such luminaries as Israeli Prime Minister Ariel Sharon and LCF Rothschild chairman Michel Cicurel, and presentations by their own principals including Amit partners Yonathan Altman and Doron Levy. In 2001

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[2] Mariani has not yet in the short time since her discovery of these facts been able to determine the scope of the RFID business of BOS, or whether BOS has any U.S. Department of Defense contracts, but in any case those are facts cited to show the security-sensitive nature of both businesses, and they are otherwise incidental to the main point of this motion.

Sharon spoke and Edouard Cukierman was moderator in a panel discussion on "The impact of the political situation on the Israeli high tech sector and its development in Europe." In 2010 Roger Cukierman, vice-president of the World Jewish Congress, moderated a discussion under the title, "Winning the Battle of the Israeli Image in Europe." Also on the 2001 program was Yair Shamir, son of another Israeli prime minister, Yitzhak Shamir, identified as chairman of Catalyst Fund.

10. Judge Hellerstein and his wife Mildred are known to be active supporters of Israeli causes, and it is implausible that Judge Hellerstein would not at least be on inquiry notice of the affiliations of his son's law firm and the connections of his son's clients to Israeli and Israeli-linked defendants in a case before him, particularly in a case of the magnitude of the 9/11 case. Even if Joseph Z. Hellerstein never personally performed services for BOS or Aeronautics Defense Systems, or has never been part of a Cukierman-sponsored conference, the acts and affiliations of a law firm are necessarily imputed to each lawyer therein for the purposes of judicial determination of the appearance of impropriety or partiality.

11. The Canons of Judicial Ethics require federal judges to avoid even the appearance of impropriety, and to disqualify themselves in proceedings "in which the judge's impartiality might reasonably be questioned," including but not limited to occasions when family members are known to have "an interest that could be substantially affected by the outcome of the proceeding." While Mariani has no proof that Joseph Hellerstein had an interest that could be affected by the outcome of the Mariani Action (and specifically the disposition of the action as to ICTS, Huntleigh and Boeing), and while neither disqualification or a judicial conduct complaint are implicated in this motion,

Mariani does assert that Judge Hellerstein should have known that as of the date of the 11/15/10 Order in 2010, his impartiality could have reasonably been questioned by one in possession of the above documentation (not timely known about by Mariani); and even beyond that, that the likelihood of partiality may explain the indifference of Judge Hellerstein or his inability to appreciate the seriousness of the conflict of interest that was presented to him by Mariani, which also becomes relevant to this appeal, since this Court may be otherwise inclined to give the lower court the benefit of any doubt as to non-quantifiable considerations going into the 11/15/10 Order, given that Judge Hellerstein did not elaborate on his conclusion that Mariani's motion should be denied (other than by saying it was a "rehash" even though Mariani was for the first time presenting facts about the conflict of interest of Ransmeier in working both for Plaintiff Estate and United Airlines and other defendants).

12. It would be sufficient for presentation of this motion if Mariani had just discovered only the Amit/Joseph Hellerstein ties with affiliates of ICTS and Boeing, but there are additional anomalies that have also either just been discovered or that take on new significance in light of the discovery of the Amit connections, and the confluence of these factors invites even closer scrutiny by the Court of Appeals.

--Neither ICTS nor Huntleigh nor Boeing appear to have needed to take part in the defense of the Mariani Action nor is there any proof that they contributed to the settlement submitted by United Airlines and certain insurers, even they will benefit therefrom. Their signatures are nowhere to be found on the Confidential Stipulation of Settlement executed in the Mariani Action. Thus there is a very real possibility that they were all trying to keep a low profile in the Mariani Action based on the above documented facts, making the

appearance of judicial partiality or impropriety the more pronounced. At no point did United Airlines or John Ransmeier attempt to explain the absence of these or other defendants as signatories to the settlement nor did Judge Hellerstein inquire, even though in other actions brought against UAL at least ICTS and Huntleigh were signatories (and indeed, two attorneys for Huntleigh had appeared at an "off-the-record" phone conference held in this case at which undersigned counsel was invited to appear, and attorneys for Huntleigh and Boeing are still included in the ECF service list for this appeal).

--Judge Hellerstein has made remarks repeatedly with regard to the 9/11 litigation that suggest that he will readily sacrifice procedural and legal rigor for the perceived benefits of expediency and "moving on," under the mantle of his passion for settlement. He has not only suggested to attorneys for family members of victims that money is the "universal lubricant" notwithstanding any invocation of "principle," he is quoted in an article in the Fordham Law Review (10/25/2011) as stating with regard to another group of 9/11 victims (first responders and rescue workers), "the niceties of federal practice [are] secondary to the compelling needs of people to get a recovery that [is] almost, almost, almost within their grasp."

13. Mariani notes that she is not lodging a grievance against Judge Alvin Hellerstein, nor is she seeking his disqualification or recusal, neither of which could be accomplished by motion to this Court in this appeal. Mariani is indeed aware that it is improper to make a complaint of judicial misconduct in the very case in which the judge has acted, and she is specifically not doing so herein. Her claims are different and are very clear: she believes simply that the above facts and documentation of them must be considered when assessing Judge Hellerstein's rejection of her right to intervene (based ultimately on a conflict

of interest of her fiduciary) and that they must be considered in determining the propriety of Judge Hellerstein's approval of an anomalous settlement. As briefed in the accompanying Memorandum, there is no exclusivity of remedy and no rule requiring an election of remedies in the context of a judge who has acted in defiance to the appearance of partiality. Just as there can be more than one remedy available based on the conflict of interest of a plaintiff (as Mariani has asserted in her brief on file herein), so there can also be more than one remedy based on the appearance of partiality of a judge, when it is relevant to the issues being decided, as here. Irrespective of whether Judge Hellerstein engaged in misconduct, therefore, there are ample substantive grounds for the consideration of the above facts about partiality and about disdain for the "niceties" of federal practice in the context of Judge Hellerstein's ruling which essentially ignores a claim about partiality.

14. Nor should this motion be deemed untimely. Mariani has filed the motion as soon as she could following her discovery of the documentation identified above--in just a day over three weeks--and this Court has already allowed certain post-briefing supplementation of the record, even over the objection of Mariani. The Court is being asked to take judicial notice of its own prior act authorizing Appellee Ransmeier to supplement the record, well after Mariani had filed her opening brief, without any consideration given to Mariani in the context of her Reply Brief, even when Appellee initially sought only to file a supplemental "appendix" to its brief. Mariani asserts that this motion can be opposed and adjudicated well in advance of the time for oral argument, which has been set for May 23, 2012, without disturbing that timetable.

WHEREFORE, Mariani requests that the documents she has appended to the declaration she is presenting herewith be added to the record herein, or that

the entire declaration be added to the record, or alternatively, that the Court take judicial notice of the documentation attached to the declaration, or for such other and/or further relief as the Court may deem just and proper.

