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Family and United Airlines Settle Last 9/11 Wrongful-Death Lawsuit

By **BENJAMIN WEISER** SEPT. 19, 2011

The last remaining wrongful-death lawsuit stemming from the Sept. 11, 2001, attacks has been resolved, according to a lawyer for the victim's family and court papers filed on Monday.

The settlement brings to an end a wrenching legal battle in Federal District Court in Manhattan, where lawsuits had been filed on behalf of 85 people who were killed in the attacks and an additional 11 who were injured, court records show.

All of those lawsuits had since been resolved, except one: a suit involving the death of Mark Bavis, a 31-year-old hockey scout who was aboard United Airlines Flight 175, the second plane to hit the World Trade Center.

Family members had long resisted a settlement in the case, which was filed in 2002, saying they wanted to hold the defendants publicly accountable at trial for what the family and its lawyers contended was gross negligence that allowed five terrorists to board Flight 175.

But that public accountability was largely achieved on Friday, said a lawyer for the family, Donald A. Migliori, when the lawyers were able to file a detailed compendium of their evidence in response to a defense motion to dismiss the lawsuit.

The filing, which included 127 exhibits and many details not previously made public, showed "the essence of the story that we would have told over a trial that we would have expected to take six weeks," Mr. Migliori said.

The defendants were United and Huntleigh USA, a security company that ran the checkpoint at Logan International Airport in Boston where Mr. Bavis boarded the flight. A trial was scheduled in November before Judge Alvin K. Hellerstein, who has overseen the wrongful-death suits as well as other Sept. 11 actions, including thousands of health-related claims by ground zero workers.

As with previous settlements in the Sept. 11 litigation, the damages will remain confidential, Mr. Migliori said.

A United spokeswoman, Megan McCarthy, said, "The tragic events of 9/11 impacted all of us, and we are pleased to resolve this case."

Jonathan J. Ross, a lawyer for Huntleigh, said that it was also pleased with the resolution. "We have always taken the approach of trying to resolve the 9/11 cases for the families who lost their loved ones," he said.

Michael Bavis, 41, the victim's twin brother, said the recent public filing "tells an important story as to why this happened."

"We hope it's information that will make a difference," Mr. Bavis said.

But he added that the "only reason" the case had come to an end was "because of recent rulings and manipulation of the law by the judge."

He criticized, in particular, a Sept. 7 ruling that he said would have severely affected the family's ability to tell its story at trial.

The lawyer, Mr. Migliori, said the ruling had shifted the burden of proof. "Instead of the Bavis family telling its story," he said, "this ruling turned the trial into the defendants telling why they did nothing wrong that day."

United and Huntleigh, in seeking dismissal of the case, had argued that they could not be held liable "for not stopping an attack that the entire federal government was unable to predict, plan against or prevent."

The security system that United had in place, they contended, had been put into effect at the government's direction and was "neither intended to stop, nor capable of stopping, what happened that day."

The Bavis family's lawyers sharply disputed that contention in their filing on

Friday. They charged that United had a history of security failures and of not heeding warnings from one of its executives that it should improve staffing and training.

They also described the Logan checkpoint as being staffed on Sept. 11 by screeners who in some cases could not speak English and did not know what Al Qaeda and Mace were.

“One of the screeners was still unable to identify Mace when handed the Mace canister,” the document said.

Mace was used by the terrorists, along with knives and the threat of a bomb, to take control of the flight, passengers and crew members said in calls to the ground before the plane crashed, according to the Sept. 11 commission report.

The wrongful-death and injury suits represented only a small fraction of the total number of victims. Thousands of other victims and families received relatively quick and uncontested settlements, totaling more than \$7 billion, through a special compensation fund created by Congress.

Although the individual legal settlements are secret, a court document filed in 2009, when all but three suits had been resolved, said that about \$500 million had been paid out to resolve the claims.

A version of this article appears in print on September 20, 2011, on page A28 of the New York edition with the headline: Family and United Airlines Settle Last 9/11 Wrongful-Death Lawsuit.