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THE ATTACKS. It was one of the darkest days in American history. On the morning of September 11, 2001, 19 terrorists from Al Qaeda hijacked four American civilian airliners and turned them into weapons of mass destruction that would take nearly 3,000 lives that day. At 8:46 am, terrorists deliberately crashed American Airlines Flight 11 into the north tower of the World Trade Center in downtown Manhattan. Less than 20 minutes later, a second hijacked airplane, United Airlines Flight 175, was flown into the World Trade Center's south tower. At 9:37 am, a third airplane crashed into the Pentagon outside Washington, DC. Half an hour later, the fourth plane, United Flight 93, crashed in a field in Shanksville, Pennsylvania, as the passengers attempted to take back the aircraft, successfully preventing the terrorists from destroying the US Capitol.

In New York, the flames of enormous heat and intensity, fueled by tons of aircraft fuel, raged through the World Trade Center complex.

At 9:59 am, the south tower, structurally weakened from the crash and the subsequent fires, collapsed. Approximately half an hour later, the north tower also collapsed.

More than 2,500 people, including the passengers on the hijacked planes, people who worked at the Twin Towers, police officers, firemen, and emergency workers, perished in lower Manhattan that morning.

The collapse of the Twin Towers unleashed tons of steel and concrete, which rained down on the surrounding buildings, causing enormous damage.

The fires that caused the collapse of the Twin Towers spread to 7 World Trade Center (7WTC), an adjacent 47-story office building.

The fires in 7WTC continued all day. Approximately seven hours after the Twin Towers fell, 7WTC itself collapsed at 5:21 pm.

Miraculously, there were no fatalities at 7WTC, as the building had been fully evacuated shortly after the planes had hit the Twin Towers.

THE LAWSUIT. The destruction of 7WTC destroyed a power substation operated beneath the building by the Consolidated Edison Company of New York, Inc. (Con Ed). This included nine transformers and related equipment housed in the substation.

On September 10, 2002, Con Ed filed a lawsuit in the Southern District of New York against the Port Authority of New York and New Jersey and the City of New York, alleging that the City's negligence

contributed to the collapse of 7WTC and the destruction of Con Ed's substation.

Specifically, Con Ed alleged that the City of New York – which leased premises at 7WTC for its Office of Emergency Management – had incorrectly designed, built and maintained an emergency generator system, including backup diesel fuel tanks in the building, and the fuel in those tanks contributed to the fires and collapse of the tower, destroying the Con Ed substation beneath.

DEFENDING NEW YORK. To defend against Con Ed's claims, the City of New York turned to two of the leading construction law litigators in the nation, Gene Scheiman and Jamie Frankel.

Gene and Jamie, together with Mark Bloom, all now partners in Arent Fox's construction law, real estate and litigation practice groups, immediately tackled Con Ed's allegations to prove to the court that the suit against the City should be dismissed because the City established the Office of Emergency Management at 7WTC in the 1990s as a civil defense measure in anticipation of an enemy attack. The Arent Fox attorneys argued that New York State Defense Emergency Act, passed in 1951, provided statutory immunity to the government from any lawsuits arising out of certain actions taken by the state or local governments related to civil defense.

Arent Fox attorneys argued that the creation of New York City's Office of Emergency Management (OEM) at 7WTC was a protected "civil defense" measure under the State Emergency Defense Act designed to "minimize the effects upon the civilian populations caused by an attack." Indeed, the statute defined "civil defense" as including the construction of "command centers" created in anticipation of an attack.

The fires that collapsed the Twin Towers spread to an adjacent 47-story office building.

THE MAYOR ACTED “REASONABLY AND WITH RESPONSIBLE FORESIGHT.” The US District Court for the Southern District of New York agreed with Arent Fox and dismissed the suit against the City.

“The creation of the OEM command center and its backup generator system qualifies as a civil defense measure,” wrote US District Judge Alvin Hellerstein. “It is clear that the City created its OEM command center in anticipation of an ‘attack.’”

Although Mayor Giuliani may not have been aware of “any particular imminent threat” when he ordered the creation of the command center at 7WTC, the judge wrote, “he nevertheless concluded, reasonably and with responsible foresight, that a terrorist attack of some sort in New York was foreseeable.”

In conclusion, the judge held that the construction of the command center, the backup generator system, and the installation of the diesel fuel tanks at 7WTC were “good faith efforts” taken by the City of New York to provide for the civil defense of New York. “The Complaint against the City is dismissed,” the judge ruled, granting the City of New York a complete victory.

Arent Fox’s Gene Scheiman reflected on the court’s decision: “The holding affirms the rights of state and local governments, in good faith, to plan and provide for the protection of their citizens in times of danger from foreign and domestic attack, as well as other emergencies, without fear of being second guessed. It was, and is, a privilege to work with the City’s attorneys to achieve this result.”

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