

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))	20/OCT/2011
)	CHIEF JUSTICE BAUMAN)
))
))

ON THE APPLICATION of the Plaintiff, Karen McKay:

coming on for hearing at the Courthouse, 800 Smithe Street, Vancouver, BC on 20/Oct/2011 and on hearing J.J. Camp, Q.C. and David G. A. Jones for the Plaintiff, Mark Underhill for the Defendant Cargolux Airlines International S.A., Christopher Naudie and Victoria Creighton for the Defendants Singapore Airlines Ltd. and Singapore Airlines Cargo PTE Ltd., Patrick Sullivan as agent for counsel for the Defendant Scandinavian Airlines System, Warren Milman for the Defendants Cathay Pacific Airways Ltd, H. David Edinger for the Defendant Korean Air Lines Co., Ltd., Randy

Sutton for the Defendants LAN Airlines S.A. and LAN Cargo S.A., Katherine Kay for the Defendants Air Canada and AC Cargo Limited Partnership, D. Martin Low, Q.C. and Lisa Parliament for the Defendants Societe Air France and Koninklijke Luchtvaart Maatschappij N.V., Margaret Waddell for the Defendant Qantas Airways Limited, Andrew Borrell for the Defendant Asiana Airlines Inc., Brad W. Dixon for the Defendant British Airways PLC and Charles Wright, counsel for the Plaintiffs in Ontario Superior Court of Justice Court File No. 50389CP;

THIS COURT ORDERS that:

1. in addition to the definitions used elsewhere in this Order, the definitions set out in the Canadian Air Cargo Shipping Services Class Action National Settlement Agreement between the Plaintiffs and Cargolux Airlines International S.A. ("Cargolux") attached as Schedule "A" and made as of May 10, 2011 (the "Cargolux Settlement Agreement") shall apply to and are incorporated into this Order. The following definitions shall also apply in this Order:
 - (a) "Proportionate Liability" means the proportion of any judgment that, had Cargolux not settled, a court or other arbiter would have apportioned to Cargolux and/or Released Parties, whether pursuant to *pro rata*, proportionate fault, *pro tanto*, or another method;
 - (b) "Action" means the proceeding commenced by Karen McKay in the form of a Writ of Summons and Statement of Claim filed on November 20, 2006 in the Supreme Court of British Columbia, Vancouver Registry, Action No. S067490; and
2. the Action be certified as a class proceeding as against Cargolux only and for settlement purposes only;
3. the BC Settlement Class be defined as follows:

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, from any air cargo carrier, including without limitation, the Defendants, and specifically including Cargolux. Excluded from the BC Settlement Class are the Defendants and their respective parents, employees, subsidiaries, affiliates, officers and directors; 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 be appointed as the representative plaintiff for the BC Settlement Class;

5. the following issue is common to the Settlement Class:

Did Cargolux 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 common law? If so, what damages, if any, did the Settlement Class Members suffer?

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

7. the Cargolux Settlement Agreement be 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 Cargolux 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, and where any term of this Order and the Cargolux Settlement Agreement conflict, the term contained in this 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 BC Settlement Class Member shall be dismissed against the Released Parties, without costs and with prejudice;

11. this Order, including the Cargolux Settlement Agreement, be binding upon each BC Settlement Class member including those persons who are minors or mentally incapable;

12. the use of the terms "Released Claims", "Released Parties" and "Releasing Parties" in this Order and in the Cargolux Settlement Agreement does not constitute a release of claims by the BC Settlement Class Members;
13. upon the Effective Date, the Releasing Parties resident in BC covenant and undertake not to sue or make any claim in any way nor to threaten, commence, or continue any proceeding in any jurisdiction against the Released Parties in respect of or in relation to the Released Claims;
14. upon the Effective Date, the Releasing Parties resident in BC shall not now or hereafter institute, continue, 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 action, suit, cause of action, claim or demand against any Released Party or any other person who may claim contribution or indemnity from any Released Party in respect of any Released Claim or any matter related thereto, except for the continuation of the Actions against the Non-Settling Defendants or unnamed co-conspirators
15. upon the Effective Date, the Released Parties have released and shall be conclusively deemed to have forever and absolutely released each of the other from any and all claims for contribution and indemnity with respect to the Released Claims;
16. (a) subject to subparagraph (b) of this paragraph, 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, relating to the Released Claims, which were or could have been brought in the Action or otherwise by any Non-Settling Defendant or any other Person or party (including a Settled Defendant) against a Released Party, or by a Released Party against a Non-Settling Defendant or any other person or party, are barred, prohibited and enjoined in accordance with the terms of this paragraph;
- (b) if a person or party is permitted to bring a claim against a Non-Settling Defendant or other Defendant (excluding Cargolux) in a jurisdiction outside of British Columbia (the "Foreign Claim") that if brought in British Columbia would

