

UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

In re Terrorist Attacks of September 11, 2001, Plaintiffs, :
 :
 Petitioners :

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**EMERGENCY PETITION OF
IN RE TERRORIST ATTACKS OF SEPTEMBER 11, 2001 PLAINTIFFS
FOR A WRIT OF MANDAMUS ORDERING THE HON. GEORGE C.
DANIELS TO SURRENDER THIS CASE, OR, IN THE ALTERNATIVE,
FOR THE ASSIGNMENT COMMITTEE OF THE SOUTHERN DISTRICT
OF NEW YORK TO TRANSFER THIS MATTER.**

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Submitted: June 3, 2010

UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

In re Terrorist Attacks of September 11, 2001, Plaintiffs, :
: *Petitioners* :
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ORDER

And now, on this ____th day of _____, 2010, upon reviewing the Emergency Petition of In Re Terrorist Attacks Of September 11, 2001 Plaintiffs for a Writ of Mandamus Ordering the Hon. George C. Daniels to Surrender This Case, Or, in the Alternative, for the Assignment Committee of the Southern District of New York to Transfer This Matter, it is hereby ORDERED that the Hon. George B. Daniels is directed to surrender control of this multidistrict proceeding, pursuant to the Rules of the Southern District of New York for the Division of Business Among District Judges, so that the Assignment Committee of the Southern District of New York may reassign this case in order to advance this litigation efficiently to resolution.

United States Circuit Judge

UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

In re Terrorist Attacks of September 11, 2001, Plaintiffs, :
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 Petitioners :
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CORPORATE DISCLOSURE STATEMENT

Pursuant to Rule 26.1 of the Federal Rules of Appellate Procedure, counsel for Petitioners certifies the following:

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Deborah A. Fangman, Beth Ann Faragher, William E. Faragher, Beverly Faragher,
James A. Faragher, William Faragher, Jr., Mary F. Waterman, Robert Fazio, Sr.,
Felicia C. Fazio, Carole Lovero, Janet Fazio, Robert Fazio, Ronald C. Fazio, Jr.,
Lauren Marie Fazio, Barton Fendelman, Loretta J. Filipov, Diane Keating, Mary
Lou Lee, Jason Foo, Samantha Foo, Thomas J. Forbes, Xiang Qun Fu, Henry
Fuerte, Sheila M. Fuller, Thomas A. Gabay, Thomas R. Gaby, Dorothy Garcia,
Andrew T. Garcia, Harvey J. Gardner, Donald R. Gavagan, Sr., Rosemarie
Gavagan, Joseph B. Gavagan, Suzanne Mascitis, Hans J. Gerhardt, Rochelle

Gerlich, Daniel Gerlich, Matt Gerlich, Jayne M. Marx, Judith M. Glick, Mari Glick
Stuart, Colin Glick, Courtney Glick, Paul E. Gonzales, Ann M. Browne, Elise S.
Guadalupe, Allan Hackel, Eugene Hague, Beverly Hall, Yanique Hall, Kathryn
Lee Barrere, Patricia E. Hargrave, Carmela M. Harrison, Betty J. Mathwig, James
A. Hart, Jr., Mary Meixelspergen, Christine L. Reichert-Hart, Sandra E. Shelley,
Jeanine Hart Seaman, Deborah L. Hayes, Eric Hazelcorn, Elaine Helms, Thomas
Herrlich, Sheila C. Hobin, Derrick J. Hobin, Sean M. Hobin, William Hodgens,
Rebecca Hofer, Alicia Hofer, Billie Ann Hofer, Richard Hofer, Susan Caneso,
Todd A. Holgan, Karen L. Homer, Robert L. Horohoe, Sr., Donna S. Hughes, Lucy
A. Aita, Lauri T. Isbrandtsen, Dirk H. Isbrandtsen, Suzanne E. McCormick, Ju-
Hsiu Jian, Robert Johnson, Elva Johnson, Gail Lindner, Diane Czlapinski, Kurt
Dominick Johnson, Angel L. Juarbe, Sr., Miriam Juarbe, Jane Kahoro, Francine
Kaplan, Edward Kaplan, Mark Kaplan, Mark E. Keane, Cynthia Polo, Sean M.
Keane, Richard Matthew Keane, Garrett P. Keane, Robert F. Keane, Paul A.
Keane, Charlotte F. Keane, Theresa I. Wilson, Constance A. Feola, Michael
Keating, John Keating, Paul J. Keating, Michael M. Kelleher, Donald P. Kennedy,
Rochelle Kirschbaum, Matthew Adam Kirschbaum, Lauren Kirschbaum, Lisa M.
Inzerillo, Eric Laborie, Orfelina Lachapel, Romano E. Lake, Sandra Lang, Danielle
Lemack, Carrie Lemack, Linda Leblanc, Kim L. Lasko, Deena Lavery, Kevin P.
Lavery, Victoria Louise Lawn, Rosanne H. Costanza, Timothy Provenzano,

Deborah Ann Schumann, Jungmi Lee, Suzanne L. Faulkner, Hursley H. Lever,
Rosemaria Lipari, Jiun-Min Liu, Leopold Victor Lizzul, Douglas C. Cleary, Keith
B. Pettus, Evelyn A Lugo, Denise Lynch, Michelle M. Madden, Robert T.
Madden, Jr., Joshua P. Madden, Beth A. Mahon, Jodie Marcusi, Martin A. Marino,
Michael P. Marino, Antonina Marino, Martin Marino, James Marino, Michael
Marino, Lori T. Marshall, Jeanette A. Marshall, John A. Martin, Paul R. Martin,
Theresa Mathai, Michael T. Mazzella, Susan M. Brannigan, Sheila Mcpherson,
James R. McCarthy, Charles McCarthy, Cynthia E. McDay, Rufus J. McDay,
Ruvaughn McDay, John T. Mcerlean, Agnes M. Mcerlean, Thomas M. Mcerlean,
Catherine Francese, Agnes Duhamel, Marie M. Hunter, Faridi McFree, Frederick
J. McNeely, William J. Skead, Mike McNulty, Clive McNulty, Luke McNulty,
Helen McNulty, Jennifer McNulty-Ahern, Catherine McNulty, Lisa Meltzer,
Victor Barahona, Earl A. Dorsey, Rafaela J. Meurer, Suzanne S. Mladenik,
Richard Mladenik, Kathleen Mladenik, Scott L. Mladenik, Michael Mladenik,
Robert E. Moore, Jr., Elizabeth Louise Moran, Lois J. Mungay, Parasar Nandan,
Leila Negron, Gilberto A. Neira, Christopher O. Neira, Francisca A. Wester, Eric
Nunez, Neal Green, John O'Brien, Helen O'Mahony Bradley, John O'Mahony,
Stephen O'Mahony, Robert J. O'Mahony, Karen O'Mahony Speidell, Stella
Olender, Joyce Christopher, Laurie Christopher, Wanda Garcia-Ortiz, Venus C.
Ortiz, Robert J. Pansini, Sr., Carol A. Pantalone, Gary Pappalardo, Vernon A.

Randlett, Bharti Parmar, Frank Tatum, Inez Paskins, Robert R. Paskins, Sarah P. Rubinstein, Bobbie Catherine Peak, Phillip Peak, Mike R. Peak, Judy Peak Rhodes, Toni Peak, Natalee Moore, Nancy Pedicini, Albert Pedicini, Anne Pedicini, June Colaio, Pamela Morace, Francesca Penoro, Nathan Peterson, Gregory M Petrik, Antimo Petti, Catherine Petti, Thomas D. Petti, Adrian L. Foran, Jacqueline Butt, Harold L. Polhemus, Olga L. Polhemus, Dorothy G. McGrath, Jane Skrzyniarz, Raju Thankachan, Mildred Ramos, Jessica Bors, Julia Rivas, Carlota Rodriguez, David Rodriguez, Thomas G. Rohner, Michael R. Rohner, Stephen J. Rohner, Kristin Nepola, Frank J. Romano, Damian Rusin, Arlene Sacerdote, Andrea Sacerdote, Frank Carl Sadocha, Norma T. Sadocha, John S. Sadocha, Susan T. Sadocha, Felicita Maria Sanchez, Ryan Pemberton, Anthony F. Scolavino, Anthony F. Scolavino, Abraham Scott, Crystal Marie Scott, Geraldine Holmes, George A. Holmes, Claudette Staley, Willette Wages, Darlene Caldwell, Delores James, Denise M. Holmes, Michael Shagi, Janine L. Vanriper, Wendy Christina Silva, Scott S. Simon, Loretta T. Slavin, Lauren A. Smith, John B. Snyder, Christina Kminek, R. Bill Sopper, Marion Kminek, Paul A. Spagnoletti, Pamela Spitz, Lauren Spitz, Vee Stadelberger, Ellen Stajk Shelnut, Paul Stanley, Lucia Balzan, Joseph R. Statkevicius, Nancy Statkevicius, Joel Statkevicius, Florence Wittner Staub, Kenneth Donohue, Barbara Maneja, Carolyn Staub Bilelis, John M. Stiastry, Christopher Suhr, Charlette Thompson, Frank R. Thurlow,

Ronald Tieste, Lisa Kennedy, Jenna Tinley Mather, Richard Tishler, Rosemary Travers, Linda Buffa, Nunzio G. Virgilio, Michael Wahlstrom, Mary Louise White, Laura Walker, Kate Walsh, Neil P. Walsh, Zhenjie Wang, Richard H. Ward, Sandra Ward, Christian R. Waugh, David Weber, Sr, Lisa Weems, Laurie Weinberg, Michael T. Whittington, Tammy G. Williams, Lucy Williamson, George P. Williamson, George Wilton, Jr., Birgit Wiswe, John W. Woodall, Mary E. Woodall, Craig Walker Woodall, Erin E. Konstantinow, Mary E. Peled, Susan York, Felice Zaslow, Adam Zaslow, Bryan Zaslow, Richard Zletz, Edward Albert, Mehr A. Tariq, Irene Angrisani, Ralph Angrisani, Gina Giovanniello, Mary E. Armstrong, Catherine M. Nolan, Gabriel Armstrong, Gerard Armstrong, Laura A. Armstrong, Marian Armstrong, Ruth Green Aron, Jules P. Aronson, Gerald Atwood, Elaine M. Atwood, Gregory P. Atwood, Raymond J. Atwood, John G. Atwood, Elaine M. Atwood, Jane M. Duffy, Drew McIntosh, Brent McIntosh, Leslie R. Blair, Keith Blass, Derrill Bodley, Thomas H. Bowden, Sheilah L. Bowden, Kathryn C. Bowden, Nicholas M. Brandemarti, Nancy Brandemarti, Jason Brandemarti, Nicole Brandemarti, Helen R. McNulty, Stephen J. McNulty, Martin L. McNulty, Bradley M. Burlingame, Michael Casey, Anne T. Heffernan, Eileen Cirri, Christine Claudi-Petosa, Todd D. Coleman, Martha E. Colon, Dawn A. Connolly, Dana Cook, Ronald Patrick Cregan, Grace Elizabeth Cregan, Jeremy Davids, Angela Ridge, Johanna L. Kmetz, Irinie Guirguis, Rogelio R. Escarcega,

