



No. S067490
Vancouver Registry

In The Supreme Court of British Columbia

Between:

KAREN MCKAY

Plaintiff

and:

**AIR CANADA, AC CARGO LIMITED PARTNERSHIP,
SOCIÉTÉ AIR FRANCE, KONINKLIJKE LUCHTVAART
MAATSCHAPPIJ N.V., ASIANA AIRLINES INC., BRITISH
AIRWAYS PLC, CATHAY PACIFIC AIRWAYS LTD.,
DEUTSCHE LUFTHANSA AG, LUFTHANSA CARGO AG,
SWISS INTERNATIONAL AIR LINES LTD., JAPAN
AIRLINES INTERNATIONAL CO., LTD., KOREAN AIR
LINES CO., LTD., SCANDINAVIAN AIRLINES SYSTEM
CARGOLUX AIRLINES 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 LIMITED AND QANTAS AIRWAYS LIMITED.**

Defendants

BROUGHT UNDER THE *CLASS PROCEEDINGS ACT*, R.S.B.C. 1996, c. 50

ORDER MADE AFTER APPLICATION

BEFORE)
) **THE HONOURABLE**)
) **CHIEF JUSTICE BAUMAN**) 24/JULY/2012
))

ON THE APPLICATION of the Plaintiff, Karen McKay:

- coming on for hearing at the Courthouse, 800 Smithe Street, Vancouver, BC on 24/July/2012 and on hearing Reidar Mogerman for the Plaintiff, Karen McKay; D. Martin Low, Q.C. and Lisa Parliament for the Defendants, Societe Air France & Koninklijke Luchtvaart Maatchappij N.V.; Randy Sutton for the Defendants, LAN Airlines S.A. and LAN Cargo S.A.; Samaneh Hosseini for the Defendants Air Canada and AC Cargo Limited Partnership; Jill Yates for the Defendant, Cathay Pacific Airways Ltd.; Paul Martin for the Defendant Asiana Airlines Inc.; Brad

Dixon for the Defendant, British Airways PLC; and Jennifer Ruddick for the Defendant, Korean Air Lines Co., Ltd.;

THIS COURT ORDERS that:

1. in addition to the definitions used elsewhere in the Order, the definitions set out in the Canadian Air Cargo Shipping Services Class Action Multi-Jurisdictional Settlement Agreement (the "AF/KLM Settlement Agreement") between the Plaintiffs and Societe Air France ("Air France"), Koninklijke Luchtvaart Maatschappij N.V. dba KLM, Royal Dutch Airlines ("KLM") and Martinair Holland N.V. ("Martinair") (collectively, "AF/KLM") executed September 19, 2011 and attached as **Schedule "A"** shall apply to and are incorporated into the Order. The following definitions shall also apply in the Order:

- a. "Proportionate Liability" means the proportion of any judgment that, had the AF/KLM Defendants not settled, a court or other arbiter would have apportioned to the AF/KLM Defendants and/or Released Parties, whether pursuant to *pro rata*, proportionate fault, *pro tanto*, or another method;
- b. "Administrative Expenses" shall have the same meaning as "Administration Expenses"; and
- c. "BC Action" means the proceeding commenced by the Plaintiff in the Supreme Court of British Columbia Court File No. S067490 (Vancouver Registry);

2. the BC Action is certified as a class proceeding as against the AF/KLM Defendants only and for settlement purposes only;

3. the BC Settlement Class is defined as:

All Persons resident in the province of British Columbia who purchased Airfreight Shipping Services* during the Purchase Period, including those Persons who purchased Airfreight Shipping Services through freight forwarders or from any air cargo carrier, including without limitation, the Defendants, and specifically including the AF/KLM Defendants. Excluded from the BC Settlement Class are the Defendants and their respective parents, employees, subsidiaries, affiliates, officers and directors, and Persons specifically named in the letter from Siskinds LLP to McMillan LLP dated September 2, 2011 as Persons who validly and timely opted-out of the

BC Action in accordance with the order of the BC Court dated March 20, 2008.

*Airfreight Shipping Services means airfreight cargo shipping services for shipments within, to, or from Canada, but specifically excluding airfreight cargo shipping services for shipments to or from the United States.

4. Karen McKay is appointed as the representative plaintiff for the BC Settlement Class;

5. for settlement purposes, the following issue is common to the BC Settlement Class:

Did the AF/KLM Defendants conspire to fix, raise, maintain or stabilize the prices of Airfreight Shipping Services during the Purchase Period in violation of Part VI of the Competition Act and the common law? If so, what damages, if any, did Settlement Class Members suffer?

