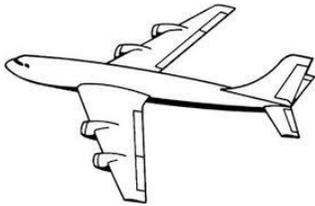


## NOTICE OF PROPOSED SETTLEMENT AND DISTRIBUTION PROTOCOL IN CANADIAN AIR CARGO PRICE-FIXING CLASS ACTIONS



**TO: Persons who purchased Airfreight Shipping Services, including those persons who purchased airfreight shipping services through freight forwarders or from any air cargo carrier, for shipments within, to, or from Canada (except shipments between the United States and Canada) (“Airfreight Shipping Services”) during the period from January 1, 2000 to September 11, 2006, and have not already excluded themselves from the class actions (the “Settlement Class”).**

### I. BACKGROUND

Class action lawsuits in Ontario, British Columbia and Quebec allege an unlawful conspiracy to fix prices for Airfreight Shipping Services from January 1, 2000 to September 11, 2006.

The following entities were named as Defendants in one or more provinces in the class actions: Air Canada, AC Cargo Limited Partnership, Societe Air France, Koninklijke Luchtvaart Maatschappij N.V. dba KLM, Royal Dutch Airlines, Asiana Airlines Inc., British Airways PLC, Cathay Pacific Airways Ltd., Deutsche Lufthansa AG, Lufthansa Cargo AG, Japan Airlines International Co., Ltd., Scandinavian Airlines System, Korean Air Lines Co., Ltd., Cargolux Airline International S.A., LAN Airlines S.A, LAN Cargo S.A., Atlas Air Worldwide Holdings Inc., Polar Air Cargo Inc., Singapore Airlines Ltd., Singapore Airlines Cargo PTE Ltd., Swiss International Air Lines Ltd., Qantas Airways Limited, and Martinair Holland N.V.

### II. CONTESTED CERTIFICATION

On August 26, 2015, the Ontario action was certified on behalf of the following persons:

Persons who purchased Airfreight Shipping Services\* during the period January 1, 2000 to September 11, 2006, including those persons who purchased Airfreight Shipping Services through freight forwarders, from any air cargo carrier, including, without limitation, the defendants, but not including Integrated Air Cargo Shippers\*\*.

Excluded from the Class are:

- a) Defendants and their unnamed co-conspirators\*\*\* and their respective parents, employees, subsidiaries, affiliates, officers and directors,
- b) persons who reside outside Canada, entered into contracts for Airfreight Shipping Services outside Canada, and suffered any alleged losses outside Canada, except those who expressly consent to the jurisdiction of the Ontario Court,

- c) persons currently resident in Australia who paid identified amounts totalling more than AUD\$20,000 for the carriage of goods to or from Australia, including in each instance a component by air during the period January 1, 2000 to January 11, 2007,
- d) persons who commence litigation in respect of Airfreight Shipping Services in a jurisdiction other than Canada prior to the conclusion of the trial of the common issues, and
- e) persons who timely and validly opted out of the litigation pursuant to the order of the Ontario court dated March 6, 2008.

\*Airfreight Shipping Services are defined as airfreight cargo shipping services for shipments to or from Canada (excluding shipments to and from the United States).

\*\*Integrated Air Cargo Shipper is defined as an air cargo shipper that manages an integrated system of people, airplanes, trucks, and all other resources necessary to move airfreight cargo from a customer's point of origin to the delivery destination, and for greater certainty includes but is not limited to FedEx, UPS, DHL and TNT.

\*\*\* Unnamed co-conspirators are defined as Aerolineas Brasileiras S.A (d/b/a Absa Cargo Airline), Air China Cargo Company Ltd. (d/b/a Air China Cargo), Air China Ltd. (d/b/a Air China), Air Mauritius Ltd., Airways Corporation of New Zealand Ltd. (d/b/a Airways New Zealand), Alitalia Linee Aeree Italiane S.p.A., All Nippon Airways Co., Ltd., DAS Air Ltd. (d/b/a Das Air Cargo), El Al Israel Airlines, Emirates Airlines (d/b/a Emirates), Ethiopian Airlines Corp., EVA Air, Kenya Airways Ltd., Malaysia Airlines, Nippon Cargo Airlines Co., Ltd., Saudi Arabian Airlines, Ltd., South African Airways (Proprietary), Ltd., Thai Airways International Public Co., Ltd., and Viação Aérea Rio-Grandense, S.A.

The Defendants in the Ontario action are seeking leave to appeal the certification decision. The Plaintiffs have appealed the jurisdiction decision, which affects the class definition. Once all appeals have been resolved, another notice will be distributed and posted online at [www.aircargosettlement2.com](http://www.aircargosettlement2.com).