Craig Esposito, David Konigsberg, Edward P. Bracken, Michael E. Flagg, Michael E. Flagg, Richard A. George, Carolyn George, Lorraine A. Gerlich, Helene W. Nelson, Andrew T. Gorayeb, Christopher J. Gorayeb, John Guarneri, Martize Guzman, Philip A. Hanna, Judith Kay Hardacre, Lawrence Hardacre, Shirley Harvey, Caren Higgins, Miriam Horrocks, Tennyson Huie, Gordon Huie, Anna V. Ivantsov, Haomin Jian, Fumei Chien Huang, Hui-Zon Jian, Hui-Cheng Chien, Hui-Chuan Jian, Hiuchun Jian, Dawn Marie Johnson, Joann Anderson, Maureen Kelly Donegan, Michelle A. Stabile, Louise A. Kurtz, Anita Lafond Korsonsky, Edward R. Lasko, Barbara J. Lasko, Karl Latouche, Jefferson Patterson, Rosanna Latouche, Michael Samuel, Raphael P. Evans, Esther G. Latouche, Laurie Miller Laychak, Hayley Natalie Lehrfeld, Patricia Lennon, John Lennon, Melissa Lennon, Haydee C. Lillo, Elizabeth Davila-Lopez, Maureen Kelly, Melissa M. Crowley, Doreen E. Rowland, John E. McDermott, Jacqueline A. McDermott, John C. McDermott, Margaret McDermott, Suzanne McDermott, Paul Newell, Terry Lin Norton, Brian O'Flaherty, Karen Tatum, D. Hamilton Peterson, Devora Wolk Pontell, Virginia A. Quinn, Nicholas Monaco, Adam Quinn, Anna Marie Morales, Bernard J. Quinn, Gregory Quinn, Sosamma George, Annamma Thomas, Ammini G. Abraham, Sosamma Mukkadan, Saramma John, Migdalia Ramos, Rodney Ratchford, Jane Marie Thompson, William H. Robotham, Iii, Helen Rosenthal, Meredith H. Rothenberg, Nancy Kelly, John J Ryan, Mary V. Ryan, Teague M.

Ryan, Patrick Ryan, Aileen Ryan, Colleen Ryan, Jesus Sanchez, Sr., Frances Santore, Kishan Sarkar, Nancy Berliner, Lilmatie Didora, Irene Lesiw, Jaroslawa Skala, Michael Skala, Ronald S. Sloan, Patricia B. Sloan, Jennifer Ann Tucker, Tammy Sopper, Blanca Stahlman, Samuel Stahlman, Renee Stahlman, Kenneth A. Summers, Karen Reilly, William Tartaro, Teresa Tartaro, Rosanna P. Tartaro, Donna D. Teepe, Adam K. Teepe, Wendy Teepe Green, Joan Tino, Pamela Schiele, Diane J. Veling, Marcella Veling, Teresa Czark, Marcella Tuohy, Susan Wallace, Zoe Louise Ghirarduzzi, Peter H. Hopwood, Sonia Hopwood, Clive Hopwood, Debra Johnson, Shelby Tyler Williams, Anne B. Adams, Lawrence Scott Adams, Selma Ann Verse, Ina Barnes, Pedro Batista, James A. Bauer, Jonathan M. Becker, Richard L. Booms, Sr., Deanna G. Demotte, William J. Bosco, Jr., Ruth Bowman White, Laura Alessi, Gina Grassi, David B. Brandhorst, Michael E. Brown, Carolyn M. Negron, James T. Bueche, Frank Jensen, Simone Cannizzaro, Carol Cannizzaro, Craig Cannizzaro, Craig D. Carlson, Mary E. Jones, Desiret Carvache, Mary Ann Hunt, Eileen Mosca, Maureen Hunt, Haim Chalouh, Tracey C. Bourke, Lisa Cohn, Nancy M. Kasak, Carlos R. Colon, William K. Connors, Christopher Connors, Nigel Cox, Princina Cox, Wendell Cox, Glenice Cox-Roach, Raffaella Crisci, John Crisci, Mitchum Cummings, Linda D'Atri, Nolton Christopher Davis, Yolanda L. Davis, Rosslyn D. Davis, Zenovia M. Cuyler, Philip Davis, Norris C. Davis, William M. Davis, Georgia D. Davis,

Christine Patterson, C. Sue Davis Westmoreland, Harry L. Davis, Maria Luisa Pocasangre, Pedro E. Pocasangre, Omar Wilfredo Pocasangre, Ivonne Pocasangre Lopez, Edward Delfino, Jan Demczur, Joan Demeo, Kristen Demeo, Craig D. Deming, Brian D. Deming, Rosemary Deming-Phalon, Rosemary Deming-Phalon, Lisa T. Dolan, Edward L. Donnelly, Cecilia E. Donnelly, Barbara Einzig, Ruth M. Fangman, Lorna Morris, Jeanette Morris-Friedrich, Gay L. Morris-Martel, Erasmo Fernandes, William H. Fields, Sr., Joan Fiumefreddo, Barbara Freund Salvadore, Carol Freund, Jennifer R. Gardner, Antonia Gargano, Shelly Genovese, Vincent Giordano, Daniela Gogliormella, Rita M. Grady, Patrick Grady, Brendan M. Grady, Deirdre M. Grady, Julius Graifman, Ruth Graifman, Brian D. Graifman, Thomas J. Grogan, Jerry F. Guadagno, Marjorie Farley, C. Lee Hanson, C. Lee Hanson, Arvette D. Harris, Robert Harris, Jr., Marcus J. Harris, Bernard Heeran, Glen Heffel, Doug R. Horning, Robert Hughes, Louise Hughes, Leigha Hughes, Shanin Hughes, Patrick Imperato, Michael A. Jalbert, Razi S. Kalish, Daniel Kruesi, Thomas Lamacchia, Joseph P. Langley, Jean Jacques Laraque, Emily Lavelle, Kathleen C. Palacio, Patricia Caloia, Barbara J. Dziadek, Alicia Leguillow, Ingrid Lenihan, Michael Loguidice, Leoncio Luis, Daniel J. Lynch, Jennifer Lyn Maerz, Kathleen Maloney, Margaret E. Cruz, Eli Medina, Enid Medina, Marie D. Mitchell, Michael J. Monyak, Doris M. Monyak, Eugene Moore, Barbara Bridges, Rayburn Moore, Karina Moore, Arina Bridges, Violet Maddix,

Nicola Napier, Mark Napier, Daniel Narlock, Scott T. Nelson, Tu A. Honguyen, James P. O'Brien, Rachel O'Brien, Margaret M. Ogonowski, Theresa Ogonowski, Joseph Ogonowski, James Ogonowski, Carol A. Ogonowski, Dolores C. Quigley, John Olender, Conrad S. Olender, Therese Winters, Petero R. Otigho, Annette M. Palazzolo, Patricia N. Papa, Michael Pena, Carmen Rodriguez, Ramon Rodriguez, Mariela Flores, Joel R. Perry, Janice L. Montoya, Petrina M. Picerno, Martha Isabel Dominguez, Diego Dominguez, Alvaro Dominguez, Alberto Dominguez, Virginia Martha Dominguez, Eric J. Pitman, Phyllis Pollio, Sandra Gonzales, Joyce Oxley, Margaret Regan, Brendan H. Reilly, Anthony Rocco, Cindy Rodriguez, Katie A. Rohner, Filomena Roman, Marie Russell, Clifford Russell, Sr., Michael G. Rynn, Charles E. Sabin, Jr., Paul Sabin, Lashea Saunders, Sheila Scandole, Robert Scandole, Margaret Scandole, Christopher Scandole, Robert Schumacker, Lawanda Simmons, Charles O'Neal Snyder, Andrew W. Sochinski, Keith Tieste, William Charles Tieste, Stephanie L. Tipping, Elizabeth Rachel Turner, Susan Uman Blomberg, John T. Vigiano, Jeanette Vigiano, John T. Vigiano, Jeanette Vigiano, Gerard Von Essen, Clara L. Pachomski, Clara Rosario, Edwin Rosario, Miriam Paine, Raquel Negron, Ada Dolch, Michele Miller, Ken Wallace, Rita Wallace, Raina Wallens, Michael Warchola, Allison Vadhan, Joan W. Winton, Sara E. Winton, Ute Mitchell, Nancy Yambem, David M. Yancey, Ana M. Raley, Lisa Ann Gray, Anne Margaret Policelli, Debra Ahearn, Kenneth P.

Ambrose, Sharon Ambrose, Joseph P. Antony, Tony Archer, Michael Arniero, Maria Transito Quintero Sacta, Maria Asitimbay Quintuna, Rosa Elena Asitimbay Quintuna, Julia Asitimbay Quintuna, George Bachmann, Michael Beehler, Thomas J. Beirne, Eric Bernsten, Jane Blackwell, Robert Blake, James J. Boyle, James R. Boyle, Carol A. Brethel, Boris Bronshteyn, Bernard Curtis Brown, Sinita Brown, Michael P. Brown, Brook A. Budd, Lois Buxbaum, John A. Cairney, Gloria E. Calderon, Robert Carberry, Salvatore F. Carcaterra, David W. Carpenter, Jr., Gary E. Carpentier, Robert J. Carroll, Alison Henderson, John Citarella, Steve Coffin, David Collins, George A. Collins, Iii, John Combos, Walter Cooper, Gregory A. Corona, Clifton Cottom, Michelle Cottom, Peter J. Creegan, Sean Cummins, Ronald Curaba, Thomas P. Davis, Alfredo Pocasangre, Julio Delgado, Bruce Delgiorno, Robert J. Deming, Dwayne Dent, Richard Dion Destefano, John Devoti, William G. Dewan, Lashawn Dickens, Omar A. Dixon, Kevin J. Doherty, Walter Donahue, John Donnelly, Gregory Dougherty, Daniel D. Doyle, Thomas Dunn, Brian J. Eagers, James J. Falcone, John C. Falconite, Helenora Farrell, Francis Fee, Jr., John T. Fee, Sr., Steven Ferriolo, Glenn Fischer, Dunston Forbes, Carlton Forbes, Christopher R. Forbes, Dorrette Williams, Eugene W. Fox, Annie Marie Carter, Ana Galang, Hugh J. Gallagher, John F. Gallagher, Louis M. Garriz, Frances M. Garvey, Jane Jones, Lisa F. Gong, Thomas Edward Gorham, Joseph R. Gorman, Albert Gotay, Barbara Gowell, Michael Gowell, Jessica Gowell, John F.

