UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

In the Matter of the FORT TOTTEN METRORAIL CASES Arising Out of the Events of June 22, 2009 **LEAD CASE: *Jenkins v. Washington Metropolitan Area Transit Authority, et al.*** **THIS DOCUMENT RELATES TO: ALL CASES**	**Case No.: 1:10-mc-314 (RBW) (JMF)**

MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF DEFENDANTS' JOINT MOTION *IN LIMINE* TO EXCLUDE EVIDENCE THAT IS NOT RELEVANT TO THE REMAINING PLAINTIFFS' DAMAGES CLAIMS

Defendants Alstom Signaling Inc. ("Alstom"), Ansaldo STS USA, Inc. ("Ansaldo"), ARINC Incorporated ("ARINC"), and Washington Metropolitan Area Transit Authority ("WMATA") (collectively, "Defendants") have informed the Court that they will stipulate to liability at the trials in the remaining Plaintiffs' cases in order to avoid the significant risks and costs associated with litigating those highly-contested and technical issues.[1] As a result, the only issue for trial is determining the amount of compensatory damages for the remaining Plaintiffs.[2]

Plaintiffs have indicated, however, that they may introduce evidence going far beyond the issue of damages, including (1) evidence relating to Defendants' alleged misconduct and how that conduct allegedly caused the June 22, 2009 accident; (2) photographs of the accident scene and autopsy photographs of accident victims; and (3) cumulative evidence from an unlimited

[1] The Plaintiffs in the remaining cases are Tawanda Brown, Individually and as Personal Representative of the Estate of Lavonda King ("Brown"), Evelin Fernandez, Individually and as Personal Representative of the Estate of Ana Fernandez ("Fernandez"), Daryl Smith ("Smith"), and Amari Washington ("Washington").

[2] Only compensatory damages are at issue since Plaintiffs have never pled or otherwise indicated that they are seeking punitive damages against any Defendant in this matter. Nor is there any basis on which to award Plaintiffs punitive damages here.

number of first responders, all six of the Decedent's children, as well as the Decedent's brother and sister, in the Fernandez case, and Decedent's mother, aunt, two sisters, and stepfather in the King case. This evidence should be excluded under Federal Rules of Evidence 402 and 403.

First, any evidence relating to Defendants' liability is both irrelevant to the amount of Plaintiffs' damages and unfairly prejudicial. Evidence of a Defendant's alleged misconduct and the role each Defendant played in the accident do not relate in any way to the only remaining issue in this case—i.e., the amount of damages to be awarded to the remaining four Plaintiffs. The only purpose this evidence would serve is to improperly inflame the jury to award higher damages. Introduction of that evidence, moreover, would likely confuse the jury, which will be instructed that Defendants are not contesting liability and that the only issue the jury is to decide is the amount of damages. Finally, permitting evidence concerning liability would open up a Pandora's box. As this Court is aware, Defendants spent nearly a year of discovery vigorously battling about the extent of their own respective liabilities. Any discussion of liability would risk reopening these disputes and precipitating a lengthy—though now entirely academic—debate among Defendants on liability issues.

Second, photographs of the accident scene and autopsy photographs of accident victims also are not relevant to damages and are highly prejudicial. The accident scene photographs would not inform the jury about the extent of Plaintiffs' pain or suffering or the amount of their economic damages. Similarly, the autopsy photographs are not relevant because there is no dispute that Ms. Fernandez and Ms. King died at the scene from the injuries they sustained in the accident. And the two personal injury Plaintiffs, Amari Washington and Daryl Smith, both admitted that they did not witness any of the victims who died in the accident. Moreover,

graphic and disturbing photographs would only serve further to inflame the jury for the purpose of provoking greater damages awards.

Third, cumulative testimony from first responders to the accident scene and from the children and relatives of Ana Fernandez and Lavonda King would do nothing but improperly influence the jury and play on its sympathies. A parade of testimony from first responders would not add any facts to the trials that one or two could provide. Similarly, allowing all six Fernandez children to testify, including a four-year-old child, would not add any facts that the eldest two children could not testify to regarding the nature of parental advice and guidance Ms. Fernandez provided—the only damages issue on which they could competently testify.