### III. PREVIOUS SETTLEMENTS

Previous settlements have been reached with:

Settling Defendant(s)	Settlement Amount
Deutsche Lufthansa AG, Lufthansa Cargo AG, and Swiss International Air Lines Ltd.	US\$5,338,000 (CDN\$6,243,307.26)
Japan Airlines International Co. Ltd.	CDN\$738,000
Scandinavian Airlines System	CDN\$300,000
Qantas Airways Limited	CDN\$237,000

<b>Settling Defendant(s)</b>	<b>Settlement Amount</b>
Cargolux Airline International	CDN\$1,800,000
Singapore Airlines Ltd and Singapore Airlines Cargo PTE Ltd.	CDN\$1,050,000
Société Air France, Koninklijke Luchtvaart Maatschappij N.V. dba KLM, Royal Dutch Airlines and Martinair Holland N.V.	CDN\$6,500,000
LAN Airlines S.A. and LAN Cargo S.A	CDN\$700,000
Polar Air Cargo LLC f/k/a Polar Air Cargo Inc.	CDN\$425,000
Korean Air Lines Co, Ltd.	CDN\$4,100,000
Asiana Airlines Inc.	CDN\$1,500,000

The settlement funds (less court approved counsel fees and disbursements) are being held in an interest bearing account for the benefit of Settlement Class Members. In addition to the above noted monetary benefits, each of the above listed settlements requires the Settling Defendants to provide cooperation to the Plaintiffs in the continued prosecution of the Canadian Proceedings. All of these settlements have received the requisite court approval.

#### **IV. PROPOSED SETTLEMENT**

A settlement has been reached with Cathay Pacific Airways Ltd. (“Cathay”). The settlement is subject to the approval of the Ontario, British Columbia and Quebec courts. The settlement represents a resolution of disputed claims. Cathay does not admit any wrongdoing or liability.

Under the terms of the settlement agreement, Cathay has agreed to pay CDN\$6,000,000 for the benefit of the Settlement Class in exchange for the full and final release for all claims formulated against it and its related entities. Cathay has agreed to provide certain documents and information to the Plaintiffs who are pursuing the class actions against the remaining Defendants.

A joint motion to certify the actions as class actions as against Cathay, for settlement purposes, and to approve the settlement, will be heard before the Ontario, British Columbia and Quebec courts on July 4, 2016 at 10:15 a.m. PST / 1:15 p.m. EST. At this hearing, the Ontario, British Columbia and Quebec courts will determine whether the settlement is fair, reasonable, and in the best interests of Settlement Class Members.

#### **V. PROPOSED DISTRIBUTION OF THE SETTLEMENT FUNDS**

At the joint motion, the Courts will be asked to approve a protocol for distributing the aggregate settlement funds, plus accrued interest, less a reserve fund, court approved legal fees and other expenses. The reserve fund will be held in a trust account for the benefit of Settlement Class Members. Class Counsel reserve the right to apply to the Ontario, British Columbia and Quebec courts to have the reserve funds applied against future disbursements and/or future adverse costs awards. A copy of the proposed distribution protocol is available at [www.aircargosettlement2.com](http://www.aircargosettlement2.com) or from Class Counsel.

Including prior settlements, the settlements achieved to date in this litigation total approximately CDN \$29.6 million. The aggregate settlement funds, plus interest and less court approved legal fees, disbursements, administration expenses, and applicable taxes, are available for compensation to Settlement Class Members.

Although settlements have only been reached with certain Defendants, Settlement Class Members can claim with respect to all Airfreight Shipping Services purchases between January 1, 2000 and September 11, 2006, regardless of the air cargo carrier, except for shipments on integrated carriers (such as FedEx, UPS, DHL and TNT).

For the purposes of calculating settlement benefits, the value of Settlement Class Members' purchases will be converted to CDN from the original currency, at the average Bank of Canada rate for that currency between January 1, 2000 and September 11, 2006.

Subject to further order of the Ontario court, the settlement funds will be distributed on a *pro rata* (proportional basis) based on the value of your claim relative to the value of all approved claims. The value of your claim will depend on the quantum of your purchases and the classification of your purchases:

- Direct Purchaser Shippers means a Settlement Class Member who purchased Airfreight Shipping Services direct from an air cargo carrier, for shipments by that Settlement Class Member. Settlement benefits payable to Direct Purchaser Shippers will be calculated based on the full value of the Settlement Class Member's Airfreight Shipping Services purchases.
- Shippers means a Settlement Class Member who purchased Airfreight Shipping Services from a Freight Forwarder. Settlement benefits payable to Shippers will be calculated based on 75% of the value of the Settlement Class Member's Airfreight Shipping Services purchases.
- Freight Forwarders means a Settlement Class Member who purchased Airfreight Shipping Services direct from an air cargo carrier, for resale to Shippers. Settlement benefits payable to Freight Forwarders will be calculated based on 25% of the value of the Settlement Class Member's Airfreight Shipping Services purchases. The settlement benefits payable to Freight Forwarders who provide information about their customers' Airfreight Shipping Services purchases to the Claims Administrator will be calculated based on 35% of the value of the Settlement Class Member's Airfreight Shipping Services purchases.