6. the AF/KLM Settlement Agreement is fair, reasonable and in the best interests of the BC Settlement Class;

7. the AF/KLM Settlement Agreement is approved pursuant to s. 35 of the *Class Proceedings Act*, RSBC 1996 c. 50 and shall be implemented in accordance with its terms;

8. the AF/KLM Settlement Agreement is incorporated by reference into and forms part of this Order, and is binding upon the representative plaintiff and all BC Settlement Class Members, including without limitation those persons who are minors or mentally incapable, and where any term of the Order and the AF/KLM Settlement Agreement conflict, the term contained in the Order shall govern;

9. upon the Effective Date, each BC Settlement Class Member shall consent and shall be deemed to have consented to the dismissal as against the Released Parties, without costs and with prejudice, of any and all of the BC Settlement Class Member's Released Claims in any jurisdiction;

10. upon the Effective Date, any and all Released Claims commenced in British Columbia by any Settlement Class Member shall be dismissed against the Released Parties, without costs and with prejudice;
11. the use of the terms "Released Claims", "Released Parties" and "Releasing Parties" in the Order and in the AF/KLM Settlement Agreement does not constitute a release of claims by the BC Settlement Class Members;
12. upon the Effective Date, each of the Releasing Parties resident in British Columbia covenants and undertakes not to sue, make any claim in any way, or to threaten, commence or continue any Claim in any jurisdiction against the Released Parties or against any Person who may claim contribution or indemnity from any one or more of the Released Parties, within the scope of, arising from or in any way related to the Released Claims;
13. upon the Effective Date, each Releasing Party shall not now or hereafter commence, institute, continue, participate in, maintain or assert, either directly or indirectly, whether in Canada or elsewhere, on their own behalf or on behalf of any class or any other Person, any Claim against any Released Party or against any other Person who may claim contribution or indemnity, or other claims over relief, from any Released Party in respect of any Released Claim or any matter related thereto;
14. all claims for contribution and indemnity or other claims over, whether asserted or unasserted or asserted in a representative capacity, inclusive of interest, taxes and costs, in respect of any Released Claims, by any Non-Settling Defendant or any other Person against a Released Party, or by a Released Party against any Non-Settling Defendant or any other Person, are barred, prohibited and enjoined. If contrary to this Order a foreign court permits a Releasing Party to bring a claim in respect of a Released Claim against a Non-Settling Defendant, another Defendant or a Released Party in a jurisdiction outside of British Columbia (the "Foreign Claim") then that Non-Settling Defendant, other Defendant or Released Party will not be prohibited by this paragraph from bringing a claim for

contribution, indemnity or other claims over against a Released Party or other Person, including a Non-Settling Defendant or other Defendant, in respect of the Foreign Claim, to the extent such a claim exists under the applicable law, provided that the Non-Settling Defendant, other Defendant or Released Party, as the case may be, raises before the foreign court in a timely and proper manner under the laws and procedure of that court, that this Order is an absolute bar to the Foreign Claim;

15. if, in the absence of paragraph 14 above, a Person or Persons would have the right to make claims for contribution and indemnity or other claims over, whether in equity or in law, by statute or otherwise, from or against the Released Parties, in any Canadian or foreign jurisdiction:
 - a. the Releasing Party or Releasing Parties (including without limitation the Plaintiff in the BC Action and the BC Settlement Class Members) are prohibited and barred from bringing or pursuing the claim that gives rise to the claim for contribution, indemnity, or other claim over against any one or more of the Released Parties;
 - b. for greater certainty, the Releasing Parties shall not be entitled to claim or recover from that Person or Persons that portion of any damages (including punitive damages, if any), restitutionary award, disgorgement of profits, interest and costs (including investigative costs claimed pursuant to s. 36 of the Competition Act) awarded in respect of any claim(s) on which judgment is entered that corresponds to the Proportionate Liability of the Released Parties proven at trial or otherwise;
 - c. for greater certainty, the Plaintiff and the BC Settlement Class Members shall limit their claims against the Non-Settling Defendants to, and shall be entitled to recover from the Non-Settling Defendants, only those claims for damages, costs and interest attributable to the Non-Settling Defendants' several liability to the Plaintiffs and the Settlement Class Members, if any;
 - d. this Court shall have full authority to determine the Proportionate Liability at the trial or other disposition of the BC Action, whether or not the Released Parties remain in the Action or appear at the trial or other disposition, and the Proportionate Liability shall be determined as if the Released Parties are parties to this Action for that purpose and any such finding by this Court in respect of the Proportionate Liability shall only apply in the BC Action and shall not be binding upon the Released Parties in any other proceedings;