BACKGROUND

On February 1, 2012, Defendants informed the Court they would not contest their liability to the remaining Plaintiffs and would proceed to damages-only trials. Pursuant to the Court's order requesting "[a] neutral statement of the case appropriate to be read to the jury during jury selection" (Dkt. 601 at 2), Defendants have prepared a statement that will provide the jury with sufficient background information about the June 22, 2009 accident and the fact that Defendants have stipulated not to contest liability in these cases:

> This case arises out of an accident involving two Metro trains. On June 22, 2009, the Metrorail System failed to detect a stopped train on the tracks between the Takoma and Fort Totten Metrorail stations, resulting in a rear-end collision between southbound Train 112 and stopped Train 214.
>
> There are four Defendants in this case. Defendant Washington Metropolitan Area Transit Authority, sometimes referred to as WMATA or Metro, is the operator of the Metrorail System. Defendants Alstom Signaling Inc., and Ansaldo STS USA, Inc., supplied components that were part of Metrorail's train control and detection system. Defendant ARINC, Inc., supplies computer

> software that monitors the movement of trains on the Metrorail system.[3]
>
> * * * *
>
> The Defendants are not contesting liability in this case. Accordingly, you will not be asked to determine whether any of the Defendants was at fault. The only matter before you is the amount of the Plaintiff's damages. The fact that the Defendants have decided not to contest liability must not influence the amount of damages, if any, that you award to the Plaintiff. Rather, your decision concerning damages must be based solely on the evidence presented to you in this trial pertaining to the Plaintiff's injuries and losses resulting from the accident.

(Ex. 1.) Defendants propose that the Court inform the jury about the background of the accident using this statement.

Nevertheless, Plaintiffs have indicated that they may introduce evidence regarding Defendants' alleged misconduct as a cause of the accident, as well as graphic photographs of the accident and its victims. Such evidence is inadmissible.

ARGUMENT

I. EVIDENCE OF DEFENDANTS' LIABILITY SHOULD NOT BE ADMITTED

A. Evidence Concerning Defendants' Liability for Plaintiffs' Injuries Is Not Relevant in Damages-Only Trials

In damages-only trials, evidence relating to a defendant's alleged misconduct is irrelevant and inadmissible. As the Second Circuit explained in *Pescatore v. Pan Am. World Airways, Inc.*:

> ***The only issue before the jury in this case was the issue of compensatory damages.*** Only evidence relevant to that issue should have been admitted. Because compensatory damages are awarded to compensate the plaintiff, and not to punish the defendant, ***evidence showing the extent of the plaintiff's loss is relevant, while evidence characterizing the misconduct of the defendant is not***.

[3] At this time, Defendants disagree among themselves as to the precise language for the description of each party, but are working to provide a single proposed description, which they will submit to the Court shortly.

97 F.3d 1, 16 (2d Cir. 1996) (citation omitted) (emphases added); *see also Large v. Mobile Tool Int'l Inc.*, 2008 WL 4238963, at *8 (N.D. Ind. Sept. 10, 2008) (granting motion *in limine* "to exclude any liability evidence that [plaintiff] would seek to utilize during the damages phase of the trial"); *In re Sept. 11 Litig.*, 2007 WL 2668608, at *2 (S.D.N.Y. Sept. 12, 2007) ("In the context of the imminent damages-only trial, evidence is relevant if it has a tendency to make the facts of the decedent's alleged pain and suffering more or less probable than without such evidence."); *Bullard v. Barnes*, 445 N.E. 2d 485 (Ill. App. 1983), *aff'd*, 468 N.E. 2d 1228 (Ill. 1984) (finding reversible error because "[t]he means of [the plaintiff's] demise and the operative facts of the accident were immaterial" when "[t]he only issues to be decided by the jury were the pecuniary loss by reason of his death to the next of kin and his conscious pain and suffering from the time of the accident until his death").

