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MEMORANDUM

To: Michael J. Kuckelman, Esq.
Kristopher A. Kuehn, Esq.

From: Todd A. Scharnhorst

Re: Meeting with Charles Slepian
Our File No. 2178-15

Date: January 15, 2002

Last week I met with Charles Slepian to discuss his service as a consultant and our future course of action with respect to World Trade Center subrogation. I will provide a brief outline of his background and credentials. I will then discuss his view of our subrogation efforts.

I. Background.

- A. Slepian is a practicing attorney admitted in the States of New York and Oregon. He also owns two full-service security companies that provide personnel, training, investigation, and consultation for commercial entities. He has overwhelming experience with the aviation industry.
- B. Slepian has written and published extensively on issues specific to aviation security. He is a frequent guest on network television, including ABC, NBC, CBS, CNN, and FOX. In fact, yesterday FOX approached Slepian about being its permanent Aviation Security Consultant. His recent TV appearances have led to him being contacted by various individuals who are pursuing litigation arising out of the events of 11 September.
- C. Interestingly enough, Slepian spoke at the Airport Security Summit just one month before the World Trade Center incident. The Summit was attended by many airline security specialists. In fact, one of the co-speakers was the then Director of Security for Boston's Logan International Airport (Joseph Lawless). Slepian's speech during the Summit focused on securing America's airports, the fact that the United States Government has not been motivated to take the steps necessary to reduce the likelihood of sabotage of American commercial aircraft, an in-depth discussion of the "mediocre coverage" currently provided at our airports, and the need for stringent supervision of airport security personnel. Had the FAA taken the steps Slepian recommended back in August (which are the

same steps he had been advocating for years), then the events of 11 September could have been avoided.

- D. Slepian was involved in the U.S. Government's investigation into the Pan-Am 103 terrorist incident. He had some involvement in TWA 800 as well. Simply put, he is a well-recognized "watch dog" who advocates for security standards to protect the general public – even when those security standards are not very popular with large commercial entities such as the airline industry. He is not shy to speak out against those large political or quasi-political bodies. He will be able to help us tremendously as we navigate through our potential claims against all private and public entities.

II. Slepian's View on Our Specific Claims Against Target Entities.

- A. Slepian spent a lot of time discussing his own views of how we should pursue subrogation. We discussed not only his independent thoughts, but also the issues raised in our WTC Subrogation Outline. Generally, he agrees that we have identified the appropriate targets. He also believes that any one of the entities we have identified could have taken steps to avert the disaster of 11 September had they appropriately carried out their duties and responsibilities in providing airline security.

Slepian has no disagreement with what we have in our outline. Accordingly, I will simply refer you to the parts of our outline discussing theories of liability with respect to each individual public or private entity. However, I will briefly address some of Slepian's comments below.

1. American and United Airlines.

Slepian believes we have valid claims against both American and United Airlines. Slepian believes that the airlines themselves will be extremely important, if not the most important, targets. He indicated that the airlines dictate "what security is and how intensive it is to be." He also indicated that the airlines have the Department of Transportation and FAA "in their hands." The airline industry pumps unbelievable amounts of money into politics for support. They are almost overpowering. He believes we can play this up well which will paint the airlines in a very bad light. He agrees whole-heartedly with those issues we have already identified. This includes the following:

- a. Failure to enact and enforce policies which would prevent passenger access to the cockpit.
- b. Failure to properly train and/or equip airline flight crews to handle a security breach.
- c. Failure to require that commercial airliners be equipped with automated transponders.

- d. Failure to retain adequate security services on the ground.

We went through each of these in some detail. He had the following things to add (some of which are related to the above):

- a. Failing to provide for close oversight of the security firms providing pre-board security.
- b. Failing to perform its own independent investigation into terror threats known to the airline industry even when not prompted by the FAA.
- c. Failing to exercise a standard of care above and beyond that which is presumably set by the FAA minimum standards. The FAA guidelines are simply a minimum expectation. However, airline carriers and security companies alike have an independent duty to exceed those minimum requirements to the extent necessary to ensure safety of the passengers and public.
- d. Failure to heed warnings from the United States Air Force and FAA relative to terroristic threats. This will require that we look into the “threat briefings” known to the airlines prior to 11 September.
- e. Failure to train crew members in hostage/terror negotiation. Somewhat related to this is the fact that the response to the hijacking, as mandated by airline policy, was too passive.
- f. Failure to appropriately utilize the CAPS system (Computer Assisted Profiling System). This system was established many years ago and, pursuant to Federal Regulation, each domestic passenger must be run through the CAPS system. We need to determine if the CAPS system was used for all of the hijackers involved. He believes they would have met many of the CAPS indices, which are meant to identify potential terrorists.
- g. Failure to equip cabin with security camera, which could be monitored in the cockpit, which would have allowed the Captain in charge of the aircraft to monitor activities in the passenger cabin. He described this as an “inexpensive fix” which has been known to the industry for some time.