Grogan, Scott F. Grubert, Nichola Gugliemo, Wilbert Gurganious, Matthew J. Hackett, David R. Hanley, Dennis Hargett, Paul Hashagen, William R. Hasseck, Erika Ann Haub, Elizabeth Gail Hayden, Joseph J. Healy, William Hiney, Donna Dietrich, James Holly, James J. Horch, Paul Hyland, Michael A. Iounio, Joseph James, Christopher C. Jensen, Robert Johnson, Jr., Robert Johnson, Sr., John T. Jones, Thomas Jordan, Ellen Jordan, John C. Jordan, Thomas P. Jordan, Bernadette Giuliani, Elizabeth Kobel, Ellen Green, Mary B. Jordan-Potash, Margaret Gregory, Sentija Jovic, Lauren Kasper, Michael Kasper, Melissa Kasper, Kara Kasper, Christopher Kazimir, Lawrence Gerard Keating, James J. Kelly, Patrick Kelly, Robert Kelly, Hedi W. Kershaw, Robert T. Keys, Patrick M. Kiernan, Michael J. Killcommons, Stephen J. King, Iii, John L. Kinta, Blaik Kirby, Ronald J. Kirchner, Robert Klaum, Steven J. Klein, Maria Koestner, Julianna M. Lanzer, Melissa White, Aimee E. Kondratenko/Garrison, Eric Kondratenko, Patricia Kondratenko, Katherine J. Kondratenko, Sarah M. Kondratenko, Caroline Kondratenko, Patricia Kondratenko-Collins, Kevin Kubler, David Labatto, Samuel J. Laforte, James F. Lanze, Richard Lapiedra, Philip Larimore, Caroline Larsen, Kevin P. Lawe, Caroline Leavy, Brian Leavy, Michael Liantonio, Dolores Libretti, Christopher Lindberg, Deryck D. Lindo, Duryel Lindo, Emanuel Lipscomb, Seelochini Liriano, Rhonda Lopez, Edmund S. Lucia, Dennis A. Lusardi, Charlie Lyons, Rico Magalhaes, Robert Maguire, Michael Mandala, Robert J. Mansberger, Patrick

Michael Marinelli, Juan R. Marrero, Edward F. Martin, Lourdes Lebron, Vincenzo Mastropasqua, Anthony John Mattone, Michael A. Maye, Dawn McAleese, John P. McAleese, Thomas H. McAllister, Michael McCall, Eugene McCarey, Kevin McCarren, Mark McGinty, Patrick McKenna, Kevin J. Mcpike, Joanne Meisenheimer, Ronald E. Merrill, John J. Messina, Jr., Edward F. Metz, Joseph Mickiewicz, Glen A. Midbo, Ciro Milano, Thomas Milton, Robert Peter Miuccio, Sr., Mary Urs, John Mooney, Joseph P. Mooney, Kevin Moore, Noel A. Moran, Steven Mormino, Maria Morocho Sanchez, Manuel Llanos, Maria Morocho Sanchez, Manuel Llanos, Steven Moss, Dennis A. Muia, Constance Muldowney, Michael Mulqueen, Christine M. Munson-Hayes, Thomas Murphy, Dolores Murphy, James A. Murray, Kenneth J. Muxie, Gerald Napier, Marjorie Napier, Elizabeth Nielsen, Michael Noel, Theresa Noel, Frank O'Brien, Luis S. O'Campo, Gerard O'Donnell, Joseph T. O'Hagan, Martin J. O'leary, Joseph O'Neil, Kevin O'Neill, Lynn A. Olcott, Keith Pander, Thomas Papaccio, Ralph Paprocki, Paul Patsos, Charles R. Peterson, Joseph M. Petrassi, Eileen R. Petti, Philip Petti, Jr., Lauren Petti, Christopher P. Piazza, Carl J. Pisani, Daniel J. Pollicino, Harry J. Powell, Norma L. Powell, John Prendergast, Edward Prince, Peter A. Quinn, Robert Rae, Michael Ramputi, Anna Rasmussen, Francis W. Renois, Richard Resto, Frank Ricca, Arthur J. Riccio, William Riordan, Nancy Elizabeth Rivas Molina, Michael Rizzo, Douglas Robinson, Dean Rosenblum, Marilyn M.

Rosenthal, Mark Ruppert, Eric M. Sachs, Maria Carmen Penafiel, Joe N. Sanders, David P. Sandvik, David A. Santise, Christopher Santos, Brian M. Schmitt, Edward J. Schneider, Dina M. Schott, Charles Scibetta, Richard E. Scola, Howard Scott, David Sears, Ralph P. Seiter, Lawrence R. Senzel, Stephen J. Sharp, John Sheehan, Edward John Shields, Clarence Singleton, Terence P. Slane, Todd Smith, Robert S. Spinelli, Anthony Squillante, Stephen E. Stroh, Leeann M. Suhr Klein, Jean Suhr Ryan, Devindra Sukhram, Michael P. Sullivan, Steven A. Supinski, Noreen Supinski, Nathan Supinski, Benjamin Supinski, Steven M. Syrop, Elaine S. Teague, Roderic S. Tierney, Anthony Tito, Edward H. Tomaszewski, Maria Teresa Rueda De Torres, Monica Torres, Miguel Torres, Michael Tracy, Thomas Turilli, Harvey Blomberg, Lawrence Vento, Scott E. Wahlstrom, Daniel S. Walis, Brian P. Wall, Patrick Wall, Thomas P. Ward, Susanne Ward Baker, Greg Waters, Greg Welge, Henry W. White, Ken Wiltse, Walter Wissell, Mary Otto, Edgar B. Wooley, Iii, John E. Young, Jill Zangrilli, Sheila A. Kiernan, Celso J. Abreu, Alberto Aguilar, Neil Alper, Douglas Anderson, Adolfo Martin Arzu, Diana Baez, Faveur Bazilme, Christian Bediako, Michael J. Bell, Lourdes Bennett O'Connor, Juliette Bergman, Luis Bonilla, Robert Broome, Joseph L. Buda, Mary Ellen McNulty, Barry L. Buss, Richard Bylicki, Colleen Cahill, James Cahill, Evelyn Cahill, Denise Troise, Kathleen Cappers, Colette Cardoza, Dominick J. Carolei, Michael Cioffi, Richard L. Collins, Sandra Dahl, Flory Danish, Jean L. Davis,

Anthony De Vita, Evelena Doctor, William L. Doctor, Shelton Doctor, Joann Doctor, Evon Baumgardner, Elaine Doctor McGraw, Kenneth Donovan, Patrick D. Duignan, Joseph Eivers, Maria Luisa Bey, Robert Farley, Edgar Felix, Fern L. Feller, Jenny Fernandez, Mary Bracken, Gregory A. Forsyth, Emma F. Gaitan, Robert C. Garrett, Joseph M. Gavitt, Getachew Gedfe, Bonnie Jean Geibfried, Thomas Gillam, Raymond L. Gilligan, Albert Greene, Fred Greene, Edgar Gutierrez, Scott W. Hawkins, Robert J. Hellmers, John A. Hinchey, Alicia T. Howard, Vincent F. Hubner, Andrea Hurst, May Marconet, Walter Iwachiw, John Jackson, Deborah B. Jacobson, Rachel Jacobson, Matthew R. James, James A. Kadnar, Brenda Vandever, Howard Katzman, Derek T. Kelly, Lisa Ann Kennedy, Maureen Kennedy, Catherine Kennedy Miller, Meredith Andrews, David Kletsman, Aubrey J. Lafrance, Madelyn Lafrance, Birther Laurencin-Bannister, Jercienne Laurencin, Michael J. Lavin, Mi Yong Lee, Mario Lopez, Alfred Luchetti, Kenneth Lucianin, Jane Luther-Umstadter, Michael P. Lynch, Michael A. Macko, Frank Malerba, Rafaela Martinez, Jaysen J. Mayo, Danielle McGuire, James McHugh, Gopal Mehta, Kenneth G. Miccio, Holly Ann Miller, Edwin Morales, Marl J. Morello, Matthew S. Mulhan, Thomas J. Mundy, Jennifer Murawski, James F. Murphy, Iii, Helen Marie Murphy, Kathleen Marie Murphy, Helen Marie Sweeney, Kristin M. Murphy, Elizabeth Murphy Cooke, Joseph J. Murphy, Richard E. Nogan, Francisco Ortiz, Ernesto Otero, Annie Guerrero, Ryan

Pacheco, Larrie Placide, John Prenty, Marilyn Raines, Vigita Ramnath, John Renna, Alfred W. Retundie, Edwin Rivera, Grace Rivera, Jose Rivera, Vincent Rivera, Michael J. Rossello, Joseph C. Rotondi, Maureen Murphy, Steven Ruggiero, Marshall Ryan, Susan S. Ryan, Audrey J. Sammis, Manish Rai, Robert Scally, Philip J. Scarfi, Daniel Seaman, Daniel Seaman, Anthony E. Sercia, Marilyn Joy Shepard, Roxanne Soliwoda, Katherine A. Soulas, Anthony E. Suchon, Soudabeh Tabatabai, Carol Tannenbaum, Expedito Tavarez, Roxanne Taylor, Edward Thompson, Violet Thompson, Scott M. Thompson, Christine E. Thompson, Lloyd Thompson, John A. Tiska, Gabriel Torres, Elian Jaramillo, Ashley Jordan Wallens, Romuald Waszielewicz, Gregg Weisenburger, Michael Welsh, Yaeno White, Murna T. Williams, Charles Mazzotta, Robert W Beatty, Donald S Bigi, Corinne Bunin, Kitty Bunin, Michael J Carlisi, Frank Castrogiovanni, Evelyn Diaz, Irene Arguelles, Anthony Ciarnella, Patricia Ciuzio, Thomas Clarke, Alan W Dagistino, John Delaney, Nicholas Fornario, Christine Huhn, David C. Hemschoot, Jeffrey W. Hemschoot, Mark D. Joseph, Helen Kresz, James Kuveikis, James W Lewis, Joseph Libretti, Adriana Belo Maluendas, Judy Maria Manalastas, Ralph Negron, John O'Brien, Lynn Pescherine, Lori A Pfeil, Kevin J. Prendergast, Dominic J Puopolo, Jr., Omayra Rivera, Gladys H. Salvo, Donald J Spurrell, Charles Parker, Iii, Matthew Lee Strickland, Michael Szejnberg, Linda Perry Thorpe, John S Verme, David R Vincent, Lucille A

Vincent, Matthew D Vincent, Carrie B Vincent, Susan Wohlforth, Estate of John P. O'Neill, Sr. on behalf of John P. O'Neill, Sr., deceased, and on behalf of decedent's heirs-at-law, John P. O'Neill, Jr., Christine I. O'Neill, Carol O'Neill, and Dorothy A. O'Neill are all natural persons; none is a corporate party.