Any evidence relating to Defendants' fault or misconduct is plainly irrelevant because Defendants have stipulated that they will not contest liability at trial. Because the only issue at trial will concern the extent of Plaintiffs' damages, all liability evidence should be excluded, including—but not limited to—the following:

- **Any master liability deposition exhibit:** The parties separated their depositions between liability depositions and damages depositions, and all of the liability exhibits were given "master liability exhibit" numbers. Because all of the master liability exhibits relate to liability issues, Plaintiffs should not be able to introduce any of these documents at trial.

- **Any document produced from the files of any Defendant:** All of the documents produced by the Defendants relate to the liability portion of this case. None of these documents is relevant to any Plaintiff's injuries from the accident.

- **Any information from the NTSB, including any of the NTSB reports or animations of the accident:** The NTSB was tasked with determining the alleged cause or causes of the accident, and not with any of Plaintiffs' damages from the accident. The documents and information produced by the NTSB concern only liability issues.

- **Evidence of any prior incidents or "near misses" on any transit system, including the WMATA Metrorail:** Evidence of prior incidents would only be relevant to fault of the Defendants, which is no longer an issue.

- **Evidence of any alleged design defects, manufacturing defects or that any Defendant was on notice of any defect or dangerous condition before the accident:** Again, such evidence would only be related to whether Defendants were at fault, which is not relevant to Plaintiffs' damages.

In nearly identical cases, courts have excluded this type of liability evidence in damages-only trials. For example, in *Bolden v. Nat'l R.R. Passenger Corp.*, 2005 WL 1431486 (E.D. La. June 14, 2005), after the defendants admitted liability for a train derailment, the only remaining issue was the nature and extent of the plaintiffs' damages. Before trial, the defendants moved *in limine* to exclude, *inter alia*, any evidence from the NTSB, "[p]hotographs of [the] accident scene or train," "[d]iagrams, sketches or videos of the accident or accident scene," "[r]epair documents or invoices regarding the tracks and/or train," and "[i]nformation regarding prior accidents and injuries." *Id*. at *1. In granting the motion, the court agreed that "the evidence sought to be excluded is relevant only to Defendants' fault and/or negligence, which are not issues for trial." *Id.* The court explained:

> In light of the stipulation as to the Defendants' liability, the Court finds that the testimony of the witnesses and the exhibits listed above are not probative of the issues to be decided by the jury and thus should be excluded under F.R.E. 401. . . . This Court . . . is of the opinion that ***evidence as to how the train derailment occurred . . . is not indicative of the injuries allegedly sustained by each of the Plaintiffs when they are considered individually.***

Id. at *2 (emphasis added).

Similarly, in *McNitt v. BIC Corp.*, the defendant waived its right to challenge the elements of the plaintiff's negligence and strict liability claims except for causation and damages. 846 F. Supp. 1049, 1050 (D.N.H. 1994), *aff'd*, 1995 WL 7439 (1st Cir. Jan. 10, 1995). At trial, the court "refused to admit evidence unless it was otherwise admissible and

relevant to the issues of causation, damages, or credibility." *Id.* In denying the plaintiff's motion for a new trial, the court explained why it had excluded evidence of the defendant's liability:

> Once BIC made the[] concessions [of liability], evidence relating only to these waived elements—***the lighter's defective design, BIC's notice of the defect, and the adequacy of the warranties BIC supplied with its product—was no longer relevant*** because BIC agreed that McNitt would be entitled to a verdict in his favor if he proved that his injuries were caused by afterburn in his BIC lighter. Thus, evidence that was only relevant to these waived issues became excludable pursuant to Fed. R. Evid. 402.

Id. at 1054 (emphasis added). The court also explained that "testimony concerning alternative designs" and any evidence "related to such issues as whether the lighter could have been designed differently to prevent [the accident] from occurring" had been properly excluded as irrelevant to the plaintiff's compensatory damages. *Id.* at 1054-55.