/s/ Bruce Leichty

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UNITED STATES COURT OF APPEALS
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JOHN RANSMEIER,

Plaintiff-Appellee,

v.

UAL CORP., et al.,

Defendants-Appellees,

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ELLEN MARIANI,
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_____/

Case No. 11-175 (11-640 CON)

MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF MOTION BY APPELLANT ELLEN MARIANI FOR ORDER AUTHORIZING APPELLANT TO SUPPLEMENT RECORD OR, ALTERNATIVELY, GRANTING REQUEST FOR JUDICIAL NOTICE

Appellant Ellen Mariani hereby submits the following points and authorities in support of her motion, filed herewith, for an order authorizing her to supplement the Record on Appeal with certain documents, or, alternatively, that the Court take judicial notice of documentation that she has recently discovered, on the connections of District Court Judge Alvin Hellerstein to affiliates of specified Defendants herein, through his son's law firm, which tend to show in conjunction with other anomalies a lack of impartiality on her motion to intervene and on his approval of a settlement she objected to, and that this Court grant the same treatment to documentation relevant to that settlement showing a lax approach on the part of the Judge toward procedural propriety in the federal courts and a bias in favor of expediency and settlement. This Memorandum is based on the Record on

Appeal extracted in the Joint Appendix on file herein (abbreviated "JA"), and on the Declaration of Ellen Mariani ("Mariani Dec.") submitted herewith, and concerns all those documents appended to the Mariani Declaration.

I. FACTS

Federal Judge Alvin K. Hellerstein has presided over all of the proceedings arising out of the terrorist acts that beset the United States of America on September 11, 2011, including but not limited to the crashing of United Airlines Flight 175 into the South Tower of the World Trade Center in New York City, leading to the death of Appellant's husband Louis Neil Mariani. The effect of Judge Hellerstein's supervision and rulings has been that no trial has been held on any wrongful death or survivorship claim arising from any of the 9/11 plane crashes. Mariani Dec.

Consistent with pressure exerted by Judge Hellerstein at numerous points, settlements have been sought and approved as to all claims made to date, and Mariani believes that her claim and the claim of her deceased husband's Estate--settlement of which was fashioned over her objection--are the only 9/11 claims not yet the subject of binding resolution by final nonappealable order. Mariani Dec.

On 11/15/2010, Judge Hellerstein denied without elaboration the motion of Mariani for an order authorizing her intervention in 03-cv-6940 in the district court (the "Mariani Action"), filed on the ground that Appellee John Ransmeier, supposedly her fiduciary, could not adequately protect Mariani's property interest in the Mariani Action. Mariani alleged that Ransmeier had a conflict of interest in that his law firm had represented aviation defendant United Airlines and other defendants in the 9/11 litigation during his

prosecution of Mariani's claims, directly involving those same defendants or their insurers, which Mariani did not discover until shortly before Ransmeier announced his intention to settle those claims. JA 27.1ff.

Judge Hellerstein in the same order (the "11/15/10 Order") approved a settlement entered into between Ransmeier, United Airlines, its parent UAL, and certain insurers, but not signed by another key defendant, aviation security provider ICTS International NV ("ICTS") or its U.S. affiliate Huntleigh USA Corporation ("Huntleigh"), even though those two entities were named beneficiaries in the proposed release that accompanied the settlement agreement. Nor was the Boeing Company ("Boeing"), also a named defendant in the Mariani Action, mentioned in the settlement agreement or a signatory thereto. JA 25.4 - 25.6. The 11/15/10 Order, together with certain related orders, is the subject of the instant appeal. JA 32.1, 46.1, 53.1.

The operative complaint in which the claims of the Louis Neil Mariani Estate and of Ellen Mariani are pled includes without limitation the following allegations directed specifically at ICTS, Huntleigh and Boeing:

--At all times pertinent, defendants Huntleigh [and] ICTS [] owned, operated, controlled, manned, supervised and oversaw the security system through which the terrorists penetrated....

--Before and on September 11, 2011, defendant Boeing designed, manufactured, assembled, inspected, tested, distributed, serviced, maintained, monitored, repaired, marketed and introduced into the stream of commerce the aircraft, and its component parts, including, but not limited to, the aircraft's cockpit security system, along with instructions and warnings for the aircraft and its component parts which it approved, wrote, prepared, provided, monitored and which were sold, delivered and provided to defendant United,

and thereafter, Boeing monitored the aircraft for service and mechanical reliability and airworthiness. JA 2.8.

--[D]efendants [], Huntleigh [and] ICTS []...breached the duty owed and engaged in conduct which was reckless, negligent [], wrongful, unlawful, careless and willful and wanton misconduct in conscious disregard for the rights and safety, which were the direct and proximate cause of the loss of control of the aircraft and ultimate crash of United Airlines flight 175.... JA 2.11.

--[] Huntleigh [and] ICTS [] have demonstrated incompetent and careless operation and maintenance of their contracted security services over many years.... JA 2.12.

--Defendants [] had exclusive management and control of the aircraft and airport security systems through which the terrorists penetrated and whose actions resulted in damages and death to plaintiff's decedent. JA 2.13.

The complaint also includes a count for strict liability and negligence against Boeing alleging, among other things, that "the aircraft and its component parts...were defective and unreasonably dangerous by reason of defective design, manufacture, or [] failure of defendants to give adequate and proper warnings of the dangers existing therein and adequate instructions regarding the avoidance of such dangers...." JA 2.13.

Boeing notified the Court on or about May 14, 2004 and both ICTS and Huntleigh notified the Court on or about May 17, 2004 that they had respectively answered the complaint in 03-cv-6940 with their Master Answer. JA 1.6, 1.7. The docket report for the Mariani Action does not show that any of these three defendants were ever dismissed as parties. JA 1.3, 1.4.

Mariani has now uncovered documentation showing connections of the

law firm of Judge Hellerstein's son, Joseph Z. Hellerstein, with close affiliates or partners of ICTS and Boeing, which connections were in existence at relevant times during the Mariani Action, and during times when Joseph was presumptively employed by the law firm, Amit, Pollak, Matalon and Company, based in Tel Aviv, Israel ("Amit").[1] Mariani Dec. These connections are as follows.

Amit represents a defense aviation contractor who is a joint venturer (effectively a partner) with Boeing as of July 2010. Amit represents Aeronautics Defense Systems, an Israeli company which specializes in providing "comprehensive defense solutions [] and has established itself as a primary global provider of security consulting services and defense applications," including with clients such as the Israeli Air Force and United States Navy. In July 2010 the relationship of Aeronautics and Boeing was formalized when Amit's client signed a Memorandum of Understanding with Boeing for marketing of the "Dominator DA42" unmanned aerial vehicle, i.e. a plane that can be flown by remote control.[2] Mariani Dec.

