

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)	CHIEF JUSTICE BAUMAN)	20/OCT/2011
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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, 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., Mark Underhill for the Defendant Cargolux Airlines International S.A., 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 the Order, the definitions set out in the settlement agreement entered into by the Plaintiff and Singapore Airlines Ltd. and Singapore Airlines Cargo PTE Ltd. (collectively the "Singapore Defendants") attached as Schedule "A" and dated June 24, 2011 (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 the Singapore Defendants not settled, a court or other arbiter would have apportioned to the Singapore Defendants and/or Releasees, 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;
2. the Action is certified as a class proceeding as against Singapore 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 Settlement Class 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 Singapore Defendants. Excluded from the BC 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 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. the Action is certified on the basis of the following issue common to the BC Settlement Class:

Did the Singapore Defendants conspire to fix, raise, maintain or stabilize the prices of Airfreight Shipping Services during the Class 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 Settlement Agreement is fair, reasonable, adequate and in the best interests of the BC Settlement Class;
7. the 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 Settlement Agreement is incorporated by reference into and forms part of this Order and is binding upon the representative plaintiff and upon all BC Settlement Class Members;
9. each BC Settlement Class Member is bound by the Settlement Agreement;
10. upon the Effective Date, each BC Settlement Class Member shall consent and shall be deemed to consent to the dismissal as against the Releasees without costs and with prejudice, of any and all of the BC Settlement Class Member's Released Claims in any jurisdiction;
11. upon the Effective Date, any and all Released Claims commenced in British Columbia by any BC Settlement Class Members shall be dismissed against the Releasees, without costs and with prejudice;
12. this Order, including the Settlement Agreement, is binding upon each BC Settlement Class Member, including those persons who are minors or mentally incapable;
13. upon the Effective Date, each Releasor resident in British Columbia shall be deemed to and does forever covenant not to sue and undertake not to make or assert any action, suit, cause of action, claim or demand or in any way or to threaten, commence, or continue to

make or assert any action, suit, cause of action, claim or demand in any jurisdiction against the Releasees arising from or in any way related to the Released Claims;

14. it is a condition of receipt of funds under the Settlement Agreement that each BC Settlement Class Member receiving funds execute a written covenant not to sue and a written undertaking not to make or assert any actions, suit, cause of action, claim or demand, or in any way to threaten, commence or continue to make or assert any action, suit, cause of action, claim or demand in any jurisdiction against the Releasees in respect of or in relation to the Released Claims;
15. each Releasor 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 within the scope of the Released Claims against any Releasee or any other person who may claim contribution or indemnity from any Releasee in respect of any Released Claim or any matter related thereto, except for the continuation of the Actions against the Non-Settling Defendants or un-named co-conspirators;
16. use of the terms "Releasors", "Releasees" and "Released Claims" in this Order is a matter of form only for consistency with the Settlement Agreement and does not constitute a release of claims by BC Settlement Class Members;
17. notwithstanding section 6.1(a) of the Settlement Agreement:
 - (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 Releasee, or by a Releasee 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 Singapore) in a jurisdiction outside of British Columbia (the "Foreign Claim") that if brought in British Columbia would contravene paragraphs 17 or 18 hereof, then that Non-Settling Defendant or other Defendant is permitted to bring a claim for contribution, indemnity or other

claims over against the Releasee 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;

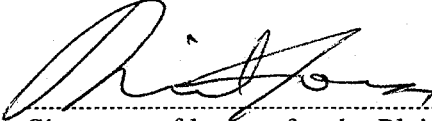
18. if, in the absence of paragraph 17 above, the Non-Settling Defendants or other Defendants (excluding Singapore) would have the right to make claims for contribution and indemnity or other claims over, whether in equity or in law, by statute or otherwise, from or against the Releasees;
 - (a) the Plaintiff and the BC Settlement Class Members shall not be entitled to claim or recover from the Non-Settling Defendants or other Defendants (excluding Singapore) that portion of any damages (including punitive damages, if any), restitutionary award, disgorgement or profits, interests 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 Releasees 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; and;
 - (c) this Court shall have full authority to determine the Proportionate Liability at the trial or other disposition of this Action, whether or not the Releasees remain in this Action or appear at the trial or other disposition, and the Proportionate Liability shall be determined as if the Releasees 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 this Action and shall not be binding upon the Releasees in any other proceedings;
19. if, in the absence of paragraph 17 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 Releasees, 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;
20. subject to paragraph 21 hereof, a Non-Settling Defendant may, on motion to the Court brought on at least ten (10) days notice and determined as if the Singapore Defendants

are parties 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 the Singapore Defendants;
 - (b) oral discovery of a representative of the Singapore Defendants, the transcripts of which may be read in at trial;
 - (c) to serve a notice to admit on the Singapore Defendants in respect of factual matters; and/or
 - (d) production of a representative of the Singapore Defendants to testify at trial, with such witness to be subject to cross-examination by counsel for the Non-Settling Defendants;
21. the Singapore Defendants retain all rights to oppose such motion(s) under paragraph 20 hereof. Notwithstanding any provision in this Order, on any motion brought pursuant to this paragraph 20, the Court may make such Orders as to costs and other terms as it considers appropriate;
 22. a Non-Settling Defendant may affect service of the motion(s) referred to in paragraph 20 above on the Singapore Defendants by service on counsel of record for the Singapore Defendants in this Action;
 23. for purposes of enforcement of this Order, this Court will retain an ongoing supervisory role and the Singapore Defendants will attorn to the jurisdiction of this Court for this purpose;
 24. 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 who are not Releasees in the Action;
 25. the Releasees have no responsibility for and no liability whatsoever with respect to the administration of the Settlement Agreement;

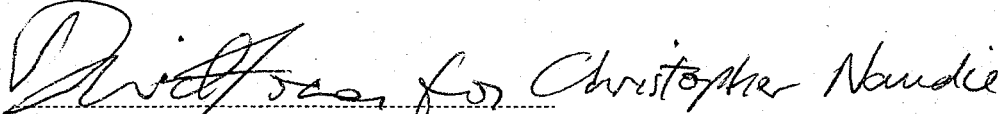
26. the Settlement Amount be held in trust for the benefit of the BC Settlement Class, pending further order of the Court, which shall be sought by the Plaintiff on a motion in the Action brought on notice to the Singapore Defendants;
27. the Action be and is hereby dismissed against the Singapore Defendants without costs and with prejudice;
28. this Order shall be declared null and void in the event that the Settlement Agreement is terminated in accordance with its terms;
29. this Order is contingent upon the approval of the Québec Court of the same Settlement Agreement and this Order shall be of no force and effect if such approval is not secured in Québec; and
30. 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:



Signature of lawyer for the Plaintiff

David G. A. Jones



Signature of lawyer for Singapore Airlines Ltd.
and Singapore Airlines Cargo PTE Ltd.

Christopher Naudie

By the Court

Registrar