Petitioners Federal Insurance Company, Pacific Indemnity Company, Chubb Custom Insurance Company, Chubb Indemnity Insurance Company, Chubb Insurance Company of Canada, Chubb Insurance Company of New Jersey, Great Northern Insurance Company, and Vigilant Insurance Company are members of the Chubb Group of Insurance Companies. Appellants' parent organization, Chubb Corporation, a publicly traded corporation, owns more than 10% of their stock.

Petitioners Zurich American Insurance Company, American Guarantee and Liability Insurance Company, American Zurich Insurance Company, Assurance Company of America, Colonial American Casualty and Surety Insurance Company, Fidelity and Deposit Company of Maryland, Maryland Casualty Company, Northern Insurance Company of New York, Steadfast Insurance Company, and Valiant Insurance Company are members of the Zurich Financial Services Group. Appellants' parent organization, Zurich Financial Services Group, a publicly traded corporation, owns more than 10% of their stock.

Petitioners One Beacon Insurance Company, One Beacon America Insurance Company, American Employers' Insurance Company, The Camden Fire

Insurance Association, and Homeland Insurance Company of New York are members of the One Beacon Insurance Group. Appellants' parent organization, White Mountains Insurance Group, a publicly traded corporation, owns more than 10% of their stock.

Petitioners Crum & Forster Indemnity Company, North River Insurance Company, United States Fire Insurance Company, Seneca Insurance Company, and TIG Insurance Company are members of the Fairfax Financial Group. Appellants' parent organization, Fairfax Financial Holdings Ltd, a publicly traded corporation, owns more than 10% of their stock.

Petitioners American Alternative Insurance Corporation, Great Lakes Reinsurance U.K. PLC, and The Princeton Excess and Surplus Lines Insurance Company are members of the Munich Re Group. Appellants' parent organization, Muenchener Rueckversicherungs, a publicly traded corporation, owns more than 10% of their stock.

Petitioners Allstate Insurance Company is a member of The Allstate Insurance Group. Allstate Insurance Company is wholly owned by The Allstate Corporation, a publicly traded corporation.

Petitioners Boston Old Colony Insurance Company, Continental Insurance Company, Commercial Insurance Company of Newark, NJ, CNA Casualty of California, Continental Insurance Company of New Jersey, Fidelity and Casualty

Company of New York, Glens Falls Insurance Company, and National Ben Franklin Insurance Company of Illinois are members of the CNA Insurance Companies. Appellants' parent organization, the CNA Financial Corporation, a publicly traded corporation, owns more than 10% of their stock.

Petitioner Hiscox Dedicated Corporation Member, Ltd. is a member of Lloyds' Syndicate 33.

Petitioner ACE American Insurance Company, ACE Capital V Ltd for itself and as representative of all subscribing underwriters for ACE Global Markets Syndicate 2488, ACE Bermuda Insurance Ltd, ACE INA (Canada), ACE Indemnity Insurance Company, ACE Insurance SA-NV, ACE Property & Casualty Insurance Company, Atlantic Employers Insurance Company, Bankers Standard Insurance Company, Indemnity Insurance Company of North America, Insurance Company of North America, Westchester Fire Insurance Company, Westchester Surplus Lines Insurance Company, and Pacific Employers Insurance Company are members of ACE INA Group. Appellants' parent organization, ACE Limited, a publicly traded corporation, owns more than 10% of their stock.

Petitioner Woburn Insurance Ltd. is a captive insurance company, wholly owned by Viacom Inc.

Petitioners AXA Corporate Solutions Assurance, AXA Corporate Solutions Insurance Company, AXA Corporate Solutions Assurance UK Branch, AXA

Corporate Solutions Assurance (Canada), AXA RE Asia Pacific Pte. Limited, AXA RE, AXA RE Canadian Branch, AXA RE UK Plc., AXA Corporate Solutions Reinsurance Company, AXA Art Insurance Corporation, SPS Reassurance, AXA Re Madeira Branch, Compagnie Generale de Reinsurance de Monte Carlo, AXA Versicherung AG, AXA Cessions and AXA Global Risks UK, Ltd. are members of the AXA Group. Appellants' parent organization, AXA Group, a publicly traded corporation, owns more than 10% of their stock.

Petitioners Pacific Employers Insurance Company, Indemnity Insurance Company of North America, and ACE American Insurance Company are members of ACE INA Group. Appellants' parent organization, ACE Limited, a publicly traded corporation, owns more than 10% of their stock.

Petitioners Vigilant Insurance Company, Pacific Indemnity Company, and Federal Insurance Company are members of the Chubb Group of Insurance Companies. Petitioners' parent organization, Chubb Corporation, a publicly traded corporation, owns more than 10% of their stock.

Respectfully submitted,

Dated: June 3, 2010

BY: /s/_____

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UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

In re Terrorist Attacks of September 11, 2001, Plaintiffs, :
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 Petitioners :

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**EMERGENCY PETITION OF
IN RE TERRORIST ATTACKS OF SEPTEMBER 11, 2001 PLAINTIFFS
FOR A WRIT OF MANDAMUS ORDERING THE HON. GEORGE C.
DANIELS TO SURRENDER THIS CASE, OR, IN THE ALTERNATIVE,
FOR THE ASSIGNMENT COMMITTEE OF THE SOUTHERN DISTRICT
OF NEW YORK TO TRANSFER THIS MATTER.**

Almost ten years after the horrific attacks of September 11, 2001, and nearly eight years after Petitioners¹ initiated civil litigation against those alleged to have provided material support to enable al Qaeda to carry out the Attacks, the family members of those murdered and other injured plaintiffs find themselves trapped in a Kafkaesque procedural abyss. In the three years since the assignment of this MDL proceeding to the Hon. George C. Daniels following the death of the Hon. Richard Conway Casey in early 2007, the district court has yet to rule on nearly 100 preliminary Rule 12 motions to dismiss, the vast majority of which were fully briefed by 2005 and urgently required resolution at the time of the 2007 reassignment. Further, the district court has held only four case management conferences in the past three years in this most important and tragic matter, effectively suspending the litigation brought by the September 11 Plaintiffs and immunizing those alleged to have sponsored the Attacks from having to answer for their conduct in this nation's courts. Simply stated, nearly seven years since the

¹ Petitioners are identified in the attached Corporate Disclosure Statement.

creation of this MDL (and three years since its reassignment to the presiding judge), the vast majority of the claims in the MDL have not advanced beyond initial briefing on preliminary Rule 12 motions to dismiss.

During the three year period this litigation has been paralyzed, the predictable and foreseeable deaths of key defendants and deterioration of evidence and witness memory have continued to erode the truth-determining capacity of the courts and integrity of the judicial process itself. In addition, the continuing procedural morass has resulted in a massive waste of the parties' time and of resources. Unfortunately, the diligent efforts of the parties to provide the district court with proposals concerning the issues most urgently requiring the district court's prompt resolution, and case management tools that would assist the district court in advancing this MDL, have provided no relief.

As a result of the delays and prejudice already encountered, and the scope of the proceedings which remain to be completed, this case stands at a precipice. There now exists an urgent need for efficient case management far greater than that which existed in 2004 when the Judicial Panel on Multidistrict Litigation consolidated the 9/11 Plaintiffs' claims to promote the efficient resolution of this litigation. This urgency arises not only from the critical need to vindicate the rights of the parties and preserve the integrity of the judicial process, but also from the compelling public interest in the historic events and conduct which give rise to these claims. Important aspects of this nation's national security policy, as embodied by Congress' creation of a civil cause of action under the Anti-terrorism Act to sanction and combat the sponsorship of terrorism, are at stake as well. At this juncture, these interests can be served only through the active management of

this litigation by a judge with a proven record in effectively managing complex MDL proceedings.

As the record makes clear, this MDL has proven unwieldy to this point, and immediate action is needed. Indeed, the resolution of the many pending Rule 12 motions to dismiss will only serve to increase the procedural complexity of this MDL, given the pleading amendments, renewed motions to dismiss, jurisdictional and merits discovery, appeals and other initiatives that would necessarily follow. Given these complexities, only a judge with unique skill and experience in the management of complex MDL proceedings will be able to advance this litigation efficiently to resolution.

Therefore, in order to protect the vital interests at stake, including the right of the September 11 Plaintiffs to full access to court, and to “secure the just, speedy, and inexpensive determination of every action and proceeding” for all parties in the manner envisioned by the Federal Rules of Civil Procedure and the precepts governing multidistrict litigation, Petitioners respectfully request that this Court take decisive action to facilitate the transfer of this MDL to a judge with a proven track record in the management of complex MDL proceedings.

I. RELIEF SOUGHT

Petitioners – including family members of those who died in the terrorist attacks of September 11, 2001, individuals who survived the attacks, and businesses whose property and business interests were destroyed -- seek a writ of mandamus ordering the presiding district court judge in the interests of justice and sound judicial administration to relinquish control of In re Terrorist Attacks of September 11, 2001, 03-MDL-1570, pursuant to Rule 19 of the Rules for the

Division of Business Among District Judges for the Southern District of New York, so that the Assignment Committee of the Southern District of New York may reassign the matter to a judge with the unique experience necessary to bring order to this long-stalled multi-district litigation.