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[1] Mariani cannot definitively determine whether Joseph Z. Hellerstein is employed by the Amit, Pollak firm at this writing. However, that was his last known employment, and the New York state bar website continues to show the Amit's firm's address as his address, and a legal directory continues to report him as employed by the Amit firm, and Mariani has been unable to locate any evidence of subsequent employment. Mariani Dec.

[2] Although this point is not essential to this motion, Mariani has maintained several times, and disclosed in papers filed with Judge Hellerstein, that Ransmeier and his counsel failed to do sufficient discovery to determine whether the systems manufactured or installed by Boeing (or United Airlines) were capable of being commandeered or were in fact commandeered remotely on 9/11/2011 by hijackers other than certain named Middle Eastern individuals who boarded and apparently terrorized passengers. Mariani's counsel was told only

Amit (and thus Joseph Hellerstein) also represented at all times pertinent to the settlement of this action what was effectively a sister security company to ICTS, a provider of "radio frequency identification" ("RFID") devices and "supply chain solutions" with the name Better Online Solutions ("BOS"). (The U.S. Department of Defense is the largest user of active RFID devices including in "supply chain management." RFID technology is also used in logistics, transportation and immigration control[3].) The links of BOS--and thus Amit and the younger Hellerstein--to ICTS are to be found in the effective control by ICTS of one Boaz Harel, who is the president and managing partner of Catalyst Investments, owned by Cukierman and Company, an Israeli investment advisor and private equity firm with numerous governmental and defense ties ("CAC"). Edouard Cukierman is the chairman of the Board of both CAC and BOS and Catalyst Investments is a large holder in BOS. Boaz Harel sat openly on the board of BOS in 2003-04. Boaz Harel has effective control of ICTS by virtue of assuming control over the majority interest in ICTS in approximately 2003. That majority interest was held by his brother Ezra Harel until Ezra's unexpected death in 2003 at age 53, and then passed to the Ezra Harel Family Estate in the form of its control over the nominal

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that some discovery was allegedly to be done on the question of whether Boeing was negligent in not installing systems that allowed for remote commandeering of the aircraft in the event of an on-plane hijacking. See Supplemental Appendix filed by Appellee Ransmeier, p. 42.

[3] Mariani has not yet in the short time since her discovery of these facts been able to determine the scope of the RFID business of BOS, or whether BOS has any U.S. Department of Defense contracts, but in any case these are facts cited to show the security-sensitive nature of both businesses, and they are otherwise incidental to the main point of this motion.

majority holder of ICTS, Harmony Ventures NV, a Dutch-registered company. Harel is acknowledged to have had a consulting relationship with ICTS, and to have served as chairman of ICTS USA, Inc. (in 1994). Both Edouard Cukierman (CEO) and Boaz Harel (Partner) were listed as principals of Catalyst Fund at a "Go4Europe" conference in 2001. Mariani Dec.

For at least 10 years Amit and CAC have co-sponsored or been featured at annual European investment conferences under the name "Go4Europe" featuring such luminaries as Israeli Prime Minister Ariel Sharon and LCF Rothschild chairman Michel Cicurel, and presentations by their own principals including Amit partners Yonathan Altman and Doron Levy. In 2001 Sharon spoke and Edouard Cukierman was moderator in a panel discussion on "The impact of the political situation on the Israeli high tech sector and its development in Europe." In 2010 Roger Cukierman, vice-president of the World Jewish Congress, moderated a discussion under the title, "Winning the Battle of the Israeli Image in Europe." Also on the 2001 program was Yair Shamir, son of another Israeli prime minister, Yitzhak Shamir, identified as chairman of Catalyst Fund. Mariani Dec.

Judge Hellerstein and his wife Mildred are known to be active supporters of Israeli and ethnic causes. Mariani Dec.

There is nothing in the record to suggest that ICTS or Huntleigh or Boeing took part in the defense of the Mariani Action, or that they (or their insurers) contributed to the settlement of the Mariani Action submitted to Judge Hellerstein for approval by United Airlines and certain unidentified insurers, although the settlement agreement provides explicitly for the release of ICTS and Huntleigh, and for a total resolution. JA passim; Mariani Dec. The signatures of attorneys for ICTS, Huntleigh and Boeing are nowhere to be

found on the Confidential Stipulation of Settlement executed in the Mariani Action. Mariani Dec.

In another 9/11 action involving UAL, previously settled, ICTS and Huntleigh were signatories to a Confidential Stipulation of Settlement. Two attorneys for Huntleigh were part of an "off-the-record" phone conference held in this case at which undersigned counsel was invited to appear, and attorneys for ICTS, Huntleigh and Boeing are still included in the ECF service list for this appeal. Mariani Dec.

Judge Hellerstein has made remarks during the course of the 9/11 litigation showing his inclination to have settlements rather than trials and his impatience with process. He has advised attorneys for family members of victims that money is the "universal lubricant" notwithstanding any initial invocation of "principle." He is quoted in an article in the Fordham Law Review (10/25/2011) with regard to another group of 9/11 victims (first responders and rescue workers) as saying, "the niceties of federal practice [are] secondary to the compelling needs of people to get a recovery that [is] almost, almost, almost within their grasp." Mariani Dec.

Mariani filed the accompanying motion as soon as she was able, following her discovery of the documentation identified above--within a day of three weeks. Mariani Dec. This Court has already allowed certain post-briefing supplementation of the record (even over the objection of Mariani) and the Court is asked to take judicial notice of its own prior act authorizing Appellee Ransmeier to supplement the record, when Appellee initially sought only to file a supplemental "appendix" to its brief, and even after Mariani had filed her opening brief, and without any consideration to Mariani as to the implications for her Reply Brief.

II. ARGUMENT

A. An Appellant Can Properly Bring Evidence of Appearance of Partiality of a District Court Judge to the Attention of the Reviewing Court

Ellen Mariani has filed this motion under federal rules that provide generic support for supplementation of a Record on Appeal and for granting judicial notice, namely, F.R.A.P. 10(e)(2)(C) and (3), and Federal Rule of Evidence 201(b)(2) and (c)(2). Such motions are clearly cognizable even if filed after oral argument has been set (as here), but the potentially untested question is whether a motion of this nature is properly used to ask for consideration of newly-discovered documentation bearing on a trial judge's partiality. Mariani submits that, irrespective of what this Court decides on the merits of her motion, (1) her submission is prima facie proper at least where there are issues on appeal involving a judge's attentiveness to conflicts of interest (or the appearance thereof) and procedural propriety analogous or similar to the issues that are raised in the newly-discovered or newly-relevant documentation, and moreover (2) the litigant who has a grievance about the conduct of a trial court judge is not limited to expressing that grievance in a complaint which must be filed with this Court in another form, nor would the conduct supporting the grievance need to give rise mandatory disqualification or recusal to be the proper subject of supplementation or notice in an appeal to which the conduct is relevant.