B. The Danger of Unfair Prejudice, Confusion, and Waste of Time Outweighs Any Probative Value of Liability Evidence

Even if liability evidence were somehow relevant to Plaintiffs' damages claims (it is not), that evidence should nevertheless be excluded because "its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury, or by considerations of undue delay, waste of time, or needless presentation of cumulative evidence." Fed. R. Evid. 403. Here, admission of evidence concerning Defendants' liability is highly prejudicial, would confuse the jury, and threatens to turn simple damages-only trials into a lengthy academic debate over Defendants' respective fault.

First, the liability evidence is highly prejudicial. "The gravamen of unfair prejudice is 'an undue tendency to suggest decision on an improper basis, commonly, though not necessarily, an emotional one.'" *United States v. Orenuga*, 430 F.3d 1158, 1165 (D.C. Cir. 2005) (quoting Fed. R. Evid. 403 advisory committee's note). Here, any attempt by Plaintiffs to introduce evidence of fault or wrongdoing would be unfairly prejudicial to Defendants because it would

serve only to provoke the jury's anger in an effort to obtain a larger damages award based on purely emotional or punitive desires.

For these reasons, courts do not hesitate to exclude evidence of misconduct in damages-only trials, even if the evidence is arguably relevant to damages. *See Piamba Cortes v. Am. Airlines, Inc.*, 177 F.3d 1272, 1306 (11th Cir. 1999) (affirming exclusion of "any evidence relating to the facts of the crash" because of "its potential for undue prejudice"); *Counts v. Burlington N. R.R. Co.*, 952 F.2d 1136, 1144 (9th Cir. 1991) ("[T]he district court abused its discretion in permitting all of the exhibits from the first trial [on liability] to go to the jury in the second trial [on damages]" and "[t]he court's cautionary instruction . . . was inadequate to cure the prejudice."); *Johnson v. Downing*, 2011 WL 846428, at *1 (D. Md. Feb. 8, 2011) (excluding evidence because "the potential of unfair prejudice to the plaintiff would outweigh [its] minimal probative value" where the "defendant has stipulated to liability" and "causation of plaintiff's injuries, and compensation for damages (if any), will be the prime issues for the jury to resolve"); *McElwain v. Harris*, 2006 WL 931920, at *5 & n.5 (D.N.H. April 6, 2006) (excluding evidence where "Plaintiff [was] attempting to infuse into the jury's assessment of damages evidence of [defendant's] prior bad acts" that were "unrelated to the calculation of compensatory damages"); *White v. Marine Drilling Co.*, 1992 WL 92050, at *1 (E.D. La. April 15, 1992) (excluding evidence "as to how [the plaintiff] sustained his injuries" where defendant stipulated to liability because "the only apparent value of the[] exhibits would be to evoke an emotional response from the jury" and would "serve no other purpose but to waste time and, possibly, prejudice the jury").

Second, evidence of Defendants' alleged negligence would also confuse the jury. In these damages-only cases, the jury will not be asked to determine whether any of the Defendants

was at fault and will be instructed that the only matter before it is the amount of the Plaintiff's damages. Admitting liability evidence would leave the jury guessing why Defendants' conduct matters. And while in other cases a limiting instruction could sufficiently guide the jury, a limiting instruction is not appropriate where, as here, the evidence has no legitimate purpose. In *McNitt*, for example, the court excluded evidence of "defective design" and "notice of the defect" because "its minimal probative value would have been substantially outweighed by the risk of confusion and the waste of time that would have resulted if I had admitted the evidence with limiting instructions." 846 F. Supp. at 1054 & n.5.

Third, admitting liability evidence would threaten to extend the trial by weeks and waste the Court's and the jury's time. Were Plaintiffs allowed to present evidence and argument on Defendants' liability, Defendants would be forced to respond and provide their own evidence and arguments rebutting any exaggerations or misrepresentations of their conduct or to provide context for that conduct.

