

**ONTARIO
SUPERIOR COURT OF JUSTICE**

The Honourable) Thursday, the 13th day
Justice Leitch) of October, 2011

BETWEEN :

AIRIA BRANDS INC., STARTECH.COM LTD.,
AND QCS-QUICK CARGO SERVICE GMBH

Plaintiffs

-and-

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, 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.

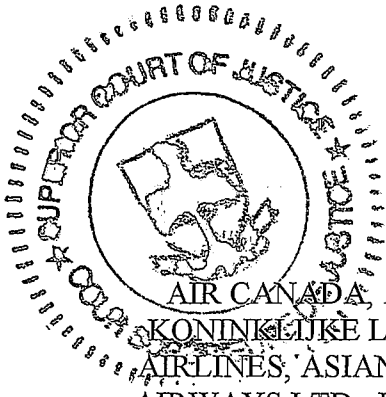
Defendants

Proceeding under the *Class Proceedings Act, 1992*

ORDER

THIS MOTION made by the Plaintiffs for an Order certifying the Action as a class proceeding for settlement purposes only as against Cargolux Airlines International S.A. ("Cargolux"), and approving the settlement agreement entered into with Cargolux was heard this day at the Court House, 80 Dundas Street, London, Ontario.

ON READING the materials filed, including the settlement agreement entered into by the Plaintiffs and Cargolux dated May 10, 2011 and attached to this Order as Schedule "A" (the



“Settlement Agreement”), and on hearing the submissions of counsel for the Plaintiffs and counsel for Cargolux;

AND ON BEING ADVISED that the Plaintiffs and Cargolux consent to this Order and the Non-Settling Defendants take no position on this Order;

1. **THIS COURT ORDERS** that, in addition to the definitions used elsewhere in this Order, the definitions set out in the 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; and

(b) “Action” means the proceeding commenced by Airia Brands Inc., StarTech.com Ltd., and QCS-Quick Cargo Service GmbH in the form of a Statement of Claim filed in the Ontario Court (London Registry) (Court File No. 50389 CP), filed on July 6, 2006.

2. **THIS COURT ORDERS** that the Action be certified as a class proceeding as against Cargolux only and for settlement purposes only.

3. **THIS COURT ORDERS** that the Settlement Class be defined as:

All Persons, other than members of the Quebec Settlement Class or the BC Settlement Class, 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 Ontario Settlement Class are the Defendants and their respective parents, employees, subsidiaries, affiliates, officers and directors, and Persons who validly and timely opted-out of the Ontario Action in accordance with the order of the Ontario Court dated March 6, 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. **THIS COURT ORDERS** that Airia Brands Inc., StarTech.Com Ltd., and QCS-Quick Cargo Service GMBH be appointed as the representative plaintiffs for the Settlement Class.
5. **THIS COURT ORDERS** that 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 the common law? If so, what damages, if any, did Settlement Class Members suffer?
6. **THIS COURT ORDERS** that the Settlement Agreement is fair, reasonable and in the best interests of the Settlement Class.
7. **THIS COURT ORDERS** that the Settlement Agreement is approved pursuant to s. 29 of the *Class Proceedings Act, 1992* and shall be implemented in accordance with its terms.
8. **THIS COURT ORDERS** that the Settlement Agreement is incorporated by reference into and forms part of this Order, and is binding upon the representative plaintiffs and all Settlement Class Members, and where any term of this Order and the Settlement Agreement conflict, the term contained in this Order shall govern.
9. **THIS COURT ORDERS** that each Settlement Class Member is bound by the Settlement Agreement.
10. **THIS COURT ORDERS** that, upon the Effective Date, each 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 Settlement Class Member's Released Claims.
11. **THIS COURT ORDERS** that, upon the Effective Date, any and all Released Claims commenced in Ontario by any Settlement Class Member shall be dismissed against the Released Parties, without costs and with prejudice.

