

Canadian Air Cargo Settlements  
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USA

CG2



**NOTICE OF SETTLEMENT APPROVAL & CLAIMS PROCESS 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”).**

**The Deadline to File a Claim under these Settlements is: May 11, 2017**

**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 AND JURISDICTION**

On August 26, 2015, the Ontario action was certified. The certification order is posted online at [www.aircargosettlement2.com](http://www.aircargosettlement2.com).

The Plaintiffs have appealed the jurisdiction decision, which affects the class definition. Once the jurisdiction appeal has been resolved, another notice will be distributed and posted online at [www.aircargosettlement2.com](http://www.aircargosettlement2.com). To ensure that you receive this notice, please register online at [www.aircargosettlement2.com](http://www.aircargosettlement2.com), call 1-800-461-6166 ext. 2446, or email [aircargo@siskinds.com](mailto:aircargo@siskinds.com).



### III. COURT APPROVED CLASS ACTION SETTLEMENTS

Settlements have been reached with:

| Settled Defendants  | Settlement Amount  |
|---|--|
| Deutsche Lufthansa AG, Lufthansa Cargo AG, and Swiss International Air Lines Ltd.                                     | US\$5,338,000<br>(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   |
| Cargolux Airline International  | CDN\$1,800,000   |
| Singapore Airlines Ltd and Singapore Airlines Cargo PTE Ltd   | CDN\$800,000 (plus<br>CDN\$250,000 in<br>administration and notice<br>costs) |
| 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   |
| Cathay Pacific Airways Ltd.   | CDN\$6,000,000   |

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 Settled Defendants to provide cooperation and/or certain documents and information to the Plaintiffs in the continued prosecution of the Canadian Proceedings. All of these settlements have received the requisite court approval.

The Canadian Proceedings are continuing against Air Canada, AC Cargo Limited Partnership, and British Airways PLC.

### IV. DISTRIBUTION OF THE SETTLEMENT FUNDS

The settlements achieved to date in this litigation total approximately CDN\$29.6 million. The aggregate settlement funds, plus accrued interest, less a reserve fund, court approved legal fees and expenses, and applicable taxes (the “Net Settlement Amount”), are available for compensation to Settlement Class Members. The Net Settlement Amount equals approximately CDN\$18,000,000. 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.

The Ontario, British Columbia and Quebec Courts approved a protocol for distributing the Net Settlement Amount. A copy of the distribution protocol is available at [www.aircargosettlement2.com](http://www.aircargosettlement2.com).

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 purpose 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 purpose of distribution of settlement funds, Settlement Class Members means all persons who purchased Airfreight Shipping Services between January 1, 2000 and September 11, 2006, except for the following persons who 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.

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 an integrated air cargo shipper (such as FedEx, UPS, DHL and TNT).

However, Settlement Class Members who have commenced litigation in other jurisdictions claiming damages arising from price-fixing of Airfreight Shipping Services will be required to discontinue or amend those proceedings



to exclude Airfreight Shipping Services by the Claims Filing Deadline in order to participate in the distribution of the Net Settlement Funds.

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 (Settlement Class Members may fall into more than one category):

- Settlement Class Members who purchased Airfreight Shipping Services direct from an air cargo carrier, for shipments by that Settlement Class Member, are "Direct Purchaser Shippers". For the purpose of valuing the claim, Direct Purchaser Shippers' Airfreight Shipping Services purchases will be valued at 100%.
- Settlement Class Members who purchased Airfreight Shipping Services from a Freight Forwarder are "Shippers". For the purpose of valuing the claim, Shippers' Airfreight Shipping Services purchases will be valued at 75%.
- Settlement Class Members who purchased Airfreight Shipping Services direct from an air cargo carrier, for resale to Shippers are "Freight Forwarders". For the purpose of valuing the claim, Freight Forwarders' Airfreight Shipping Services purchases will be valued at 25%. The claims of Freight Forwarders who provide information about their customers' Airfreight Shipping Services purchases to the Claims Administrator will be valued at 35%.