More importantly, because Defendants themselves do not agree about their relative fault, any liability evidence or argument by any one Defendant inevitably would lead to the introduction of rebuttal liability evidence by the other Defendants. Such a debate is purely academic because Defendants are not contesting liability. But that debate could waste a tremendous amount of time and judicial resources, especially when one considers Plaintiffs' previous estimate that a liability trial would require six weeks. Accordingly, to prevent these simple damages-only trials from devolving into a full-scale trial among Defendants over their respective fault, no evidence of liability should be admitted.

II. PHOTOGRAPHS OF THE ACCIDENT SCENE AND THE BODIES OF THE VICTIMS SHOULD BE EXCLUDED AS IRRELEVANT AND PREJUDICIAL

Plaintiffs also may attempt to introduce photographs of the accident scene and post-mortem photographs of the Decedents and other victims. This evidence is not relevant to any damages issues and is prejudicial. For example, photographs of the accident scene in no way relate to the extent of any pain or suffering Plaintiffs experienced or the amount of their economic damages. *See Bolden*, 2005 WL 1431486, at *1 (excluding "[p]hotographs of [the] accident scene or train" in damages-only trial because they "do[] not tend to make the existence of the Plaintiffs' injuries any more or less probable than without the evidence").[4]

Similarly, the autopsy photographs of Ms. Fernandez, Ms. King, or other decedents do not relate to any damages issues in the four remaining cases. The parties do not dispute that Ms. Fernandez and Ms. King died because of the injuries they received in the accident, or that they died at the scene. Pictures of their bodies would do nothing more than show evidence of their death. *See Bridges v. Enter. Prods. Co.*, 2007 WL 571074, at *1 (S.D. Miss. Feb. 20, 2007) (excluding autopsy photographs where parties did not dispute "that [the decedent] died because of the injuries she received in [the] collision," and that she "was pronounced dead at the scene of the accident"). Likewise, the two personal injury Plaintiffs, Amari Washington and Daryl Smith, both testified that they never witnessed any of the victims who died in the accident. (Ex. 2, A. Washington Dep. Tr. at 99:22-100:2, 100:16-18, Ex. 3, D. Smith Dep. Tr. at 168:9-169:5, 169:13-21.) Thus, autopsy photographs or other photographs of the deceased cannot possibly be relevant to Washington's and Smith's personal injury claims.

Moreover, the danger of unfair prejudice outweighs any probative value that autopsy photographs and photographs of the deceased could have. These serve no purpose except to

[4] For the same reasons that pictures of the accident scene are not relevant to the nature or extent of the Plaintiffs' claims for damages, neither is any first responders' testimony regarding the accident scene.

provoke an emotional response and inflame the jury. *See Bridges*, 2007 WL 571074, at *2 ("[A]ny probative value of the autopsy photographs is substantially outweighed by the danger of unfair prejudice and invoking bias on the part of the jury."). To the extent Ms. Fernandez's and Ms. King's injuries need to be described, that can be done through the expert witnesses and the autopsy reports without subjecting the jury to gruesome photographs. As one court explained:

> Since the medical examiner's testimony adequately described the injuries incurred by the victims during the car crash and the cause of death, . . . the photographs of the two victims were cumulative. Moreover, the photographs . . . were only marginally relevant, were somewhat prejudicial, and should not have been admitted.

Congelosi v. Miller, 611 F. Supp. 2d 274, 294 (W.D.N.Y. 2009); *see also Campbell v. Keystone Aerial Surveys*, 138 F.3d 996, 1004 (5th Cir. 1998) (upholding exclusion of photographs of decedent at accident scene that "created some risk that the jury's decision would be based on a visceral response to the images presented"); *Wheeler v. Carlton*, 2007 WL 446353, at *3 (E.D. Ark. Feb. 6, 2007) (excluding evidence of post-accident photos depicting what decedent endured while still alive because of their "undue tendency to suggest decision on an emotional basis" and because the information they contained "can easily be obtained through testimony without the need of introducing cumulative evidence in the form of photographs").