16. if, in the absence of paragraph 14 hereof, the Non-Settling Defendants would not have the right to make claims for contribution and indemnity or other claims over, whether in equity or in law, by statute or otherwise, from or against the Released Parties, then nothing in the Order is intended to or shall limit, restrict or affect any arguments which the Non-Settling Defendants may make regarding the reduction of any judgment against them in the Action;
17. subject to paragraph 18 hereof, a Non-Settling Defendant may, on motion to the Court brought on at least ten (10) days notice and determined as if the AF/KLM Defendants are parties to the BC Action, not to be brought unless and until the BC Action against the Non-Settling Defendants has been certified and all appeals or times to appeal have been exhausted, seek orders for the following:
 - a. documentary discovery and a list of documents in accordance with the Supreme Court Civil Rules from Air France, KLM and/or Martinair;
 - b. oral discovery of a representative of Air France, KLM and/or Martinair, the transcript of which may be read in at trial;
 - c. leave to serve a notice to admit on Air France, KLM and/or Martinair in respect of factual matters; and/or
 - d. the production of a representative of Air France, KLM and/or Martinair to testify at trial, with such witness to be subject to cross-examination by counsel for the Non-Settling Defendants.

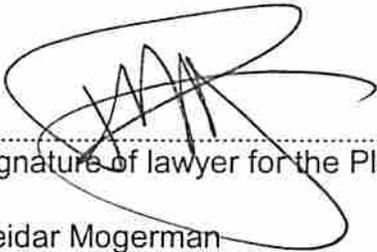
For greater certainty, if any of the AF/KLM Defendants brings a claim for contribution and indemnity or other claims over against a Non-Settling Defendant, nothing in this paragraph is intended to or does affect or limit in any way any documentary or oral discovery rights under the Supreme Court Civil Rules or otherwise of that Non-Settling Defendant or the AF/KLM Defendant in that claim, and such rights may be exercised by the parties in that claim notwithstanding any other provision in this paragraph.

18. the AF/KLM Defendants retain all rights to oppose such motion(s) brought under paragraph 17. On any motion brought pursuant to paragraph 17, the Court may make such orders as to costs and other terms as it considers appropriate;

19. a Non-Settling Defendant may effect service of the motion(s) referred to in paragraph 17 on the AF/KLM Defendants by service on counsel of record for the AF/KLM Defendants in the BC Action;
20. for purposes of enforcement of the Order, this Court will retain an ongoing supervisory role and the AF/KLM Defendants will attorn to the jurisdiction of this Court for this purpose;
21. except as provided in this Order and the Settlement Agreement, the Order does not affect any claims or causes of action that any BC Settlement Class Member has or may have against the Non-Settling Defendants or unnamed co-conspirators in the BC Action;
22. the Released Parties have no responsibility for and no liability whatsoever with respect to the administration of the AF/KLM Settlement Agreement;
23. the Settlement Amount be held in trust for the benefit of the Settlement Class, pending further order of the Court, which shall be sought by the Plaintiffs on a motion in the Action brought on notice to the AF/KLM Defendants;
24. the BC Action be dismissed against the AF/KLM Defendants without costs and with prejudice;
25. this Order shall be declared null and void in the event that the AF/KLM Settlement Agreement is terminated in accordance with its terms;
26. the Order is contingent upon the approval of the Ontario Court and the Quebec Court of the AF/KLM Settlement Agreement and the Order shall be of no force and effect if such approval is not secured in Ontario and Quebec; and

27. endorsement of this Order by counsel for the Non-Settling Defendants be dispensed with.

THE FOLLOWING PARTIES APPROVE THE FORM OF THIS ORDER AND CONSENT TO EACH OF THE ORDERS, IF ANY, THAT ARE INDICATED ABOVE AS BEING BY CONSENT:



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Signature of lawyer for the Plaintiff

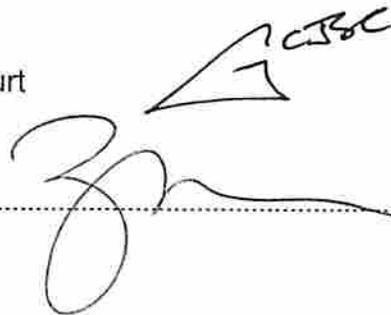
Reidar Mogerman



.....
Signature of lawyer for the Defendants
Societe Air France &
Koninklijke Luchtvaart Maatschappij N.V.

D. Martin Low, Q.C.

By the Court



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Registrar

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Defendants

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CAMP FIORANTE MATTHEWS MOGERMAN
Barristers & Solicitors
#400 – 856 Homer Street
Vancouver, BC V6B 2W5

Tel: (604) 689-7555
Fax: (604) 689-7554
Email: service@cfmlawyers.ca

Via Mike Bike