By way of example: If a Settlement Class Member purchased \$100,000 of Airfreight Shipping Services directly from an air cargo carrier and \$200,000 of Airfreight Shipping Services from a Freight Forwarder, its Airfreight Shipping Services Purchases for the purposes of determining its *pro rata* share of the Net Settlement Funds would be calculated as follows:

- $\$100,000 \times 1.0$  (representing the categorization of the purchaser as a Direct Purchaser Shipper) = \$100,000;
- $\$200,000 \times .75$  (representing the categorization of the purchaser as a Shipper) = \$150,000;
- $\$100,000 + \$150,000 = \$250,000$ .

Assuming all valid claims totalled \$100 million, this Settlement Class Member would be entitled to 0.25% of the Net Settlement Funds (CDN\$45,000).

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 Ontario court, 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 as part of any future distribution.

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.



## V. FILING A CLAIM

To be eligible for settlement benefits, Settlement Class Members must file a properly completed claim which includes a consent to the jurisdiction of the Ontario Superior Court of Justice and a full and final release for the benefit of the Settled Defendants, together with the required supporting documents, no later than May 11, 2017. Settlement Class Members who have commenced litigation in other jurisdictions against the Released Parties (as defined in the Settlement Agreements) relating to the Released Claims (as defined in the Settlement Agreements – e.g. claims resulting from or relating to the purchase of Airfreight Shipping Services) or if such litigation has been commenced on their behalf, must either discontinue or amend that litigation to exclude the Released Claims before filing a Claim, or expressly consent to a dismissal of such litigation when filing a Claim. Subject to further order of the Ontario court, Claims that are not made within the deadline will not be eligible for compensation.

Claims must be filed using the online claims process at [www.aircargosettlement2.com](http://www.aircargosettlement2.com). If you do not have Internet access, but wish to file a Claim, please contact the claims administrator at 1- 888-291-9655 (U.S. and Canada) or 1-614-553-1296 (International).

Where possible, Settlement Class Members will be able to rely on sales records provided by the Defendants, International Air Transport Association (“IATA”) which offers an electronic billing service to airlines and others in the airline industry called Cargo Accounts Settlement Systems (“CASS”), and/or Freight Forwarders to establish their purchases. Settlement Class Members may also rely on their own purchase records. Please refer to the distribution protocol or question 6 of the Frequently Asked Questions (online at [www.aircargosettlement2.com](http://www.aircargosettlement2.com)) for more information.

The courts have appointed Garden City Group, LLC (an independent third-party) to receive and review claims, make determination in respect of entitlement to direct payment of settlement benefits, and issue payments to eligible Settlement Class Members.

Questions regarding the claims process should be directed to Garden City Group, LLC at 1-888- 291-9655 (U.S. and Canada) or 1-614-553-1296 (International) or [administrator@aircargosettlement2.com](mailto:administrator@aircargosettlement2.com).

The litigation is continuing against Air Canada, AC Cargo Limited Partnership, and British Airways PLC. Settlement Class Members who file a claim will be able to rely on that claim in respect of any subsequent settlement.

## VI. CLASS COUNSEL & LEGAL FEES

The law firm of Siskinds LLP represents Settlement Class Members in Ontario and in all provinces other than British Columbia and Quebec, as well as corporations of more than 50 employees in Quebec.

Siskinds LLP can be reached at: 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.

The law firm of Camp Fiorante Matthews Mogerman (“CFM”) represents Settlement Class Members in British Columbia. CFM can be reached at: (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.

The law firm of Liebman Legal Inc. represents individuals and corporations of 50 or less employees who are Settlement Class Members in Quebec. Liebman Legal Inc. can be reached at: (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.

You do not need to pay out-of-pocket for the lawyers working on the class action. The lawyers will be paid from the settlement funds in an amount approved by the courts.



## **VII. QUESTIONS**

More information about the settlements, the distribution of the settlement funds and the claims process is available online at [www.aircargosettlement2.com](http://www.aircargosettlement2.com), by email at [administrator@aircargosettlement2.com](mailto:administrator@aircargosettlement2.com) or by calling 1-888-291-9655 (U.S. and Canada) or 1-614-553-1296 (International).

## **VIII. INTERPRETATION**

This notice contains a summary of some of the terms of the Settlement Agreements and the distribution protocol. If there is a conflict between the provisions of this notice and the Settlement Agreements (including the appendices) and/or the distribution protocol, the terms of the Settlement Agreements and/or distribution protocol shall prevail.

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