A court may entertain a motion to supplement the record or take judicial notice even after oral argument, as well as before argument. See BP Products North America v. Charles v. Stanley, Jr., 669 F.3d 184, 188 n.4 (4th Cir. 2012) (noting that appellant had requested after oral argument that the court take judicial notice of or supplement the record with a partial release that BP

had recorded, and denying the motion not on the grounds that the request was improper but because it was moot in light of the disposition of the appeal); Javitch v. First Union Securities, Inc., 315 F.3d 619 (6th Cir. 2003) (court granted motion filed shortly before oral argument that judicial notice be taken of two orders from a different case that had previously been stricken when simply attached to movant's brief); Travelers Insurance Co. v. Liljeberg Enterprises, Inc., 38 F.3d 1404, 1408 n. 6 (5th Cir. 1994) (granting a motion made by appellee "shortly before oral argument" for judicial notice of a song penned by a litigant). In the latter case the Court took judicial notice of the song "King Henry," on a compact disc released by the attorney for the appellant, on the ground that the song was a personal attack on Judge Henry Mentz whose rulings were the subject of the appeal.

A motion asking for supplementation or notice of documents concerning a trial judge's indifference to his connections to defendants--or the appearance of partiality--can satisfy, and in this case does satisfy, the elements set forth in the aforementioned rules, and is not expressly prohibited by the Rules or any other provision of law.

1. Cognizability of Claims Suggesting Partiality Is Nowhere Confined to Complaints Against Judges

Appellant anticipates that one or more of the appellees might oppose this motion on the grounds that the belated discovery of partiality cannot be raised with this Court of Appeals in the appellate case itself, but only in a separate complaint against a judge filed with the Court of Appeals, or in a Rule 60 motion filed with the District Court for disqualification. However, such a claim would partake of the same fallacy that attends the ruling being appealed--

namely that the only relevancy of a conflict of interest of a probate administrator would be to a motion to remove the administrator that is necessarily filed in a state court probate proceeding, and not to a motion for intervention based on inability of the administrator to adequately protect the movant's property interest. To straitjacket the relevancy of connections creating the appearance of partiality in such a manner, one would need to show that an aggrieved party is forced to make an election of remedies based on certain conduct, or is limited to one exclusive remedy, neither of which are true with regard to evidence of a trial judge's connections.

Mariani freely concedes that she would have the prerogative to file a complaint with this Court regarding judicial misconduct, under 28 U.S.C. 351-364 (the "Judicial Conduct and Disability Act" or "the Act"), and that she might have the ability to file a motion for disqualification of the trial court judge under 28 U.S.C. Section 455 (although that is more dubious in light of her disputed would-be intervenor status and the posture of the underlying case). However, Section 351 authorizing filings of judicial misconduct complaints is phrased permissively rather than prescriptively (an aggrieved party "may" file a complaint), and an even more dispositive statement of non-exclusivity is found in Section 362, where Congress stated that nothing in the Chapter should be construed as affecting any provision of Title 28, or the Federal Rules of Appellate Procedure or Federal Rules of Evidence, essentially leaving the door wide open to motions of exactly the type being filed here. Nor is there any preclusive provision of exclusivity provision found in the Rules of Judicial-Conduct and Judicial-Disability Proceedings adopted the United States Judicial Conference.

Similarly there is nothing in 28 U.S.C. Section 455 which requires that

a party having concerns about a judge's connections--particularly when they are not capable of being documented until after his ruling--file a motion for disqualification under that statute.

A related proposition is that Mariani is not asking for any finding to be made in her appeal, or in this motion, of an event of judicial misconduct, or grounds for disqualification, but instead only for supplementation of the Record on Appeal with certain documents, or judicial notice thereof. It also follows that it is not and would not be necessary for this Court to make any finding of judicial misconduct of grounds for disqualification in order to grant the motion.

Canon 2.2 of the Model Rules of Judicial Conduct of the American Bar Association sets the standard which Mariani invokes here. That canon states that a judge must recuse himself when the judge's impartiality might reasonably be questioned, and Mariani is asking the Court to focus not so much on whether recusal was warranted here as whether, in light of the facts now available, there is reason to question Judge Hellerstein's impartiality in light of the judgment he actually made. Indeed, Mariani freely concedes that on the facts she has educed here, she might not have succeeded in disqualifying Judge Hellerstein even if she had known about them in time to attempt to do so or had standing to do so (as a would-be intervenor, her standing was already disputed by Judge Hellerstein).[4]

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[4] By the same token, nothing in this motion should be construed as a statement by Mariani that she doesn't believe that Judge Hellerstein should have taken the initiative to recuse himself from handling the 9/11 litigation--and the Mariani Action specifically--particularly if the known connections and affiliate relationships are merely the "tip of the iceberg," but even if this motion identifies the connections and affiliations more or less comprehensively, in which case there is still the appearance of lack of impartiality.

The authorities are few and not necessarily on point. Compare Harris v. Champion, 15 F.3d 1538, 1571 (10th Cir. 1994) (federal trial judge should be disqualified where his uncle, since deceased, had been named in state court habeas petition), with Oriental Fin. Group, Inc. v. Fed. Ins. Co., Inc., 467 F. Supp.2d 176 (D.P.R. 2006) [28 U.S.C. Section 455(b)(5) did not require disqualification where the father of the judge's son-in-law sat on the board of one of the named parties in the case before him]; and compare Pashaian v. Eccelston Properties, Ltd., 88 F.3d 77 (2nd Cir. 1996) (no disqualification necessary where partner in the law firm representing the defendant was married to the judge's sister-in-law) with In re Aetna Casualty & Surety Co., 919 F.2d 1136 (6th Cir. 1990) (even after judge severed off three of seven claims against an insurance company where his daughter's law firm represented the other four claimants, disqualification in the cases involving those three claims was still required based on the appearance of partiality).

But Mariani also asserts that being able to supplement the record with facts which suggest an absence of impartiality, or to ask the court to take judicial notice of same, is not dependent on proof of elements under 28 U.S.C. Section 455 or of actual judicial misconduct, just as the standards for determining what has the appearance of partiality are not bright line standards. See In re Allied Signal, Inc., 891 F.2d 967, 970 (1st Cir. 1989), cert. denied 495 U.S. 957 (1990), where the court observed that a claim of partiality "must be supported by a factual basis" and also that disqualification in proceedings where a judge's impartiality might reasonably be questioned is required only if "the facts provide what an objective, knowledgeable member of the public would find to be a reasonable basis for doubting the Judge's impartiality." Mariani submits that this standard is in fact satisfied here, but recognizes that

there could be differences of opinion as to what objective, knowledgeable members of the public would find reasonable. This court has found that reversal for judicial bias is appropriate where an examination of the record revealed that jurors had been impressed with the trial judge's partiality toward one side to the point where the partiality had been "a factor" in the jury's determination. United States v. Salaneh, 152 F.3d 88 (2nd Cir. 1988).