contravene paragraphs 16 or 17 hereof, then that Non-Settling Defendant or other Defendant is permitted to bring a claim for contribution, indemnity or other claims over against the Released Party thereafter in respect of the Foreign Claim notwithstanding this paragraph, provided that the Non-Settling Defendant or other Defendant establishes that it raised before the foreign court or other arbiter in a timely and proper manner that this Order is an absolute bar to any Foreign Claim arising from the Released Claims

17. if, in the absence of paragraph 16 hereof, the Non-Settling Defendants or other Defendants (excluding Cargolux) 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;
 - (a) the Plaintiff and the BC Settlement Class members shall not be entitled to claim or recover from the Non-Settling Defendants or other Defendants (excluding Cargolux) 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;
 - (b) 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 Plaintiff and the BC Settlement Class Members, if any;
 - (c) this Court shall have full authority to determine the Proportionate Liability at the trial or other disposition of the Action, whether or not the Released Parties 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 Action and shall not be binding upon the Released Parties in any other proceedings;
18. if, in the absence of paragraph 16 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 this Order is intended to or shall limit, restrict or affect any arguments which

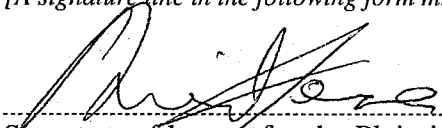
the Non-Settling Defendants may make regarding the reduction of any judgment against them in the Action;

19. subject to paragraph 20 hereof, a Non-Settling Defendant may, on motion to the Court brought on at least ten (10) days notice and determined as if Cargolux is party to the Action, not to be brought unless and until the 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 an affidavit of documents in accordance with the Supreme Court Civil Rules from Cargolux;
 - (b) oral discovery of a representative of Cargolux, the transcripts of which may be read in at trial;
 - (c) to serve a notice to admit on Cargolux in respect of factual matters; and
 - (d) production of a representative of Cargolux to testify at trial, with such witness to be subject to cross-examination by counsel for the Non-Settling Defendants;
20. Cargolux retains all rights to oppose such motion(s) brought under paragraph 19 hereof. Notwithstanding any provision in this Order, on any motion brought pursuant to paragraph 19 the Court may make such orders as to costs and other terms as it considers appropriate;
21. a Non-Settling Defendant may affect service of the motion(s) referred to in paragraph 19 above on Cargolux by service on counsel of record for Cargolux in the Action;
22. for purposes of enforcement of this Order, this Court will retain an ongoing supervisory role and Cargolux will attorn to the jurisdiction of this Court for this purpose;
23. except as provided herein, this 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 Action;
24. the Released Parties have no responsibility for and no liability whatsoever with respect to the administration of the Cargolux Settlement Agreement;

- 25. the Settlement Amount be held in trust for the benefit of the Settlement Class, pending further orders of the Court, which shall be sought by the Plaintiff on a motion in the Action brought on notice to Cargolux;
- 26. the Action be dismissed against Cargolux without costs and with prejudice;
- 27. this Order sought be contingent upon the approval of the Ontario Court and the Quebec Court of the Cargolux Settlement Agreement and this Order sought shall be of no force and effect if such approval is not secured in Ontario and Quebec; and
- 28. endorsement of this Order by counsel for the Non-Settling Defendants be dispensed with.

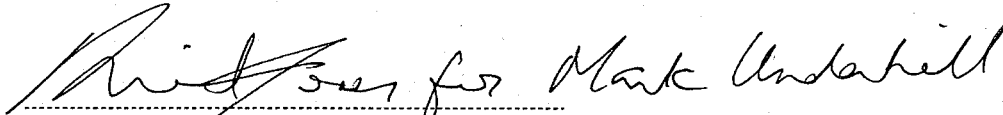
THE FOLLOWING PARTIES APPROVE THE FORM OF THIS ORDER AND CONSENT TO EACH OF THE ORDERS, IF ANY, THAT ARE INDICATED ABOVE AS BEING BY CONSENT:

[A signature line in the following form must be completed and signed by or for each consenting party.]



Signature of lawyer for the Plaintiff

David G. A. Jones



Signature of lawyer for the Defendant Cargolux Airlines International S.A.

Mark G. Underhill

By the Court

Registrar

