

## **NOTICE OF SETTLEMENT APPROVAL HEARING IN THE CANADIAN AIR CARGO PRICE-FIXING CLASS ACTIONS**

**Please read this notice carefully. It may affect your legal rights.**

### **A. WHO IS AFFECTED BY THIS NOTICE?**

This notice affects anyone 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 during the period from January 1, 2000 to September 11, 2006, and have not already excluded themselves from the class actions (the "Settlement Class" or "Settlement Class Members").

Airfreight Shipping Services means airfreight cargo shipping services for shipments within, to, or from Canada, but excludes airfreight shipping services for shipments:

- a) with an origin point in Canada and a destination point in the United States; or
- b) with an origin point in the United States and a destination point in Canada,

but includes airfreight cargo shipping services in which the freight:

- c) travelled by truck from Canada to the United States, and then by air from the United States to a third country; or
- d) travelled by air from a third country to the United States, and then by truck from the United States to Canada.

### **B. WHAT IS A CLASS ACTION?**

A class action is a lawsuit filed by one person on behalf of a large group of people.

### **C. WHAT ARE THESE CLASS ACTIONS ABOUT?**

Class action lawsuits were commenced in Ontario, British Columbia and Quebec alleging that the Defendants participated in an unlawful conspiracy to fix prices of Airfreight Shipping Services from January 1, 2000 to September 11, 2006.

The Ontario action was certified as a national class proceeding in 2015. As a result, Class Counsel agreed to actively pursue the litigation in Ontario. Pending the outcome of the Ontario action, the Quebec action has been stayed and the parties have agreed not to litigate in British Columbia.

Previous settlements were reached with twelve groups of defendants and the related settlement funds have been distributed to Settlement Class Members. For information about those settlements, visit [www.aircargosettlement2.com](http://www.aircargosettlement2.com).

#### **D. WHAT NEW SETTLEMENTS HAVE BEEN REACHED IN THE CLASS ACTIONS?**

Settlements were reached with British Airways PLC (“British Airways”) and Air Canada. The settlements are subject to court approval. If approved, the settlements will resolve the litigation in its entirety.

Under the terms of their settlement agreements, British Airways agreed to pay CAD\$9,000,000 and Air Canada agreed to pay CAD\$7,000,000 in exchange for a full release of the claims against them relating to the alleged price-fixing of Airfreight Shipping Services. The settlement funds will be paid in three installments over the period from 15 October 2020 to 15 October 2021. British Airways also agreed to provide cooperation to the plaintiffs.

The settlements represent a resolution of the disputed claims. British Airways and Air Canada do not admit and expressly deny any wrongdoing or liability.

Copies of the settlement agreements are available at [www.aircargosettlement2.com](http://www.aircargosettlement2.com).

#### **E. WHAT SHOULD I KNOW ABOUT THE APPROVAL HEARINGS?**

Both settlements must be approved by the Ontario court. The Air Canada settlement must also be approved by the British Columbia and Quebec courts. At the approval hearings, the courts will determine whether the settlements are fair, reasonable, and in the best interests of Settlement Class Members.

Class Counsel’s legal fees and disbursements must also be approved by the courts. Class Counsel will collectively be requesting that legal fees of up to 25% of the British Airways and Air Canada settlement funds, plus disbursements and applicable taxes, be approved and paid out of the settlement funds.

The Ontario and British Columbia approval motions will take place jointly by video conference on May 21, 2021 at 11:00 a.m. PST / 2:00 p.m. EST. The Quebec approval hearing is scheduled for June 8, 2021 at 2:00 p.m. EST.

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

Previous settlements were reached with 12 groups of defendants. In 2019, those settlement funds were distributed to eligible Settlement Class Members, less fees, disbursements and a litigation reserve fund.

At the approval motions, the courts will also be asked to approve a second protocol for distributing the current Net Settlement Funds to Settlement Class Members. The Net Settlement Funds include (i) the British Airways and Air Canada settlement amounts, less approved legal fees and expenses; (ii) residual settlement funds from the first distribution; and (iii) the remainder of the litigation reserve fund.

The Net Settlement Funds will be distributed in the same manner as in the first distribution. The following is a summary of the proposed distribution. A copy of the proposed distribution protocol is available at [www.aircargosettlement2.com](http://www.aircargosettlement2.com).

### **Persons Eligible to Claim**

While the settlements release the claims of persons who purchased Airfreight Shipping Services within Canada, those persons are not eligible for compensation, as the alleged conspiracy related only to international shipments.

For the purposes of the distribution of settlement funds, Airfreight Shipping Services means airfreight cargo shipping services for shipments to or from Canada, but specifically excluding:

- a) airfreight cargo shipping services for shipments between Canada and the United States; and
- b) airfreight cargo shipping services provided by integrated air cargo shippers, such as FedEx, UPS, DHL, and TNT, on their own aircraft.

For certainty, Airfreight Shipping Services includes airfreight cargo shipping services in which the freight:

- a) travelled by truck from Canada to the United States, and then by air from the United States to a third country on a through airway bill;
- b) travelled by air from a third country to the United States, and then by truck from the United States to Canada on a through airway bill; or
- c) the shipping arrangement was made with an integrated air cargo shipper, but the freight was shipped on an air cargo carrier (not on the integrated shipper's own aircraft), including any of the Defendants in the litigation.

For the purposes of the distribution of settlement funds, Settlement Class Members means all persons who purchased Airfreight Shipping Services between January 1, 2000 and September 11, 2006. The following persons are excluded:

- a) the Defendants and their respective parents, employees, subsidiaries, affiliates, officers and directors;
- b) the alleged unnamed co-conspirators: 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., and their respective parents, employees, subsidiaries, affiliates, officers and directors; and
- c) persons who opted out of the proceedings.