Mariani has carefully considered the above cases and others construing 28 U.S.C. Section 455 governing disqualification, and (since she is not seeking disqualification or seeking a determination of judicial misconduct) nonetheless asserts that the documentation she has now uncovered deserves appellate court consideration at least when juxtaposed with the other anomalies she has pointed out about the Court's treatment of her motions, and the Court's treatment of defendants ICTS, Huntleigh and Boeing, who by all rights should appear as signatories to a settlement agreement since never dismissed as defendants but who have apparently been given a free ride (at least a ride free of an obligation to sign or to take an active part in the Mariani Action despite being at risk for damages). Even if the attorneys for United Airlines were acting as liaison counsel at the time the settlement was signed, that would still not explain the absence of these defendants on the settlement document, at least barring some secret agreement or agreement not disclosed in the Mariani Action.

All that a grant of this motion would signify is that an appellant is entitled to have the Court of Appeals consider, alongside other items in the record, the lower court's propensity to ignore or minimize the problem of the appearance of partiality (toward certain defendants), which facts are especially significant in an appeal where a judge has ignored or minimized the conceded conflict of interest on the part of a plaintiff before him (as to certain co-

defendants); and the concomitant additional problem of a lack of procedural rigor freely confessed by the lower court, which then takes on significance in view of anomalies associated with a settlement operating favorably for exactly those defendants as to whom there is a showing of appearance of partiality. Likewise, no finding of judicial misconduct or grounds for disqualification (as distinct from judicial error) is necessary, of course, to uphold one or more of the many well-taken contentions of Mariani at issue in this appeal.

2. Appellant's Claims of Partiality and Indifference to Procedural Propriety Relate to Issues on Appeal

Mariani asserts that it is readily apparent that the documentation which is the subject of this motion is relevant to her claims on appeal in light of the issues she has specifically preserved and briefed on appeal. Among those issues are:

"A. Whether Judge Hellerstein improperly denied a motion for intervention based on previously-unasserted grounds including conceded conflicts of interest on the part of the probate administrator plaintiff.

"B. Irrespective of whether formal intervention was proper, whether Judge Hellerstein erred in approving a settlement where the Judge was required to consider comments by non-party Mariani objecting to the settlement and where she had presented uncontroverted evidence that the fiduciary plaintiff had loyalties to defendants during the action.

"B.1. "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."

"B.3. Whether any authority of Ransmeier to settle Mariani's independent claim is tangential to the real question of whether a settlement could be approved once it became apparent that the fiduciary entering into the settlement had unwaived loyalties to the party he settled with."

As noted in the Record, Mariani had presented uncontroverted evidence to the Court that Appellee Ransmeier's law firm had represented United Airlines and other defendants, and certain insurers who were effectively the real parties in interest, in the 9/11 litigation during the time that Appellee was prosecuting the Mariani Action. It is certainly relevant to a review of his handling of that claim, even if not dispositive, that at the same time that Judge Hellerstein ruled without even acknowledging the conflict on the part of Appellee Ransmeier, he either may have been or was effectively ignoring the appearance of partiality that was created by his son's position at an Israeli law firm representing affiliates[5] of certain other defendants, namely the Israeli company ICTS, its subsidiary Huntleigh, and a joint venture by the Boeing Company with another Israeli firm represented by the Amit firm. It is not plausible that Judge Hellerstein, a highly-educated and connected supporter of Israeli causes, was unaware of the connections of his son's law firm.

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[5] The term "affiliate" has no fixed definition in federal law, and is used with different definitions in different acts, relating to securities, taxation, bankruptcy, and many more substantive bodies of law. Commentators have cautioned that the word is "not precise," and commented that it "may mean many different things." As used here, the term includes but is not necessarily limited to a company or individual who is linked to a subject company or its controlling individual or executive by ownership, control, oversight, partnership, joint venture for financial gain, fiduciary responsibility, common director, consultative relationship or family relationship, whether singly or in combination (and usually the latter); and affiliate includes "affiliate of an affiliate."

This Court is also entitled to know about and to determine the likelihood of relevance to Judge Hellerstein's 11/15/2010 order (and orders thereafter) of a Confidential Stipulation of Settlement whereby ICTS and Huntleigh were to be released by name, and whereby Boeing was to be effectively released from further liability, without any of them having to sign the stipulation or appear before the Court, and of Judge Hellerstein's passion for settlement and his remarks admitting his casual approach to federal procedure (and his low regard for invocation of principle), Mariani Dec., where the 11/15/2010 Order and the orders following it showed both acts of ignoring an asserted conflict of interest and a disregard for formal procedural requirements.

Notwithstanding the absence of direct applicability of 28 U.S.C. Section 455 to this motion, Mariani notes that it is well established in federal law that the test for judicial recusal pursuant to 28 U.S.C. Section 455 based on the appearance of partiality is not a subjective test but an objective one, and in Section 455(b) one of the grounds for mandatory recusal is if a close relative has an interest that could be affected by the outcome of the proceeding. While there are many other circumstances that can give rise to the appearance of partiality, it does not stretch credulity to imagine how the Amit firm in Tel Aviv might have an interest in the proceeding, since if ICTS, Huntleigh and Boeing all prospered, so did their principals and/or affiliates who were good clients or controlled clients of the Amit firm. Moreover, it is well established that the connections of a law firm (here the Amit firm in Tel Aviv) are imputed to an attorney employed by that law firm (here Judge Hellerstein's son Joseph), based on the Model Rules of Professional Conduct of the American Bar Association, Rule 1.10(a), which states (in the usual context of imputation) that "while lawyers are associated in a firm, none of them shall knowingly

represent a client when any of them practicing alone would be prohibited from doing so...." The point here is not that Joseph Hellerstein violated a duty, but only that the client relationships of the Amit firm would ordinarily be imputed to Joseph Hellerstein and that this Court is entitled to consider those relationships in the context of Judge Hellerstein's rulings affecting affiliates and principals of the son's clients. That there is a basis for concern about the appearance of partiality even when the relative's law firm is not representing a defendant per se, but rather an affiliate or principal of a defendant, is not necessarily the subject of any case law (but see In re Aetna Casualty & Surety Co., supra), but is certainly suggested here based on the anomalies characterizing the Court's treatment of the affiliated defendants at the time of settlement.

Accordingly, Mariani asserts that there is a sufficient legal and factual basis for allowing supplementation of the Record on Appeal herein with, or for taking judicial notice of, the documents that are appended to the Declaration of Ellen Mariani filed herewith, so that this Court has the most comprehensive picture possible of the mindset of Judge Hellerstein and the possible connections that he had with several Defendants, attenuated although they may be, at the time of his decisions adverse to Appellant.