2. Security Companies.

- a. Again, Slepian agrees with our approach with respect to Huntleigh and Globe. He said our approach would be equally applicable to Argenbright (with respect to our pursuit of subrogation for aircraft hull losses). He also added that the security companies themselves

had a duty to exceed the minimum FAA criteria recognized by 14 CFR § 107 and 14 CFR § 108.

b. In addition, Slepian suggested the following:

(1) Insufficient security staffing at each gate. There are minimum staffing standards established by the FAA and recognized by the airline industry. We will need to do some discovery to figure this out. However, he is fairly confident that the staffing at Boston's Logan International Airport on 11 September was not up to those standards. This is due to the fact that they have one of the highest security employee turnover rates in the industry. Nearly 400 percent in the years proceeding 11 September 2001.

(2) He indicated that part of the problem was a lack of communication between all involved. This includes a lack of communication between the airlines and the security companies. He believes the breakdown in communication led to the "right hand not knowing what the left hand was doing." This is precisely why the security companies may be one of the weakest links in the chain (although the airlines themselves could have strong-handed the security companies and made security much tighter).

3. United States Government.

a. Once again, Slepian agrees with our approach to the FAA. He does acknowledge the "discretionary function" issue and the defenses that can be raised. However, he believes we can show that much of what was to be done was the "intent of Congress." Once the "intent of Congress" is established, then the functions are not discretionary. The FAA must take certain steps. The question is "how they want to go about it." That is where they have the leeway. Slepian feels that if we can focus on the "intent of Congress," showing that certain things were mandatory, then we can take positive steps in overcoming any discretionary function defenses.

b. In addition to what we have in the outline, Slepian also noted that the FAA has responsibility for approving individual airport security plans. Every airline in the industry drafts its own security plan. They then send it to the airport. The airport puts all individual airline plans together and submits them to the FAA. The FAA is then involved in approving everything. Is the approval of weak security plans a "discretionary function?" This is something we

will need to work through. Slepian feels we should pay considerable attention to this.

- c. Slepian believes the duty to protect the public from acts of terrorism belongs to the United States Government. However, the United States Government turned around and, as a condition to allowing operation of an airport, delegated their duty to the individual airports. The airports then delegated their duties to the airlines. There was a system of delegation going on where no one was to remain accountable. This is the key problem. He believes we can show this to support claims against the Federal Government. The same is true with respect to the airports, airlines, and security companies.

4. Boeing.

- a. Out of all of our potential targets, Slepian is the least excited about Boeing. At this point, he does not believe there is a great case against the aircraft manufacturer. However, as time goes on, the published literature and experts in the field do suggest that, perhaps, Boeing had some obligation to make a more secure cockpit. We will need to keep our eye on this. I will also address this with some of our other experts who may have a view different than Slepian's.
- b. Further, if we have a decent case against Boeing, Slepian believes it will rest with the failure to incorporate a full-time transponder into each 767 or 757 aircraft.

5. Massport.

- a. This is not covered as extensively as it should be in our report. We will need to "beef" that section up a bit. This is especially true given the recent Report of the Special Advisory Task Force on Massport. Slepian believes this report is extremely damning for Massport and essentially "indicts" the airport owner. He believes we can use the Massport report itself to formulate a strong claim against Massport. This includes contentions such as the following:
 - (1) Failure to ensure effective screening of passengers and baggage, going well beyond Federal requirements.
 - (2) Failure to appropriately utilize its powers as an airport owner to raise the standard of security.
 - (3) Allowing significant fragmentation of responsibility among the three parties principally responsible for airline security. This includes the FAA, the airlines, and Massport. The

mode of operation on 11 September created a system where everyone was involved in aviation security, but no one was singularly responsible. The result was diminished security due to ineffective communication among these three parties and other important agencies (such as the FBI, CIA, etc.).

- (4) Back in June 2001, Massport knew of the airline's lax security practices. While Massport challenged the airlines, at that point, they should have taken more affirmative steps to improve security employee qualifications. Failure to do so allowed for lax security at Boston Logan International Airport to continue through 11 September.
- (5) Failure to enhance security beyond the requirements of 14 CFR § 107 and 14 CFR § 108. This gets to one of the key points in our case. The airlines, airports, and security companies will likely say that they complied with FAA regulations in screening the passengers who boarded the four flights at issue. However, many authorities, including Boston Logan's own Director of Security, have suggested that the FAA regulations are simply minimum requirements. Individual airlines, airports, and security companies have a duty to exceed those when necessary. Massport should have exceeded those in a similar fashion to other large International airports in the U.S. The Massport report specifically mentions airports such as San Francisco International Airport, JFK in New York, and Miami International Airport.
- (6) Failure to establish a "layered" security system with multiple redundancies. This includes the integration of highly trained personnel and effective anti-terrorism technology. This is something they are now trying to do in hindsight.

6. Other.

- a. Slepian discussed a number of other less significant issues during our meeting. We candidly did not discuss claims against the terrorists themselves. They are rather obvious targets. The question there will become recovery potential.

III. Summary.

In summary, Slepian agrees with our approach at this time. He believes we should focus on American and United Airlines as well as the security companies. The U.S. Government is a strong target as well. We will bolster this with Billie Vincent.

Hopefully, Vincent can help us circumvent any problems with the “discretionary function” defense. Slepian will continue to help us fine-tune things. His high profile in the industry will allow him to keep apprised of significant developments. He has agreed to pass those developments along to me as they become known.