III. THIS COURT SHOULD BAR CUMULATIVE TESTIMONY FROM FIRST RESPONDERS AND THE RELATIVES OF DECEDENTS

"Under Rule 403, the district court has discretion to exclude evidence that is unfairly prejudicial where its effect is merely cumulative." *United States v. Long*, 328 F.3d 655, 664 (D.C. Cir. 2003). Courts often limit the number of witnesses who may testify to the same or similar issues, even when that issue is critical to the case. *See, e.g.*, *Manbeck v. Ostrowski*, 384 F.2d 970, 972-973 (D.C. Cir. 1967) (excluding cumulative testimony because party is not

"entitled as a matter of right to put on his entire testimonial display where, as here, it relates to a controlling factual issue").

Here, Plaintiffs have identified a nearly unlimited number of first responders they intend to call at trial to testify about the accident scene. For example, in their initial damages disclosure, counsel for Plaintiff Estate of Ana Fernandez listed unnamed "On-scene Emergency Responders" as potential witnesses, and then listed seven other types of emergency personnel who may testify. Fernandez Initial Rule 26 Damages Disclosures at 2-3 (Ex. 4).[5] Then in their December 2011 submission to the Court, counsel for Decedent Fernandez vaguely identified "first responders" as witnesses. (*See* Dkt. 546 at 4.) Such unlimited first responder testimony would be prohibitively cumulative, and the repetitive testimony on the inflammatory topic of the accident scene would provide no new or relevant information to the jury, and would only inflame their passions and play on their sympathies. *See Keys v. Wash. Metro. Area Transit Auth.*, 272 F.R.D. 243, 247 (D.D.C. 2011) (dismissing all claims because the "repetitive and cumulative nature" of inflammatory and improper testimony was "highly and unfairly prejudicial to defendant"). Plaintiffs should be limited to a small, finite number of first responder witnesses.

Similarly, the Court should also restrict the number of Decedents' relatives who may testify. Plaintiff's counsel recently suggested that they intended to call all six of Ana Fernandez's children to testify. Plaintiff's counsel also previously indicated that Decedent's brother and sister, Judith and Nelson Fernandez might testify. The repetitious and cumulative testimony of all of these witnesses would serve only to play on the jury's sympathies and would provide no new relevant information. *See United States v. Shelton*, 736 F.2d 1397, 1409-10 (10th Cir. 1984) (significantly reducing the number of witnesses testifying because additional

[5] *See also* Brown Amended Rule 26(a)(1) Disclosures at 2 (Ex. 5.); Smith Initial Damages Disclosure Pursuant to Rule 26(a)(1) at 1-2 (Ex. 6.); Washington Initial Damages Disclosure Pursuant to Rule 26(a)(1) at 1-2 (Ex. 7.).

testimony "would have been repetitious and cumulative"). This is especially true for Ms. Fernandez's youngest daughter, J.S.F, who is only four years old and was only two years old at the time of the accident. That she lost her mother at such a young age is certainly a tragedy. But she can have no understanding of the services and guidance her mother may have provided, nor could she have at the time of the accident. *See Trevino v. Gates*, 99 F.3d 911, 922-23 (9th Cir. 1996) (upholding district court's refusal to allow five-year-old plaintiff to testify in her case seeking damages for her father's death because "there was little probative value to [her] testimony because she could not meaningfully testify as to the distress she had suffered in the past or would suffer in the future," and "the clear prejudicial effect of having a highly sympathetic child testify who knew nothing about" the damages at issue). Only the eldest two of the Decedent's children—both adults—need testify about the nature of parental advice and guidance the Decedent provided.

Similarly, in the case of Lavonda King, numerous witnesses were identified to testify regarding Ms. King's household services, employment history, intention to open a beauty salon and the loss of care, guidance, training, education, counsel, and advice to her minor children. These witnesses include Debora Brown, Ms. King's aunt, Delshwanda and Keonda King, Ms. King's sisters, and Jonathan Elliott, Ms. King's stepfather. The testimony of Tawanda Brown, Ms. King's mother, is sufficient to detail these damages. Testimony from these additional family witnesses would similarly be cumulative and unfairly prejudicial to the Defendants.