B. This Motion is Not Barred For Any Reason of Timing

A motion requesting that judicial notice be taken under Federal Rule of Evidence 201 can be brought at any time during the proceeding. F.R.A.P. 11, of course, provides precisely for occasions where the record on appeal may need to be supplemented during the appeal. The only issue with regard to this

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motion is whether there is any reason in law or precedent based on the content of the motion for regarding it as barred or untimely, and clearly there is not.

The motion does not seek relief that can no longer be granted because of the setting of oral argument in this case (for May 23). The motion is being filed on April 19, and opposition is due within 10 days, after which a ruling can issue. If necessary, a ruling can even be made at the time of oral argument or thereafter, since the bulk of oral argument will obviously be taken up with issues already briefed rather than facts presented here. Mariani indeed is willing to let the documents that would be subject of supplementation or judicial notice to speak for themselves.

The documentation that is a subject of this motion is simply one additional factor that Mariani believes should be considered by the Court of Appeals in determining the appeal, but Mariani is not arguing that the appeal rises or falls on this motion. The Court can determine that Judge Hellerstein improperly ignored Appellee Ransmeier's relationship with defendants in a case where he was plaintiff for purposes of deciding Mariani's motion to intervene, even without knowing about Judge Hellerstein's own ambiguous relationship to certain defendants through his son's law firm, although supplementation or judicial notice would give texture and depth to the analysis. Clearly the documentation of Judge Hellerstein's own connections to defendants is in the nature of supplemental, rather than critical, evidence.

Finally, it cannot be argued that Mariani should have filed the motion earlier, since she was not aware that her suspicions about Hellerstein's connections to certain defendants through his son Joseph could be documented earlier than three weeks ago. She acted as soon as she could after gaining that awareness. Nor should she be faulted for having previously failed to engage

in more extensive investigation to determine whether Judge Hellerstein had connections suggesting partiality. She was not a party, and she was entitled to presume that Judge Hellerstein would judge impartially, and she simply didn't have proof for the allegations about Judge Hellerstein's ties that were being bandied about (sometimes by sources she had no particular reason to credit). The court should not by rejecting this motion on timeliness grounds effectively impose on her a duty to have investigated at an earlier phase of this case all allegations of judicial misconduct or questionable connections that were surfacing in the media and on the Internet. In any case, there will be no prejudice to any Appellee from the filing or granting of this motion. All appellees will have the ability to respond with opposition, if they choose; and the Court can see to it that they know, along with Mariani, of the outcome of the motion well before oral argument.

WHEREFORE, based on those points and authorities, Appellant Mariani requests that the relief she has requested in the accompanying Motion be granted, in the form of an order either allowing her to supplement the Record on Appeal with the documents attached to her declaration, or an order granting judicial notice of same.

/s/ Bruce Leichty

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UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

JOHN RANSMEIER,

Plaintiff-Appellee,

v.

UAL CORP., et al.,

Defendants-Appellees,

v.

ELLEN MARIANI,
Proposed Intervenor/
Party in Interest-
Appellant

_____/

Case No. 11-175 (11-640 CON)

DECLARATION OF ELLEN MARIANI IN SUPPORT OF MOTION FOR ORDER AUTHORIZING APPELLANT TO SUPPLEMENT RECORD OR ALTERNATIVELY GRANTING REQUEST FOR JUDICIAL NOTICE

(EXHIBITS FILED UNDER SEPARATE COVER PAGE)

I, Ellen Mariani, declare as follows:

1. I am one of two beneficiaries of the intestate estate of my deceased husband Louis Neil Mariani, which is the plaintiff (through administrator John Ransmeier) in Case No. 03 Civ 6940 filed in the United States District Court for the Southern District of New York. My personal survivorship claim is also pled in that action. I am the appellant herein as a result of my appeal of certain adverse rulings issued by District Court Judge Alvin K. Hellerstein including on my request to intervene. I currently reside in Colorado and have been represented since Fall 2007 by California attorney Bruce Leichty, with whom I have worked closely in preparing this declaration. I believe I am the last remaining family member not to have been compensated for the death of a victim of the 9/11 terrorism which led to the filing of the above case.

2. I make this declaration without waiving the attorney-client privilege,

and any statements made herein which could be construed as inconsistent with the exercise of the attorney-client privilege may not be deemed to constitute a general waiver of the privilege.

3. I submit this declaration as a result of documentation regarding Judge Alvin K. Hellerstein that came to my attention for the first time on March 28, 2012, with additional information and documents shown to me thereafter as a result of my direction and my attorney's subsequent investigations. Some of the information that was sent to me beginning March 28 was not new, but critical parts of it were new. I had already believed, since well before 2007, that Judge Hellerstein has acted prejudicially to plaintiffs in the 9/11 litigation. I already had concerns about the effect of Judge Hellerstein's known sympathies for the State of Israel, which benefitted from the events of 9/11. Judge Hellerstein and his colleague Sheila Birnbaum pressured me and my prior attorneys to settle my case while I was still sole plaintiff, and I witnessed how much pressure was placed on victims' families in general to settle. What was new about the documentation sent to me beginning March 28 was not, therefore, the impression of Judge Hellerstein that it created in my mind. Rather, what was new about this discovery was that for the first time I could see that there was actual documentation of Judge Hellerstein's questionable connections, which I previously believed I had no hope of proving. Now the first time I saw documentation of the connections of Amit, Pollak, Matalon and Co., the Israeli law firm of Judge Hellerstein's son, Joseph Hellerstein, to a major defendant in my case, ICTS International NV, and through them to its U.S. subsidiary, Huntleigh USA. Because my attorney and I saw for the first time that these connections were capable of being documented and not simply alleged, and also because this documentation in turn led my attorney and me to other publicly-

available documentation which we knew nothing about previously (showing connections of defendant Boeing Company to the Amit law firm), I determined in consultation with my attorney that this motion was necessary in order to bring new facts to the attention of this Court, knowing that this Court was being asked to consider the failure of Judge Hellerstein to appreciate the significance of a different and more egregious conflict of interest I had pointed out--between Appellee John Ransmeier and yet another defendant, United Airlines.

4. I believe that Judge Hellerstein's connections and his obviously lax understanding of his role are a matter of concern not only in terms of their implications for the integrity of the judicial system--which might be a matter for filing an optional grievance against the Judge--but that they are of direct relevance to his rulings in my case, which means that I am not limited to filing a complaint against a judge, but instead allows and requires the consideration of these connections in this appeal. The reason I say that the appearance of partiality on the part of John Ransmeier is even more egregious than it is in the case of Judge Hellerstein is that Ransmeier and his firm actually represented both sides in the same litigation (the "Mariani Action"), but the appearance of partiality and imperviousness to law (in favor of a rush to settle cases) on the part of Judge Hellerstein is no less relevant, precisely because of the claims on appeal. The merits of the appeal involving the Ransmeier conflict of interest and its consequences for my intervention and objection to Ransmeier's settlement are, of course, separate and distinct from the merits of this motion regarding Judge Hellerstein, and I hope that if the Court of Appeals does not grant this motion that it also does not take the position that the claims rise or fall together.