In the alternative, Petitioners seek mandamus as to the Assignment Committee itself so that it will execute its powers under Rule 19 for the Rules for the Division of Business Among District Judges to transfer cases “in the event of ... the build up of an excessive backlog” to any remaining active or senior judge in the Southern District who is “willing and able to undertake” this litigation.

The facts unfortunately speak for themselves. Nearly 100 preliminary Rule 12 motions to dismiss have been fully briefed and pending since 2005, many of which were in fact ripe for resolution before the end of 2004. Since assuming the management of this MDL in April 2007, the presiding district court judge has held only four case management conferences – June 30, 2007, September 15, 2008, July 15, 2009 and April 15, 2010. As to the vast majority of the claims advanced in this MDL, no progress has been made for many years, and the litigation remains mired in the preliminary motion to dismiss phase. In order to provide long-awaited redress to the family members of those killed and others injured by the September 11th Attacks, this litigation must be transferred to a judge with the experience and vision necessary to bring order to this proceeding.

The issue presented by this Petition does not concern the merits of any substantive or procedural decisions rendered by the presiding district court judge – to the contrary, the problem is that as a practical matter there have been none. Indeed, of the nearly 100 preliminary Rule 12 motions to dismiss pending when

the case was transferred to the presiding district court judge in April 2007, the district court has ruled only on two, both involving discrete issues that did not touch upon the substantive legal standards under Fed. R. Civ. P. 12 at the heart of the nearly 100 remaining motions to dismiss.

II. ISSUE PRESENTED

This petition for a writ of mandamus presents the issue of whether this Court of Appeals should exercise its authority to compel reassignment of a multi-district consolidated litigation proceeding arising from the September 11th Attacks where the underlying proceedings have been pending for eight years, nearly 100 preliminary motions to dismiss have been pending for nearly five years, the claims against the majority of the defendants have not proceeded beyond briefing on preliminary Rule 12 motions and plaintiffs already have suffered severe prejudice due to the delays. Petitioners respectfully submit that these circumstances contravene in the most fundamental sense the provisions of Fed. R. Civ. P. 1 (“[The Federal Rules] shall be construed and administered to secure the just, speedy, and inexpensive determination of every action and proceeding”) and 28 U.S.C. § 1407 (authorizing transfer and consolidation of multi-district proceedings involving common questions of fact “to promote the just and efficient conduct of such actions”), and threaten the integrity of the judicial process.

III. FACTS NECESSARY FOR THE ISSUANCE OF THE WRIT

A. The Gravamen of the Litigation

In these lawsuits, Petitioners seek to hold accountable the individuals, financial institutions, businesses, and ostensible charities that knowingly sponsored al Qaeda and provided the means for it to carry out its devastating attacks against

the United States. Without this material support, the al Qaeda terrorists could not have planned and successfully carried out their attacks. Plaintiffs assert causes of action under federal statutory causes of action, common law causes of action, and causes of action arising under federal common law for violation of international law. As this Court previously observed in relation to Petitioners' appeals from rulings issued by Judge Casey in 2005 (the last decisions issued by the district court on the substantive Rule 12 issues raised by the nearly 100 motions to dismiss filed in the preliminary stages of this litigation), Petitioners' complaints offer "a wealth of detail (conscientiously cited to published and unpublished sources)" in support of the asserted claims.

The basic principle underlying these lawsuits has been eloquently stated by the Seventh Circuit: "[T]here would not be a trigger to pull or a bomb to blow up without the resources to acquire such tools of terrorism and to bankroll the persons who actually commit the violence." Boim v Quranic Literacy Institute, 291 F.3d 1000, 1021 (7th Cir. 2002), *aff'd en banc*, 549 F.3d 685 (7th Cir. 2008). In light of the essential and primary role terror sponsors play in making terrorist attacks possible, Petitioners seek through this litigation to sanction and deter the sponsorship of terrorism against the United States from abroad, consistent with Congress' view that civil suits against terror sponsors should play an important role in America's broader national security strategy to prevent terrorism.

B. The Structure of the Litigation

The various actions that comprise this multi-district proceeding are summarized in a chart attached as Exhibit A.

By way of further background, the *Burnett* and *Ashton* cases are brought on behalf of family members of those who died on September 11 as well as survivors who were injured in the attacks; the Burnett case includes 5,312 such plaintiffs, while Ashton is brought by 2,664 individual plaintiffs. The three O'Neill cases, two of which are pled as class actions, are brought on behalf of the family of John P. O'Neill, Sr., the FBI agent who led the national security division of the FBI's flagship New York office, and then, after retiring from the Bureau, was killed on September 11, while serving as director of security for the World Trade Center.

The Federal Insurance, Pacific Employers Insurance, Vigilant Insurance, Continental Casualty, and New York Marine and General Insurance cases are brought on behalf of insurance companies that paid billions of dollars to insured victims of the attacks. The Euro Brokers and Cantor Fitzgerald cases are brought by businesses whose offices in the Towers were destroyed in the attacks.

Approximately 100 defendants have appeared – financial institutions, charities, businesses, individuals, and foreign government officials, as well as the government of Saudi Arabia. The lead wrongful death and personal injury suits - Bumett, and Ashton - were filed in 2002. The lead action on behalf of commercial victims of the Attacks, Federal Insurance, was filed in 2003. On August 7, 2003, defendant Saudi Binladin Group moved the Judicial Panel on Multidistrict Litigation (JPML) for transfer and consolidation of all 9/11 terrorism sponsorship cases, stressing the need for the efficient management of the litigation.²

² See Exhibit B, Motion for Consolidation and Transfer. (“For example, consolidation of these actions before a single court will eliminate duplicative discovery and the issuance of duplicative letters rogatory by multiple courts,
(cont'd next page...)”)

On December 9, 2003, the JPML issued its order transferring Burnett and Havlish to the Southern District of New York and consolidating as MDL 1570, for pretrial purposes, Burnett, Ashton, Havlish, Federal Insurance, and three other cases then pending, and assigning the consolidated proceeding to Judge Richard Conway Casey. See Exhibit C. MDL Transfer Order. Later filed cases were thereafter consolidated into the MDL.

In designating Judge Casey to manage the litigation, the JPML stressed Judge Casey's considerable experience in managing MDL proceedings: "We note that Judge Richard C. Casey, before whom the majority of the New York actions are pending, is an experienced Section 1407 transferee judge, and we are confident in our decision to entrust this important and challenging assignment to a distinguished jurist already sitting in the New York district." Id.

C. Stagnation of the MDL

Following the passing of Judge Casey on March 22, 2007, the then-Chief Judge of the Southern District of New York assigned the September 11 MDL to the Hon. George B. Daniels on April 25, 2007. At the time of the transfer, following several major rulings by Judges Robertson and Casey, approximately 100 motions to dismiss stood fully briefed and awaiting either oral argument or disposition without argument. The majority of these motions had in fact been fully briefed by 2005, and urgently required resolution at the time of the 2007 transfer.

prevent conflicting pretrial rulings, conserve judicial resources, reduce the costs of litigation for the thousands of parties involved, and allow the cases to proceed more efficiently.")

From the inception of Judge Daniels' handling of this litigation, both Plaintiffs and Defendants have consistently and repeatedly urged the court to take action on these long-pending Rule 12 motions to dismiss as its first priority. Instead, in the three years he has been presiding over this MDL, the district court judge has ruled upon only two motions to dismiss – a single sentence order denying one motion to dismiss on August 2, 2007,³ and a four-page order docketed on January 5, 2009, granting a motion to dismiss in a pro se plaintiff's lingering suit against a defendant no longer being sued by any other plaintiff in the MDL.⁴ In these three years, the district court has held only four case management conferences, despite the explicit recommendation in the Federal Judicial Center's Manual on Complex Litigation that "Conferences following the initial conference help the judge to monitor the progress of the case and to address problems as they arise.... On-the-record conferences will minimize later disagreements, particularly if the judge anticipates issuing oral directions or rulings." Federal Judicial Center, *Manual on Complex Litigation, 4th*, § 11.22.

1. The Parties' Unsuccessful Efforts to Obtain Rulings on the Long Pending Motions to Dismiss and Regular Case Management Conferences

From the date of the transfer of the MDL to the presiding district judge, both Plaintiffs and Defendants have repeatedly stressed the urgent need for the district

³ Docket #1873, denying the motion to dismiss of Defendant Sana-Bell, Inc., in which the defendant had claimed that it no longer existed.

⁴ Docket #2149, dismissing April Gallop v. Riggs National Corp., 04 CV 7281, adopting the recommendation of Magistrate Judge Maas which had been issued on September 17, 2007, approximately sixteen months earlier. *See* Docket #2036.

court to expeditiously resolve the many pending motions to dismiss, and strived diligently to provide a clear framework for achieving that goal.⁵ In this regard, a letter submitted by the Plaintiffs' Executive Committee ("PEC") on May 29, 2007 stressed that the "first priority of this Court" should be resolution of the pending motions to dismiss. See Exhibit D. The Defendants' Executive Committee ("DEC") concurred via separate letter, stating that it believed "the Court should move ahead to resolve the remaining motions to dismiss...chronologically in the order that they were fully briefed." See Exhibit E, DEC Letter of May 25, 2007.

To assist the district court in deciding how best to approach the pending motions to dismiss, both sides submitted charts identifying the outstanding motions, including the dates on which they were filed and actions in which those motions were pending. See Exhibit D, Attachments. Plaintiffs further suggested that oral argument with respect to a select number of representative motions would be extremely helpful to the district court in familiarizing it with the theories and defenses, and thereby promote the efficient resolution of all of the pending motions to dismiss. Id. Consistent with the Federal Judicial Center's view that a district court's management of complex litigation should be active and employ regular case management conferences as a tool to promote efficiency, Petitioners also urged the district court to hold conferences on a regular basis. Id.

⁵ Pending motions to dismiss pertain to two general areas: motions seeking dismissal on the ground that the pleadings fail to state claims as to which relief may be granted, and motions raising challenges as to the court's jurisdiction – specifically, as to persons alleged to have provided money and support to al Qaeda, and who are alleged to have thereby directed their conduct at the United States.