CONCLUSION

For the foregoing reasons, Defendants respectfully request that the Court grant their Motion *in Limine* to Exclude Liability Evidence.

Dated: February 13, 2012

Respectfully submitted,

/s/ *Timothy M. Broas*
Timothy M. Broas (D.C. Bar No. 391145)
John J. Rosenthal (D.C. Bar No. 425263)
Nicole S. Soukup (D.C. Bar No. 995104)
WINSTON & STRAWN LLP
1700 K Street, N.W.
Washington, DC 20006
Telephone: (202) 282-5000
Facsimile: (202) 282-5100
Email: tbroas@winston.com

Kimball R. Anderson (admitted pro hac vice)
WINSTON & STRAWN LLP
35 W. Wacker Drive
Chicago, IL 60601
Telephone (312) 558 5858
Fax (312) 558-5700
Email: kanderson@winston.com

Attorneys for Alstom Signaling Inc.

/s/ *Robert P. Fletcher*
Robert F. Reklaitis, Esq. (# 358973)
Leslie Paul Machado, Esq. (# 472395)
Robert P. Fletcher, Esq. (#375543)
LECLAIR RYAN
1101 Connecticut Avenue, N.W.
Suite 600
Washington, DC 20036
Telephone: (202) 659-6714
Facsimile: (202) 659-4130
Email: robert.fletcher@leclairryan.com

Attorneys for Defendant Ansaldo STS USA, Inc.

/s/ *K. Nichole Nesbitt*
Richard M. Barnes, Esq. (# MD00669)
Linda S. Woolf, Esq. (# MD084724)
K. Nichole Nesbitt, Esq. (# 469793)
Craig S. Brodsky, Esq. (# 454924)
GOODELL DEVRIES LEECH & DANN, LLP
One South Street
20th Floor
Baltimore, MD 21202

Attorneys for Defendant ARINC Incorporated

/s/ William G. Gandy
William G. Gandy, Esq. (# 491153)
Jason R. Waters, Esq. (# 491066)
Christopher K. Mangold, Esq. (#384069)
8444 Westpark Drive Suite 510
McLean, VA 22102
Telephone: (703) 245-9300
Facsimile: (703) 245-9301
william.gandy@wilsonelser.com
jason.waters@wilsonelser.com

/s/ Robert B. Wallace
Robert B. Wallace, Esq. (# 108571)
700 11th Street, N.W., Suite 400
Washington, DC 20001
Telephone: (202) 626-7660
Facsimile: (202) 628-3606
robert.wallace@wilsonelser.com

Of Counsel:
Thomas W. Tobin, Esq.
Wilson, Elser, Moskowitz, Edelman & Dicker LLP
3 Gannett Drive
White Plains, NY 10604-3407
Telephone: (914) 323-7000

Facsimile: (914) 323-7001

/s/ *Mark F. Sullivan*
Carol B. O'Keeffe, Esq.*
General Counsel
Bruce P. Heppen, Esq. (# 252171)
Deputy General Counsel
Mark F. Sullivan, Esq. (# 430876)
Deputy General Counsel
Brendan Chandonnet, Esq. (# 986719*)*
Assistant General Counsel

Washington Metropolitan Area Transit Authority
600 Fifth Street, N.W.
Washington, DC 20001
Telephone: (202) 962-2814
Facsimile: (202) 962-2550
msullivan@WMATA.com
bchandonnet@WMATA.com

Attorneys for Defendant Washington Metropolitan Area Transit Authority

CERTIFICATE OF SERVICE

I, Timothy M. Broas, an attorney, hereby certify that on February 13, 2012, this motion was electronically filed with the Clerk of the Court and that, in the same manner, an electronic copy was served on all counsel of record.

/s/ *Timothy M. Broas*
Timothy M. Broas