5. I expect that one of the appellees or adverse parties might complain

about the timing of this motion, particularly now that the appeal has been calendared for oral argument. However, this filing is completely independent of the setting of the appeal for argument, and I would have preferred it be filed before that setting, but logistically this was not possible. As it is, I am filing it within three weeks of the time I first learned about the documentation of Hellerstein's connections with defendants. This declaration was effectively complete and that the accompanying motion was delivered to me in draft form on 4/12/2012, substantially complete, before we got notice that argument was set (that notice was e-mailed to my attorney on April 13, 2012 and he promptly let me know). In other words, this Court set the day for oral argument the day after I first received a draft of the accompanying motion by e-mail.

6. I discovered the capability of documenting Judge Hellerstein's connections to ICTS (through his son's law firm) when I first saw on March 28, 2012 a copy of a mysterious document taken from the worldwide web, found at the web address www.firstamendmentcafe.files.wordpress.com (nothing in this declaration should be construed as my endorsement or approval of anything that appears on this website; I am simply indicating where the document was found and where it can be found by a search engine search of the words "motion to recuse Hellerstein"). I am not attaching the document here because I am not relying directly on this document for anything, and because it could be misleading in at least one respect (see below), but it did provide me with solid leads to further documents. This document was titled "Motion to Recuse Judge Hellerstein," and is captioned "Mary Bavis v. UAL Corp." and bears a U.S. District Court for Southern District of New York case number of 02-CIV-7154; however, my attorney has indicated to me that he does not believe the document was ever served or filed in the SDNY, and the signature line is blank. I had

met or spoken with Mary Bavis after the events of 9/11/2011, and I know who represented her until her own settlement, because her attorneys--affiliated with the Motley, Rice law firm--have also been involved in the mishandling of the Mariani Action, and I think it is very unlikely they would have prepared or filed the "Motion to Recuse" document. The significance of the document is not necessarily that it is accurate in all details, but that it contains footnotes which in turn led my attorney and me to primary source documents showing the ties of Judge Hellerstein's son Joseph (and his law firm) to affiliates of defendant ICTS International NV. We drew from the primary sources discussed below.

7. Attached hereto as part of Exhibit 1 is a true and correct copy of a current (4/7/2012) printout of a page from a legal directory ("legal500.com") showing that Joseph Z. Hellerstein has been an attorney with the Amit, Pollak and Matalon firm since 2006 (i.e. during the entire time period that I have been active in the Mariani Action) and a member of the Israeli Bar Association since 2003, and that he previously worked with two New York City law firms. I also consulted the website of the Amit firm. The name Joseph Hellerstein is no longer found listed among the attorneys employed by that firm. However, the website for the New York State Bar still shows the address of Joseph Z. Hellerstein as the Amit firm in Tel Aviv, as part of a "current" registration that will not expire until March 2014; a true and correct copy of the registration is attached hereto as another part of Exhibit 1.

8. Attached hereto as Exhibit 2 is a true and correct copy of another page from the above-referenced legal directory which describes the practice of the Amit firm, and identifies some of its clients, including Aeronautics, which is shown under a section identifying "senior partner Yonathan Altman" as the head of a team serving "hi-tech, start-ups and venture capital."

9. Attached hereto as Exhibit 3 is a true and correct copy of a release dated July 2010 appearing on the website of "Defense Update," under the heading "Boeing, Aeronautics Join Forces to Promote the Dominator MALE UAV" (appearing in top line and obscured above picture), showing that Aeronautics Defense Systems of Israel entered into a Memorandum of Understanding with the Boeing Company for international marketing of an unmanned aerial vehicle modified by Aeronautics known as the Dominator DA42 Twin Star. Aeronautics Defense Systems touts itself on its website as a company which "specializes in providing comprehensive Defense Solutions…[which] has established itself as a primary global provider of security consulting services and defense applications."

10. Attached hereto as Exhibit 4 is a true and correct copy of an SEC filing from January 2006 which shows that the Amit firm acted as counsel in Israel to B.O.S. Better Online Solutions Ltd. ("BOS").

11. Attached hereto as Exhibit 5 is a true and correct copy of a two-page extract printed from the website of BOS showing that Edouard Cukierman has been chairman of BOS since June 2003.

12. Based on publicly available information I have located on the Internet, BOS is a security company and provider of "radio frequency identification" ("RFID") devices and "supply chain solutions." I have not yet been able to determine whether BOS has contracts with the U.S. Department of Defense ("DOD"), but DOD is said to be the largest user in the world of active RFID devices including in "supply chain management." RFID technology is also used in logistics, transportation and immigration control. A true and correct copy of a Wikipedia article relating to RFID technology (provided for easy access to information about RFID) is attached hereto as Exhibit 6.

13. Attached hereto as Exhibit 7 is a true and correct copy of a three-page printout from the website www.cukierman.co which shows (as of 3/29/2012) Edouard Cukierman, Yair Shamir and Boaz Harel as the three managing partners of the private equity division of Cukierman and Co., and Cukierman as chairman of the company, and which gives a short resume of Harel.

14. Attached hereto as Exhibit 8 is a true and correct copy of a three-page printout from the website www.cukierman.co which shows the same information as noted in Paragraph 10, with the resume of Cukierman instead of the resume of Harel.

15. Attached hereto as Exhibit 9 is a true and correct copy of a "bio" material on Boaz Harel, taken from the website businessweek.com, which shows that Harel was a member of the board of BOS in 2003-04 and that he was a member of the "supervisory board of ICTS from January 1, 1996 to November 12, 2001," and that he has served as a "consultant" to ICTS International NV.

16. Attached hereto as Exhibit 10 are true and correct copies of certain pages from the websites of newspapers New York Times and Haaretz indicating the death of Ezra Harel and that he was a brother to Boaz Harel.

17. Attached hereto as Exhibit 11 is a true and correct copy of an extract from an SEC filing taken from "edgar-online" which shows the directors and executive officers of ICTS in 2001, and identifies Ezra Harel as chairman of the supervisory board.