After receiving the parties' initial submissions in May 2007, the district court requested, and the parties provided, detailed overviews of the procedural history of the litigation and the legal and factual issues raised by the pending motions to dismiss.⁶ In relation to that process, the parties sought to provide the district court with a clear roadmap for the efficient resolution of the pending motions to dismiss. To this end, Plaintiffs provided the district court with a supplemental chart in August 2007, grouping by categories the defendants who had appeared in the consolidated litigation. *Id.* Plaintiffs proposed that these groupings could be used to assist the district court in efficiently resolving the remaining motions to dismiss. Defendants also provided the district court with a revised chart in relation to their August 2007 filings, which identified the legal defenses raised by each of the pending motions to dismiss. *Id.* These submissions provided the district court with a clear snapshot of the litigation and long pending motions, and the parties were optimistic that the district court would begin issuing decisions on motions within months.

In the nearly three years that have passed since those submissions, the parties have unfailingly reiterated the urgent need for decisions on the pending motions to dismiss in every submission to the presiding district court judge concerning the management of the MDL, and Petitioners have consistently urged the district court to actively manage the MDL through regular case management conferences. To provide some understanding of these efforts, and the procedural paralysis that has come to define this MDL, Petitioners refer to the urgent letters

⁶ See Exhibit F, PEC and DEC Submissions of August 1, 2007.

sent to the district court over the last three years, at the district court's request, advising it as to issues requiring the district court's immediate attention.

On November 16, 2007, the PEC wrote to the district court, stressing the need to move forward given the length of time which had elapsed already:

It is now more than five years since the first of these cases was filed and more than six years since the tragic events that gave rise to this litigation. By the time of the conference, it will be more than four years since the JPML transferred and coordinated these actions in this Court. Although discovery is proceeding with respect to a handful of defendants, it is not even begun with respect to the large majority of defendants whose motions to dismiss remain pending. The discovery that is proceeding has been delayed by numerous disputes. We propose that the Court and the parties use the upcoming conference as an opportunity for a dialogue about how the progress of this case can best be advanced in order to meet the goals of an MDL proceeding to 'promote the just and efficient conduct' of the actions, see 28 U.S.C. §1407, in order to accomplish 'the just, speedy, and inexpensive determination of every action' envisioned by Rule 1 of the Federal Rules of Civil Procedure... Plaintiffs would like the opportunity to discuss with the Court what, if anything, can be done to expedite decisions on these motions.

Exhibit G. Petitioners also urged the district court to harmonize the procedural status of proceedings against common defendants across all cases within the MDL, noting that discovery was proceeding as to certain defendants in fewer than all cases, an inefficient circumstance that was undermining the goals of MDL consolidation and producing needless disputes:

Plaintiffs would like to discuss with the Court our request that the Court extend to all cases denials of motions to dismiss that Judge Casey issued in some, but fewer than all, cases. This is particularly important because, except for jurisdictional discovery, discovery is proceeding only with respect to defendants whose motions to dismiss have been denied. Defense counsel have taken inconsistent positions as to how this principle is applied where motions have been denied in

some, but not all, cases, arguing in some instances that discovery cannot proceed in the cases where motions are still pending, and in others that any discovery taking place now must be applied to all cases, including those in which motions are still pending.

Id.⁷ After the presiding district court judge postponed the scheduled January 18, 2008 status conference to March 18, 2008 (over Petitioners' objection), the parties briefed the district court again. Petitioners requested that the district court utilize the session to address impediments to the parties' discovery efforts, Defendants' contention discovery, the application of Judge Casey's rulings to other matters involving the same defendants, and the resolution of outstanding motions to dismiss. That submission stressed, again:

[T]he most pressing matter before the Court is the necessity for decision on the motions to dismiss. By deciding even a limited number of these motions the court could do much to hasten the progress of key matters in these cases such as applying the proper pleading standard under Fed. R. Civ. P. 12(b)(6).

Exhibit H, PEC Letter of March 13, 2008. Noting that it had been ten months since the prior status conference, Petitioners urged the district court to hold the conference scheduled for March 18, 2008, stressing that it "would be beneficial toward advancing the litigation and would not be unduly burdensome in any manner for the parties." Id. Defendants agreed that the district court was prepared to resolve the long-pending motions to dismiss. See Exhibit I, DEC Letter of March 14, 2008, at 2. Instead, the district court ordered that the conference be postponed until July 15, 2008, while promising:

All previously filed motions to dismiss are being reviewed and decided on an issue-by-issue basis. All subject matter jurisdiction

⁷ This issue has yet to be resolved by Judge Daniels in the intervening three years.

motions to dismiss on the grounds of sovereign immunity are currently under consideration. A decision on that issue will be followed by decisions on all personal jurisdiction motions to dismiss, and motions to dismiss for failure to state a cause of action.

See Exhibit J, Order of March 14, 2008. Although it had been more than a year since the first and only Case Management Conference since transfer of the MDL, and three previously scheduled conferences had already been adjourned, the presiding district judge nevertheless postponed *that* July 15, 2008 conference until September 15, 2008. By that point, there was even more to discuss: on August 18, 2008, the Second Circuit affirmed the orders of dismissal of the late Judge Casey as to five foreign sovereign defendants, albeit on different grounds than those upon which Judge Casey had ruled in 2005. See In re Terrorist Attacks of September 11, 2001, 538 F.3d 71 (2008). The parties promptly completed their supplemental briefing as to the decision's impact in November 2008.

Simultaneous with that November 2008 filing, the PEC further filed with the district court its list of Defendants as to which it agreed with the Defendants Executive Committee that the Second Circuit's holding was dispositive, while clarifying the remaining grounds of disagreement as to the remainder – arguments as to the applicable pleading standards and jurisdictional test, primarily.⁸ See Exhibit K. As of this date, Judge Daniels has not even entered any of the agreed-upon dismissals, nor held argument nor issued rulings regarding the remainder. No such motions have been decided since that date, nor has oral argument been held.

⁸ Plaintiffs acknowledged that the issues presented in that appeal were dispositive as to the immunity defenses raised by two defendants – the Saudi Joint Relief Committee and Saudi Red Crescent – while reserving the right to argue on appeal that the Second Circuit had erred as to those legal issues.

The next scheduled conference – January 16, 2009 – was adjourned by the district court for six months. Plaintiffs cited the “acute need” for this conference to be held and urged the presiding district court judge to take up the still-remaining preliminary Rule 12 motions to dismiss. See Exhibit L, PEC Letter of July 8, 2009. In their separate filing, Defendants agreed that the Rule 12 motions should be resolved promptly. See Exhibit M, DEC Letter of July 8, 2009, at 9.

At that July 15, 2009 conference, the presiding district court judge promised to resolve the pending motions to dismiss through a series of decisions to be issued on a rolling basis before the end of 2009, and assured the parties that discovery would be proceeding expeditiously by January 2010:

THE COURT: I would anticipate that all of the relevant decisions that need to be issued in order to move forward with discovery will be issued, a series of opinions by that time over the September through November time frame. The initial decisions with regard to, particularly, immunity and some other issues will probably be the first series of decisions that I will issue in September.

See Exhibit N, Transcript of Proceedings Before Judge Daniels dated July 15, 2009, at 4. No such decisions have been issued, and discovery remains stalemated.

The next scheduled case management conference was set for January 13, 2010. As no decisions had been issued despite the contrary assurances from the district court, Plaintiffs requested that the conference be held so that the presiding district court judge could update the parties as to its progress in resolving the motions to dismiss and otherwise advance the litigation. Exhibit O, PEC Letter of January 6, 2010. Instead, the presiding district court judge adjourned the conference for three months, suggesting that meaningful developments would transpire in the interim. See January 11, 2010 Order, attached as Exhibit P.

During the next three months, the presiding district judge did not issue any decisions on the long pending Rule 12 motions, and it became apparent to Petitioners from the dialogue at the April 15, 2010 Conference that the presiding district court judge had not yet even arrived upon a firm approach for resolving the motions, or developed a strategy for key aspects of the management of the litigation following decisions on the motions to dismiss. Although again promising that he would resolve the motions to dismiss shortly, much as he had in March 2008 and again in July 2009, the presiding district court judge expressed uncertainty as to whether he would be issuing a “decision” or multiple “decisions.” See Exhibit Q, Transcript of April 15 proceedings. Moreover, despite the fact that the parties had already submitted proposals for the management of discovery several months earlier in response to the court’s request at the July 2009 conference (which remained pending before the court), the presiding district court judge again asked the parties for discovery proposals at the April 2010 conference, suggesting that their earlier proposals had received no attention to that point. The presiding district court judge also expressed uncertainty as to whether defendants whose motions to dismiss were granted should be given final judgments under rule 54(b). In sum, over the three years this MDL has been pending before the presiding district court judge, virtually no progress has been made, and no plan has been put in place to move this matter forward.

2. The Delays Encountered Thus Far Have Resulted in Severe Prejudice and Threaten the Integrity of the Judicial Process

The presiding district court judge’s failures to resolve the long pending preliminary Rule 12 motions and implement an active management strategy for this MDL have severely prejudiced Petitioners in their efforts to obtain justice and

accountability for the September 11th Attacks, and undermined Congressional prerogatives and the integrity of the judicial process in a case with unique importance to the public as a whole.

Not surprisingly given the length of time the Rule 12 motions have been pending, key defendants and witnesses have died during the delays experienced already. Of particular note is the death of Khalid bin Mahfouz, who was alleged by Petitioners on the basis of evidence from the U.S. government to have played a central role in al Qaeda's financial infrastructure, and to have orchestrated and assisted the terrorist activities of several other defendants. Bin Mahfouz died on August 16, 2009, *four years* after his motion to dismiss was fully briefed in all cases. A year prior to his death, Petitioners moved to compel his response to discovery while his motion to dismiss remained pending, arguing that he possessed singular information concerning the terrorism sponsorship activities of National Commercial Bank, a financial institution bin Mahfouz controlled and one of the few defendants as to which discovery was proceeding (pursuant to a decision issued by Judge Casey). In January 2010, the magistrate judge denied the motion to compel, citing bin Mahfouz's death while the motion was pending.⁹ The loss of the testimony from key witnesses and defendants like bin Mahfouz can never be redressed fully.

⁹ Bin Mahfouz possessed personal knowledge concerning plaintiffs' claims against a number of defendants, including but not limited to, National Commercial Bank, Saudi Binladin Group, the International Islamic Relief Organization, the Muslim World League, and others. That information is now presumably lost.