### Distribution of Settlement Funds

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 a Settlement Class Member's Eligible Airfreight Shipping Services Purchases as against the value of all claimants' Eligible Airfreight Shipping Services Purchases.

To calculate Eligible Airfreight Shipping Services Purchases, Settlement Class Members will be categorized based on their position in the distribution chain and the following percentages will be applied their Airfreight Shipping Services Purchases. Settlement Class Members may fall into more than one category.

| Purchaser Type                                                                 | Description                                                                                                                                          | Percentage |
|--------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------|------------|
| Direct Purchaser Shippers                                                      | Settlement Class Members who purchased Airfreight Shipping Services direct from an air cargo carrier, for shipments by that Settlement Class Member. | 100%       |
| Shippers                                                                       | Settlement Class Members who purchased Airfreight Shipping Services from a Freight Forwarder.                                                        | 75%        |
| Freight Forwarders                                                             | Settlement Class Members who purchased Airfreight Shipping Services direct from an air cargo carrier, for resale to Shippers.                        | 25%        |
| Freight Forwarders who provided customer information in the first distribution |                                                                                                                                                      | 35%        |

### Sample Calculation

If a Settlement Class Member purchased \$10,000 of Airfreight Shipping Services directly from an air cargo carrier and \$20,000 of Airfreight Shipping Services from a Freight Forwarder, its Eligible Airfreight Shipping Services Purchases for the purposes of determining its *pro rata* share of the Net Settlement Funds would be calculated as follows:

- d)  $\$10,000 \times 1.00$  (representing the categorization of the purchaser as a Direct Purchaser Shipper) = \$10,000;
- e)  $\$20,000 \times .75$  (representing the categorization of the purchaser as a Shipper) = \$15,000;
- f)  $\$10,000 + \$15,000 = \$25,000$ .

Assuming all valid claims totalled \$100 million, this Settlement Class Member would be entitled to 0.025% of the Net Settlement Funds.

### **Persons Who Claimed in the First Distribution**

Persons who were issued payment in the first distribution (“Original Claimants”) will be able to rely on information provided in their previous claim form, but will be required to confirm their contact information and provide a statement of release.

Original Claimants who were issued a minimum payment of \$20 in the first distribution, notwithstanding that their *pro rata* entitlement was less than \$20, will have to account for the excess payment in this distribution. For example, if the Original Claimant’s *pro rata* entitlement under the First Distribution was \$15, but the Original Claimant was paid \$20, and the Original Claimant’s *pro rata* entitlement under the Second Distribution is \$30, the Original Claimant will only be paid an additional \$25.

### **Minimum Payments**

Subject to further order of the Ontario Court, all valid Claims will be assigned a minimum value of \$20. However, if the *pro rata* distribution would result in a payment of less than \$10 to an Original Claimant, no additional payment will be issued to that claimant.

### **Filing a Claim**

Another notice will be provided regarding the process for applying to receive settlement funds. In the interim, you should keep copies of all relevant records.

### **Residual Funds**

To the extent that the full Net Settlement Funds are not paid out due to uncashed cheques, residual interest or otherwise, subject to further Order of the court, such monies shall be paid to Pro Bono Canada if the amount is equal or less than \$10,000, less any amounts payable to the Quebec Fonds d’aide aux actions collectives. For distribution of any amount above \$10,000, further direction of the court shall be sought.

## **G. WHAT ARE MY OPTIONS?**

You do not have to do anything to stay in the class action. The time to opt-out (exclude yourself) from the class action has already expired. Settlement Class Members who have not opted-out will be bound by the settlement agreements and any court orders in the class actions.

If you want to object to the proposed settlements, fee request or distribution protocol at the approval hearings, you must send a letter to Class Counsel at the addressed listed below, postmarked no later than May 11, 2021

You may (but do not need to) attend the settlement approval hearing. If you want to attend the hearing, please contact Class Counsel for additional details.

## **H. WHO ARE LAWYERS WORKING ON THESE CLASS ACTIONS AND HOW ARE THEY PAID?**

The following law firms represent Settlement Class Members and are available to answer questions about the proposed settlement:

Settlement Class Members outside British Columbia and Quebec:

- 1-800-461-6166
- [aircargo@siskinds.com](mailto:aircargo@siskinds.com)
- Siskinds LLP, 680 Waterloo Street, London, ON, N6A 3V8, Canada, Attn: Charles Wright.

British Columbia Settlement Class Members:

- (604) 689-7555
- [djones@cfmlawyers.ca](mailto:djones@cfmlawyers.ca)
- Camp Fiorante Matthews Mogerman LLP, #400 - 856 Homer Street, Vancouver, BC, V6B 2W5, Attn: David Jones.

Quebec Settlement Class Members:

- (514) 846-0666
- [moe@liebmanlegal.com](mailto:moe@liebmanlegal.com)
- Liebman Legal Inc., 1 Westmount Square #350, Montreal, QC, H3Z 2P9, Attn: Moe F. Liebman.

**You do not have to pay the lawyers working on these class actions any money.** The lawyers will be paid from the money collected in the class actions. The courts will be asked to decide how much the lawyers will be paid.

## **I. WHAT IF I HAVE MORE QUESTIONS?**

For more information, and relevant documents (including copies of the settlement agreements and proposed distribution protocol) please visit [www.aircargosettlement2.com](http://www.aircargosettlement2.com).