18. Attached hereto as Exhibit 12 is a true and correct copy of an SEC filing for ICTS "for 12/31/2003" titled "Amendment to Annual Report of a Foreign Private Issuer, Form 20-F," making the following statement in a footnote attached to a reference to the "Estate of Ezra Harel": "Harmony

Ventures BV, owns directly and indirectly approximately 59 per cent of the issued and outstanding Common Shares. A family trust for the benefit of the family of Mr. Menachem J. Atzmon...and the Estate of Ezra Harel own 100 per cent of the outstanding shares of Harmony Ventures BV and may be deemed to control Harmony Ventures BV. Mr. Atzmon disclaims any beneficial interest in the Atzmon Family Trust. Harmony Ventures BV, the Atzmon Family Trust and the Estate of Ezra Harel may be able to appoint all the directors of ICTS and control the affairs of ICTS."

19. Attached hereto as Exhibit 13 is a true and correct copy of conference schedule for a "Go4Europe Conference" held in 2001 at the Hilton Tel Aviv, sponsored by Cukierman and Co. and the Amit firm (among others), showing Israeli Prime Minister Ariel Sharon as a speaker on a panel moderated by Edouard Cukierman ("The impact of the political situation on the Israeli high tech sector and its development in Europe"), Boaz Harel as a speaker, and Jonathan Altman of the Amit firm as a speaker on the same panel with Harel.

20. Attached hereto as Exhibit 14 is a true and correct copy of a conference schedule for the 2010 "Go4Europe Conference" showing Edouard Cukierman as the opening speaker, Michel Cicurel (Chairman of LCF Rothschild) as a speaker and Doron Levy of the Amit firm as a speaker, and also showing Roger Cukierman as vice-president of the World Jewish Congress moderating a panel titled, "Winning the Battle of the Israeli Image in Europe."

21. Attached hereto as Exhibit 15 is a copy of a letter, printed out from the Worldwide Web, addressed to Mr. Andrew Borodach, dated May 6, 2011, regarding "The Jewish Center 2011 Nominating Committee Report," discussing the committee's intention to nominate Alvin Hellerstein to the board of directors and that Mildred Hellerstein (known to be his wife) had advised the Committee

that she would not seek renomination to the Board, and the recommendation of the Committee that she be designated a "Life Trustee." According to the website for The Jewish Center, it is a synagogue and recreational center serving the Upper West Side of New York City, and there is a box to check for website viewers to see what "Israeli Activism" events are planned. Attached as Exhibit 16 is an article written in 2007 by journalist Christopher Bollyn in which he notes the Judge's connections to the Center and that Judge Hellerstein is also a former president of the Board of Jewish Education of Greater New York, and that his wife Mildred is a former senior vice president and treasurer of a New York-based organization called "AMIT" which promotes Jewish immigration to Israel, and stands for "Americans for Israel and Torah." Attached hereto as Exhibit 17 is a report issued on Joseph Z. Hellerstein, Bronx, New York, which shows that his family members include Alvin K. Hellerstein and Mildred Hellerstein.

22. I collected and read all of the transcripts of hearings that took place in the 9/11 litigation to which the Mariani Action was related. Attached hereto as Exhibit 18 are portions of the transcript of a hearing held 6/25/2007 in the 9/11 master litigation (referred to in the above-referenced Bollyn article), where Judge Hellerstein spoke about the Mariani Action at one point. During this hearing he also made a cynical remark suggesting essentially that the family members of victims of 9/11 needed to move on with their lives. "Each of us has a choice…to fashion a life beyond the pain….[T]he question then becomes what's the fairest, the most efficient, what is the best way to get on with the rest of our lives." Money, he opined, was the "universal lubricant" (pp. 40-41). Judge Hellerstein also reemphasized in his final words of the hearing, "Somehow we need to get past September 11, 2011 as a country and

individually for all clients, and I wold like to bring about that possibility as best I can, as efficiently as I can, in a[s] short a period of time as I can" (p. 42). Even though Judge Hellerstein always professed to be open to conducting trials, he clearly was not anxious to try any cases, and in fact, none of the 9/11 cases filed in his court ever went to trial (he did, however, assure my attorney who attended one 2010 hearing personally, that the Mariani Action could still be tried even though he was setting what were apparently inconsistent deadlines and schedules for the only case that he acknowledged was headed to trial at that point, based on the Flight 175 claim of Mary Bavis against the same defendants who were sued in the Mariani Action). None of the objections I voiced to the settlement were even acknowledged by Judge Hellerstein.

23. Attached hereto as Exhibit 19 is a copy of a very recent article from the Fordham Law Review in which Judge Hellerstein is quoted regarding another group of 9/11 cases that he received as a result of the act of Congress conferring authority over 9/11 litigation in his court. This article notes that Hellerstein disparaged the "niceties of federal practice" in favor of the perceived benefit of getting a "recovery" for people.

24. Attached hereto as Exhibit 20 is a copy of an order signed by Judge Hellerstein dated May 25, 2011 showing that ICTS International, NV was dismissed with prejudice from the action styled Mary Bavis v. United Airlines, Inc., in which Bavis was represented by the same attorneys who either used to represent me (Schiavo) or were involved in negotiating the settlement of the Mariani Action (Migliori).

25. Attached hereto as Exhibit 21 is a copy of the "Confidential Stipulation of Settlement" (no longer confidential based on Judge Hellerstein's order) including form of release that was approved by Judge Hellerstein in the

Mariani Action (though the approval is arguably still not final since it is one of the subjects of this appeal). This shows that ICTS and Huntleigh are named beneficiaries of the settlement approved by Hellerstein even though they are not signatories. Despite my attorney's request, we have been unable to obtain information as to the identities of the anonymous insurers signing the agreement through a representative--a form of signature which is itself an anomaly and which we do not believe was ever the subject of judicial consent or scrutiny.

26. By contrast to the settlement agreement entered into in the Mariani Action, attached hereto as Exhibit 22 is a copy of the Confidential Stipulation of Settlement entered into by UAL and filed in the case Hayden v. United Air Lines, which shows both ICTS and Huntleigh as signing parties.

27. Finally, I participated in a phone conference requested by Judge Hellerstein on May 10, 2010, to which my attorney, Bruce Leichty, was invited, by one Anicka Dailey, attorney for United Air Lines. The phone conference was called without my participation or knowledge, apparently so that there could be discussion of the escrowing of settlement funds promised by one or more defendants pursuant to the settlement (for which no court approval had at that time been sought, and as to which I had not approved receipt or settlement). Aside from Ms. Dailey, who arranged the call, two of the participants on that call were identified as attorneys for Huntleigh USA--Lee Godfrey and Charles Eskridge. John Ransmeier and two of his attorneys, Charles Capace and Donald Migliori, also participated. Judge Hellerstein abruptly ended the phone conference after Mr. Leichty indicated that he wished to have some recording or reporting of the proceeding that would allow transcription.

Pursuant to 28 U.S.C. Section 1746 I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and

correct, and that I executed this declaration on April 16, 2012 at Parker, Colorado.

Ellen Mariani

Ellen Mariani

Respectfully submitted,

/s/ Bruce Leichty

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