In an effort to prompt some action that would serve to advance the litigation and avoid further prejudice, several of the Petitioners went so far as to warn the presiding district court judge of their very real fears that the continuing delays may prevent them from seeing any justice in their lifetimes. Alice Hoagland, mother of one of the heroes from United flight 93, was among those plaintiffs who recently filed affidavits with the presiding district court judge raising such concerns, noting:

I, along with the many families of others killed on September 11, 2001, initiated this lawsuit in 2002, in order to obtain some measure of justice for my son's death, to hold accountable those whose intentional acts facilitated the attacks, and to the extent possible, prevent it from happening again.

It has been nearly 8 years since we filed this lawsuit, and I understand that the claims against nearly all of the defendants still have not proceeded beyond initial motions stage and the Court has prevented the plaintiffs from learning even the most basic information about the defendants, including information about a number of defendants that have been designated as terrorists by the U.S. government for years.

I fear that continued delays in this litigation will prevent me from ever seeing justice for my murdered son in my lifetime.

See Exhibit R, Affidavit of Alice Hoagland, February 1, 2010.

The delays and judicial inattention encountered over the last several years have also impaired Petitioners from conducting effective discovery directly as to the few defendants whose motions were decided prior to the 2007 transfer of the MDL. As discussed above, the presiding district judge has failed to act on Petitioners' long-outstanding request, dating from the time of the initial transfer of the MDL, that the district court harmonize the procedural status of claims against defendants whose motions were previously denied in fewer than all cases by Judge Casey. This inaction has caused unnecessary disputes among the parties, and

undermined the most fundamental goals of MDL consolidation. For example, defendant Jamal Barzinji, whose motion to dismiss was denied in the Federal Insurance case but not addressed in any of the other pending actions, has argued that only the Federal Insurance plaintiffs are permitted to conduct discovery as to him at this time, going so far as to object to the service of any written discovery responses upon plaintiffs in the remaining actions. In contrast, defendant NCB has argued that all plaintiffs are bound by the discovery conducted as to it in the Burnett and Ashton cases, a position that precipitated an intense procedural dispute which has been the subject of extensive briefing dating back to April 2007, but has never been addressed by the presiding district court judge.

Further compounding matters, the presiding district court judge has left in place a stay on discovery as to defendants with pending motions to dismiss established by Judge Casey in the initial Case Management Order in 2004, when the court expected that all motions to dismiss would be resolved quickly.¹⁰ See Exhibit S, Case Management Order No. 2 at ¶ 17. As a result of this stay, Petitioners have been unable to pursue discovery from defendants with direct knowledge relevant to their claims against other defendants as to whom discovery is proceeding, as was the case with regard to Plaintiffs' efforts to obtain discovery from NCB's former chairman Khalid bin Mahfouz and the architect of NCB's Islamic Banking Division, Yassin al Kadi. Al Kadi is an Executive Order 13224 terrorist designee, and is alleged by Petitioners to have orchestrated NCB's sponsorship of al Qaeda in concert with bin Mahfouz. Because those defendants'

¹⁰ That Case Management Order contemplated that all liability discovery in the MDL would be completed by April 15, 2006. See Exhibit S at ¶ 19.

motions to dismiss have never been decided, despite having been fully briefed in 2005, the stay has prevented Petitioners from pursuing discovery from them in relation to NCB. Far more troubling, even though the stay has precluded plaintiffs from obtaining discovery from these and other defendants with direct knowledge of facts relevant to plaintiffs' theories of jurisdiction and liability as to NCB, the presiding district court judge has authorized NCB to file a renewed Motion to Dismiss for lack of personal jurisdiction. For obvious reasons, an approach which closes jurisdictional discovery as to one defendant before plaintiffs have even had an opportunity to conduct any discovery as to related parties is deeply prejudicial, and inimical to the goals of MDL consolidation.

The presiding district court judge's failure to issue a ruling on any of the long-pending motions to dismiss for lack of personal jurisdiction has also prevented the magistrate judge designated to manage the discovery process from resolving critical disputes between the parties. In this regard, a decision issued by the magistrate judge on January 13, 2010, addressing a number of discovery disputes concerning NCB that were originally brought to the presiding district court judge's attention in August 2007 and referred to the magistrate judge for resolution in July 2008, is telling. See Exhibit T. One of the main disputes at issue concerned Petitioners' efforts to obtain discovery concerning NCB's direct sponsorship of al Qaeda in support of their theories of specific jurisdiction as to NCB. Sadly, more than two years after the dispute was referred to him, the magistrate judge ruled that the absence of any decision by the presiding district court judge concerning the legal standards governing specific jurisdiction theories precluded him from resolving the dispute:

Plaintiffs hope to establish that NCB was not merely a passive donor to organizations that financed al Qaeda's terrorist activities, but an active participant in the efforts of Bin Mahfouz and al Qadi to use its "infrastructure and resources to build and sustain Muwafaq, for the purpose of enabling al Qa[e]da to realize its stated ambition to attack America." (Carter Letter III at 5). Predictably, the parties disagree as to whether these allegations, if proved, would be sufficient to establish jurisdiction over NCB on a "purposefully directed" theory.

Reasonable observers could disagree as to the adequacy of the Plaintiffs' prima facie showing in light of the Second Circuit's decision in Terrorist Attacks III. *In these circumstances, Judge Daniels should have the opportunity to consider in the first instance whether the conduct alleged by the Plaintiffs is sufficient to bring NCB within the Court's jurisdiction. Because it is possible that Judge Daniels will conclude that the Plaintiffs' theories of specific jurisdiction are not viable under Terrorist Attacks III, NCB should not be subjected to extensive additional discovery before he decides the issue.*

Moreover, the *Plaintiffs clearly have reason to fear that NCB's motion will remain pending for some time after it is fully briefed because Judge Daniels has expressed an intention to deal first with defense motions challenging the Court's subject matter jurisdiction. (See Docket No. 2072) (Order dated Mar. 14, 2008). This raises the spectre that potentially valuable information responsive to the Plaintiffs' document requests might be destroyed in the ordinary course of business while the NCB motion is pending.*

Exhibit T, January 13, 2010 Order at pp. 32-33. In other words, more than two years after the discovery dispute was referred to the magistrate judge, the absence of a single decision by the presiding district judge on a pending motion to dismiss for lack of personal jurisdiction compelled the magistrate judge to refer the

issue back to the presiding district court judge, even in the face of the “spectre” that valuable evidence would be destroyed as a result of the delays.¹¹

IV. REASONS FOR ISSUING THE WRIT

The extraordinary inaction by the district court in the management of this important MDL proceeding, involving claims from a singularly horrific event in American history, warrants intervention by this Court to rescue this litigation from its current dire state. Indeed, a writ of mandamus removing this case from its current judicial assignment is the only means through which the parties’ due process rights can be vindicated and this litigation administered in accordance with the Federal Rules of Civil Procedure, the statutes governing multidistrict litigation and the procedures outlined by the Federal Judicial Center for handling complex litigation. *See, e.g., Manual on Complex Litigation 4th §§10-11, 20-22, Fed. R. Civ. P. 1.*

¹¹ Relevant documentary evidence has almost certainly been destroyed in the interim, and defendants’ assets moved. Not only have Plaintiffs been harmed, but even in this uniquely contentious litigation certain defendants have argued they suffer from the same frustration, asserting that they have been harmed by these delays as well. ¹¹ See, e.g., Exhibit U, Letter of August 1, 2007 by Martin J. Schwartz, Counsel for Banco del Gottardo, to the Court: “BDG’s motion to dismiss pursuant to Rule 12(b)(6) has been *sub judice* since December 1, 2005. The continued pendency of a baseless lawsuit accusing BDG of culpability in connection with the most horrific acts of terrorism ever perpetrated against the United States casts a long shadow over BDG’s business reputation.”

Judge Daniels has taken no action as to Banco del Gottardo.

A. The Law of Mandamus

In the context of case management, mandamus is a remedy which this and other Circuits have employed against recalcitrant judges. “There can be no doubt that, where a district court persistently and without reason refuses to adjudicate a case properly before it, the court of appeals may issue the writ ‘in order that [it] may exercise the jurisdiction of review given by law.’” Will v. Calvert Fire Ins. Co., 437 U.S. 655, 661-62 (1978), citing Insurance Co. v. Comstock, 16 Wall. 258, 270 (1873). “Traditional use of the writ in aid of appellate jurisdiction both at common law and in the federal courts has been to confine an inferior court to a lawful exercise of its prescribed jurisdiction or to compel it to exercise its authority when it is its duty to do so.” Will, 437 U.S. at 661.¹²

Such a writ was successfully obtained in the In re IBM antitrust litigation, which began in the waning days of the Lyndon Johnson presidency and extended into 1982, at which point the parties sought approval from the district court to enter an agreed dismissal of the claims. When the Judge decided to raise *sua sponte* a new jurisdictional question to delay even further consideration of the dismissal agreement, the parties sought a writ of mandamus from the Second Circuit to move the case forward. This Circuit granted the writ, stating that the Judge “clearly abused his power by taking such a substantial amount of time to resolve what we

¹² See, e.g., Potomac Elec. Power Co. v. Interstate Commerce Comm’n, 702 F.2d 1026, 1032 (D.C. Cir. 1983) (ordering ICC to issue a decision within 60 days because “if review is denied until the Commission’s decision, there will be no effective remedy for the parties harmed by the Commission’s delay, even if that delay directly contravenes the intent of Congress in enacting” the statute in question.)

have shown to be a clear-cut issue.” In re IBM Corp., 687 F.2d 591, 603 (2d Cir. 1982). The writ directed the lower court “(1) to cease his consideration of whether the parties must comply with the Tunney Act before their stipulation of dismissal may become effective; and (2) to dispose promptly of any matters presented by the parties necessary to effectuate the conclusion of this litigation, especially with respect to the needless storage of documents.” Id. at 604.

That case involved mere months of delay, and hundreds of thousands of dollars in attorney time wasted by delay. Here, given the size of the multidistrict litigation and the three years of unconscionable delay under the presiding district court judge, those costs are easily in the millions of dollars – let alone the potential billions of dollars in recovery to which Petitioners believe they are entitled which has been withheld from them.

In In re Sharon Steel Corp., 918 F.2d 434 (3d Cir. 1990), similarly, the Third Circuit issued mandamus against a district court judge who had willfully refused to rule upon a motion for reconsideration. “By refusing to rule on [defendant] ARCO’s motion to reconsider, the district court ... has failed to exercise its judicial power, which in turn has inhibited this Court’s exercise of appellate jurisdiction. The issuance of a writ of mandamus is therefore appropriate.... The district court had a duty to dispose of [ARCO’s] motion, a duty inherent in a judicial system which guarantees a conditional right to an appeal. The district court failed to perform this duty, choosing instead to block ARCO’s avenue of appeal, thereby frustrating our jurisdiction.” Id. at 436-37 (emphasis added). *See also* Maloney v. Plunkett, 854 F.2d 152 (7th Cir. 1988).