12. **THIS COURT ORDERS** that this Order, including the Settlement Agreement, is binding upon each Settlement Class Member including those persons who are minors or mentally incapable and the requirements of Rules 7.04(1) and 7.08(4) of the *Rules of Civil Procedure* are dispensed with in respect of the Action.
13. **THIS COURT ORDERS** that, upon the Effective Date, each Releasing Party has released and shall be conclusively deemed to have forever and absolutely released the Released Parties from the Released Claims.
14. **THIS COURT ORDERS** that, upon the Effective Date, each Releasing Party 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. **THIS COURT ORDERS** that, 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. **THIS COURT ORDERS** that the use of the terms “Releasing Party” and “Released Claims” in the Order does not constitute a release of claims by those Settlement Class Members who are resident in any jurisdiction where the release of one tortfeasor is a release of all tortfeasors.
17. **THIS COURT ORDERS** that, upon the Effective Date, each Settlement Class Member who is resident in any jurisdiction where the release of one tortfeasor is a release of all tortfeasors covenants and undertakes not to 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.

18. **THIS COURT ORDERS** that:

- (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 Actions 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 other Defendant, 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 Ontario (the “Foreign Claim”) that if brought in Ontario would contravene paragraphs 18 or 19 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.

19. **THIS COURT ORDERS** that if, in the absence of paragraph 18 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 Plaintiffs and the 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;

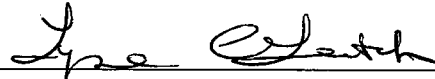
- (b) for greater certainty, the Plaintiffs and the Settlement Class Members shall limit their claims against the Non-Settling Defendants to, and shall be entitled to recover from the Non-Settling Defendants, only those claims for damages, costs and interest attributable to the Non-Settling Defendants' several liability to the Plaintiffs and the Settlement Class Members, if any;
 - (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.
- 20. **THIS COURT ORDERS** that if, in the absence of paragraph 18 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.
- 21. **THIS COURT ORDERS** that, subject to paragraph 22 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, and 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 *Rules of Civil Procedure* O. Reg. 194 from Cargolux;
 - (b) oral discovery of a representative of Cargolux, the transcripts of which may be read in at trial;
 - (c) leave to serve a request to admit on Cargolux in respect of factual matters; and/or

- (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.
22. **THIS COURT ORDERS** that Cargolux retains all rights to oppose such motion(s) brought under paragraph 21 hereof. Notwithstanding any provision in this Order, on any motion brought pursuant to paragraph 21 the Court may make such orders as to costs and other terms as it considers appropriate.
23. **THIS COURT ORDERS** that a Non-Settling Defendant may affect service of the motion(s) referred to in paragraph 21 above on Cargolux by service on counsel of record for Cargolux in the Action.
24. **THIS COURT ORDERS** that for purposes of enforcement of the Order, this Court will retain an ongoing supervisory role and Cargolux will attorn to the jurisdiction of this Court for this purpose.
25. **THIS COURT ORDERS** that, except as provided herein, the Order does not affect any claims or causes of action that any Settlement Class Member has or may have against the Non-Settling Defendants or unnamed co-conspirators in the Action.
26. **THIS COURT ORDERS** that the Released Parties have no responsibility for and no liability whatsoever with respect to the administration of the Settlement Agreement.
27. **THIS COURT ORDERS** that 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 Plaintiffs on a motion in the Action brought on notice to the Settling Defendants.
28. **THIS COURT ORDERS** that the Action be dismissed against Cargolux without costs and with prejudice.

29. **THIS COURT ORDERS** that this Order is contingent upon the approval of the Quebec Court and British Columbia Court of the same Settlement Agreement and this Order shall be of no force and effect if such approval is not secured in Quebec and British Columbia.

Date:

OCT 25 2011



The Honourable Justice Leitch

ORDER ENTERED
77-72
OCT 26 2011

**ONTARIO
SUPERIOR COURT OF JUSTICE**

Proceeding commenced at London

Proceeding under the *Class Proceedings Act, 1992*

**ORDER
Cargolux Settlement Approval**

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