Settlement Class Members may fall into more than one category.

If the *pro rata* distribution would result in Settlement Class Members receiving an amount that is beyond any reasonable estimate of expected damages, Class Counsel will seek further direction from the Ontario court with respect to the distribution of the net settlement funds. Subject to further order of the court following the adjudication of all claims, all valid claims will be assigned a minimum value of \$20. As part of any distribution of any subsequent settlements and/or court awards, Settlement Class Members whose *pro rata* entitlement was less than \$20 will have to account for the fact that their claim was increased beyond their *pro rata* entitlement.

Payments to Quebec Settlement Class Members are subject to deductions payable to the Fonds d'aide aux recours collectifs, calculated in accordance with the governing regulations.

## **VI. PARTICIPATING IN THE SETTLEMENT APPROVAL HEARINGS**

Settlement Class Members who do not oppose the proposed Cathay settlement and who wish to claim benefits under the settlements need not do anything at this time, but are encouraged to register online at [www.aircargosettlement2.com](http://www.aircargosettlement2.com) to receive updates about the class action.

Settlement Class Members who wish to comment on or make an objection to the proposed settlement and/or proposed distribution protocol, or make submissions at the approval hearing must submit a written submission to Class Counsel at the address listed below, postmarked no later than June 24, 2016. Class Counsel will forward all such submissions to the courts. All written submissions will be considered by the courts. If you do not submit a written submission postmarked by June 24, 2016, you may not be entitled to participate, through oral submissions or otherwise, in the approval hearing.

Settlement Class Members may attend the approval hearing. If you wish to attend the approval hearing or make submissions, please contact Class Counsel for additional details.

## **VII. FILING A CLAIM**

Settlement Class Members who wish to apply for compensation under the settlements must file a claim. Where possible, Settlement Class Members will be able to rely on sales records provided by the Defendants, the International Air Transport Association, and/or Freight Forwarders to establish their purchases. Settlement Class Members may also rely on their own purchase records.

The deadline and procedure for filing a claim will be reviewed at the approval hearing and those details will be available in a further notice to be distributed by mail or email and posted online at [www.aircargosettlement2.com](http://www.aircargosettlement2.com). If you did not receive this notice by mail, please register online at [www.aircargosettlement2.com](http://www.aircargosettlement2.com) or by telephone at 1-888-291-9655 (U.S. and Canada) or 1-614-553-1296 (International) to ensure that further notices will be sent to you directly, by mail.

The litigation is continuing against the non-settling Defendants. Settlement Class Members who file a claim will be able to rely on that claim in respect of any subsequent settlement.

## **VIII. CLASS COUNSEL & LEGAL FEES**

This notice only summarizes the Cathay Settlement Agreement and distribution protocol. More information about the settlement and distribution protocol is available online at [www.aircargosettlement2.com](http://www.aircargosettlement2.com). Questions about the settlement or any other matters contained in this notice may be directed to Class Counsel:

- Settlement Class Members outside British Columbia and Quebec: 1-800-461-6166 ext. 2446 or [aircargo@siskinds.com](mailto:aircargo@siskinds.com) or Siskinds LLP, 680 Waterloo Street, London, ON, N6A 3V8, Canada, Attn: Charles Wright.

- British Columbia Settlement Class Members: (604) 689-7555 or [djones@cfmlawyers.ca](mailto:djones@cfmlawyers.ca) or Camp Fiorante Matthews Mogerman, #400 - 856 Homer Street, Vancouver, BC, V6B 2W5, Attn: David Jones.
- Quebec Settlement Class Members: (514) 846-0666 or [moe@liebmanlegal.com](mailto:moe@liebmanlegal.com) or Liebman Legal Inc., 1 Westmount Square #1750, Montreal, QC, H3Z 2P9, Attn: Moe F. Liebman.

Class Counsel legal fees and disbursements must be approved by the Ontario, British Columbia and Quebec courts. Class Counsel will collectively be requesting that legal fees of up to 25% of the Cathay settlement funds, plus disbursements and applicable taxes, be approved by the courts and paid out of the Cathay settlement funds.

This notice has been approved by the Ontario, British Columbia and Quebec courts.