B. Case Assignment in the Southern District of New York

Two local rules from the Southern District's Rules for the Division of Business Among District Judges govern the reassignment of cases within the District. First is the rule regarding the judicial obligation to release cases "in the interest of justice or sound judicial administration."

Rule 22. Reassignment of Cases

The judge to whom the case is assigned may reassign it in the interest of justice or sound judicial administration. If the Judge to whom the case is assigned determines that it should be reassigned, it is sent to the clerk for reassignment. If upon reassignment there is a dispute as to the proper place of holding court, it will be referred to the Assignment Committee for final determination. If the case is reassigned, it will be reassigned as if it were a new filing, but will retain its original case number.

If the Judge is unwilling to release a case he has failed to administer soundly, the Assignment Committee is empowered to remove it from him:

Rule 19. Transfer of Cases Because of Death, Resignation, Prolonged Illness, Disability, Unavoidable Absence, or Excessive Backlog of a Judge

The assignment committee shall, in the case of death or resignation, and may, in the event of prolonged illness, disability, unavoidable absence of an assigned judge, or the build up of an excessive backlog, transfer any case or cases pending on the docket of such judge by distributing them as equally as is feasible by lot, to all remaining active judges and to such senior judges who are willing and able to undertake them.

It is the "buildup of an excessive backlog" prong upon which Petitioners herein rely. The Assignment Committee defined this metric in Securities And Exchange Commission v. Drexel, Burnham, Lambert, Inc., 1989 U.S. Dist. Lexis 4651 (S.D.N.Y. 1989), in which parties jointly petitioned the Committee to reassign an action. While the petition therein was denied, the Committee made

clear that this evaluation included objective scrutiny of the judge's entire docket as well as consultation with chambers. "The docket of Judge Pollack is entirely current. He advises that he is ready, willing and able to entertain a joint application to have these judgments entered, and if approved, administered." Id. at *2.

Precedent supports this Court's power to transfer cases based upon delay. "An order of the Judicial Council reassigning cases (or providing an impartial mechanism for doing so) to address judicial delay falls within the broad mandate of section 332(d)." United States v. Colon-Munoz, 318 F.3d. 348, 354-55 (1st Cir. 2003), citing Chandler v. Jud. Council of the Tenth Cir., 398 U.S. 74, 98-102 (1970) (Harlan, J., concurring). The Fifth Circuit concurred in In re McBryde, 117 F.3d 208 (5th Cir. 1997), noting that "cases affirming a judicial council's exercise of its power under § 332 typically involve judicial council rules promulgated to alleviate judicial delay or prevent 'chaos.'" Id. at 227.

C. Immediate Reassignment of this MDL to a Judge With Unique Experience and Vision is Necessary to Preserve the Integrity of the Judicial Process and Protect the Rights of the Parties

As the discussion set forth above makes clear, this MDL has fallen into a procedural black hole, and reassignment of the MDL pursuant to the legal standards described above represents the only viable path. Nearly 100 preliminary Rule 12 motions to dismiss have now been pending for at least four years. The presiding district court judge's failure to resolve those motions, and to actively manage this MDL, have paralyzed the limited discovery proceedings ongoing as to defendants whose motions were decided by Judges Robertson and Casey. In the meantime, critical defendants and witnesses have died, and evidence directly

relevant to these claims concerning responsibility for the September 11th Attacks has been irretrievably lost.

Significantly, the resolution of the long-pending motions to dismiss will only add to the complexity of this MDL, and present greater challenges to the judge managing the litigation. Indeed, given Petitioners' well settled right to amend their pleadings,¹³ decisions on the pending motions are simply a first step in the proceedings as to the majority of the defendants. Repleading is likely in many cases, which may very well prompt another round of motions to dismiss. Further, certain defendants are likely to seek final judgments under 54(b), requiring the presiding judge to develop an efficient and coherent strategy for inevitable appeals to this Court. At the same time, the scope of ongoing discovery will expand exponentially. Given the history of proceedings before the presiding district court judge over the last three years, Petitioners believe that a judge with greater experience in the management of MDL proceedings should be designated to meet these unique challenges.

Difficulties encountered by other plaintiffs in more routine litigation before the presiding district court judge further counsel against entrusting this important and difficult MDL to him going forward. In 2004, a New York Times article detailed significant delays encountered by plaintiffs in other cases pending before

¹³ Under Fed. R. Civ. P. 15(a) as interpreted by this Circuit, leave to replead shall be freely given when justice so requires, this is especially true in cases applying the standards of Twombly and Iqbal to complaints filed prior to those decisions being rendered. See Perez v. Time Moving & Storage, Inc., 2009 U.S. Dist. LEXIS 17065, *2 (S.D.N.Y. Jan. 15, 2009); Mastafa v. Australian Wheat Bd. Ltd., 2008 U.S. Dist. LEXIS 73305, *35 (S.D.N.Y. Sept. 25, 2008).

the presiding district court judge. See Benjamin Weiser, “Judge’s Decisions Are Conspicuously Late,” The New York Times (Dec. 6, 2004), attached as Exhibit V, which notes in part:

[T]here is one unchallenged king of delayed decisions: Judge George B. Daniels of Federal District Court in Manhattan, who, the latest statistics show, had 289 motions in civil cases pending for more than six months, by far the highest total of any federal judge in the nation.... [O]f about 1,500 active and senior Federal District Court judges and magistrates in the United States, none come close to Judge Daniels’s record of motions that have been awaiting action for more than six months, according to the fall 2003 list, the most recent available.

The judge’s total is more than 100 ahead of the second-ranked judge, who is from South Carolina and has 171. On the Manhattan federal bench, Judge Daniels has more than three times the number of these motions than the next judge, who has 91.

... . If there has been a common course in the cases pending before Judge Daniels, it is this: the plaintiffs and their lawyers wait one, two, or three years for a ruling, growing increasingly restless and perplexed. When they are completely exasperated, they write to the appeals court. Judge Daniels then usually acts. In some cases, the appeals court would respond by issuing a brief order that said it would not intervene immediately, but that the plaintiff could come back if the judge did not act within a specific period, like 30 days.

But court records and interviews make clear that by then, the damage was often done.

The reporter noted that in at least eight recent cases, aggrieved litigants had sought mandamus action from this Circuit as to Judge Daniels’ case management practices, asking this Court to require him to resolve pending motions. Petitioners have located four such cases: *In re Michael J. Hall*, 03-3115 (mandamus denied with leave to refile within 90 days if motion not ruled upon); *In re Regina Adams*,

03-3096 (mandamus denied with leave to refile within 30 days if motion not ruled upon); *In re Charisse Johnson*, 03-3099 (same); and *In re Jose Soto*, 01-3070 (mandamus denied “because we have no reason to doubt that the district judge will rule on petitioner’s 28 U.S.C. 2254 motion with reasonable promptness.”) ¹⁴

V. CONCLUSION

Section 10.13 of the *Manual for Complex Litigation, 4th* instructs that management of complex litigation should be active, substantive, timely, and fair. Federal Judicial Center, *Manual on Complex Litigation, 4th* at §10.13. In no way has the presiding district court judge abided by these simple principles. The parties to this litigation have been subject to delay for far too long. In this litigation in particular – which seeks to provide justice for victims and accountability for the sponsors of the September 11th Attacks – it was particularly incumbent upon the federal courts to resolve these matters expeditiously.

As another Court in the Southern District of New York properly recognized in a closely related context almost two years ago, concerns regarding the age and health of the September 11 plaintiffs require the courts to work expeditiously to resolve disputes:

¹⁴ The *Soto* case involved an HIV-positive inmate who had filed a habeas petition *pro se* in August 2000. Assigned to Judge Daniels, Soto wrote to this Circuit in September 2001 seeking judicial assistance in advancing his case. Following this Court’s order two months later, this Court’s expectation of “reasonable promptness” instead led to nineteen months of delay before Judge Daniels would even assign the matter to a Magistrate Judge, who issued a report within two days recommending that the petition be dismissed as moot, as Soto had passed away the previous month. It nevertheless required Judge Daniels ten months to issue an order adopting the report and dismissing the case.

There already have been two interlocutory appeals in the cases against the City, slowing progress by several years. According to newspaper reports, various of the plaintiffs have died or experienced grave consequences to their health while these cases are pending, and claim substantial prejudice from delays. More than six years have passed since September 11, 2001, and much judicial effort has been expended in moving these cases toward resolution or trial. Another delay would cause severe prejudice to many of the litigants.

WTC Captive Ins. Co. v. Liberty Mut. Fire Ins. Co., 537 F. Supp. 2d 619, 629 (S.D.N.Y. 2008) (Hellerstein, J.).

Sadly, Petitioners have already suffered such prejudice. Rule 1 of the Federal Rules of Civil Procedure requires the Court to “construe[] and administer [the rules] to secure the just, speedy, and inexpensive determination of every action and proceeding.” Because the current chief presiding judge’s handling of this litigation has caused it to be unjust, stagnant and massively expensive, he must be removed from this case, either by forcing him to surrender this litigation or commanding the Assignment Committee of the Southern District of New York to take it from him, so that this MDL matter can be reassigned to a judge with the unique skill, experience, and proven track record in the management of complex MDL proceedings to advance this litigation efficiently to resolution. Petitioners truly have no other adequate means to obtain the relief we seek.

Dated: June 3, 2010

Respectfully Submitted,

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CERTIFICATE OF SERVICE

I, Adam C. Bonin, counsel for Petitioners, certify and affirm that on this 3rd day of June, 2010, I served a copy of this Emergency Petition for a Writ of Mandamus and all accompanying exhibits upon all counsel to In re Terrorist Attacks of September 11, 2001, 03-MDL-1570, via electronic mail.

Additional copies were served via hand delivery on the Hon. George B. Daniels of the Southern District of New York, the Hon. Frank Maas, and the Hon. Loretta A. Preska, Chief Judge of the Southern District of New York and chair of the Assignment Committee for the Southern District of New York, at the Daniel Patrick Moynihan United States Courthouse, 500 Pearl Street, New York, NY, 10007.

_____/s/_____

Adam C. Bonin