

# SUPERIOR COURT

CANADA  
PROVINCE OF QUEBEC  
DISTRICT OF MONTREAL

No: 500-06-000344-065

DATE: March 10, 2015

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**IN THE PRESENCE OF: THE HONOURABLE CHANTAL CORRIVEAU, J.S.C.**

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**CARTISE SPORTS INC.**

Plaintiff

v.

**POLAR AIR CARGO LLC F/K/A POLAR AIR CARGO INC. ("POLAR")**

et al.

Defendants

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## JUDGMENT

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[1] The court is seized with a Motion made by the Plaintiff for an Order authorizing the Québec Action as a class proceeding for settlement purposes only as against Polar Air Cargo LLC (formerly known as Polar Air Cargo Inc.) ("Polar") and approving the settlement agreement entered into with Polar;

[2] CONSIDERING the Settlement Agreement entered into between Plaintiff and Polar dated as of August 1, 2014 and attached to this Order as Schedule "A" (the "Settlement Agreement"), the materials filed, and on hearing the submissions of counsel for the Plaintiff and counsel for Polar, including that Polar does not admit, through the execution of the Settlement Agreement, any allegation of unlawful conduct alleged in the Québec Action;

[3] CONSIDERING THAT Plaintiff and Polar consent to this Order, Atlas Air Worldwide Holdings Inc. consents to the dismissal of the Québec Action as against it

without costs and with prejudice, and the Non-Settling Defendants take no position on this Order;

[4] CONSIDERING THAT for settlement purposes only, Polar does not dispute that the criteria of article 1003 C.C.P. are satisfied;

[5] CONSIDERING THAT the Court finds that the Settlement Agreement is fair, reasonable and in the best interests of the Québec Settlement Class;

**FOR THESE REASONS, THE COURT:**

**[6] ORDERS THAT:**

1. The definitions set out in the Settlement Agreement shall apply to and are incorporated into this Order.
2. This Action is authorized as a class proceeding as against Polar only and for settlement purposes only.
3. The Québec Settlement Class is defined as:

*"All Individuals resident in the Province of Québec and all legal Persons resident in Québec established for a private interest, partnership or association in the Province of Québec which, at all times between May 5<sup>th</sup>, 2005 and May 5<sup>th</sup>, 2006 had under its direction or control no more than fifty (50) persons bound to it by a contract of employment, who purchased Airfreight Shipping Services\* during the Purchase Period, including those individuals and legal Persons who purchased Airfreight Shipping Services through freight forwarders, from any air cargo carrier, including without limitation, the Defendants, and specifically including Polar, during the Purchase Period. Excluded from the Québec 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 Québec Action in accordance with the order of the Québec Court dated April 14<sup>th</sup>, 2008".*

*\*Airfreight Shipping Services means airfreight cargo shipping services for shipments within, to, or from Canada. Airfreight Shipping Services specifically excludes airfreight cargo shipping services for shipments (i) with an origin point in Canada and a destination point in the United States or (ii) with an origin point in the United States and a destination point in Canada, but includes airfreight cargo shipping services in which the freight (i) travelled by truck from Canada to the United States, and then by air from the United States to a third country, or (ii) travelled by air from a third country to the United States, and then by truck from the United States to Canada.*

4. Cartise Sports Inc. is appointed as the representative Plaintiff for the Québec Settlement Class.

5. For settlement purposes, the following issues are common to the Québec Settlement Class:

Did Polar 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 *Civil Code of Québec*? If so, what damages, if any, did Settlement Class Members suffer?

6. The Settlement Agreement is approved and shall be implemented in accordance with its terms.

7. The Settlement Agreement is incorporated and forms part of this Order, and is binding upon the representative Plaintiff and all Québec Settlement Class Members, and where any term of this Order and the Settlement Agreement conflict, the term contained in this Order shall govern.

8. This Order, including the Settlement Agreement, is binding upon each Québec Settlement Class Member.

9. As of the date of this Order, each Québec Settlement Class Member consent to the dismissal as against the Released Parties, without costs and with prejudice, of the Settlement Class Member's Released Claims in any jurisdiction.

10. As of the date of this Order, all Released Claims commenced in Québec by Settlement Class Member shall be dismissed against the Released Parties, without costs and with prejudice.

11. As of the date of this Order, the Releasing Parties release and discharge the Released Parties of Released Claims.

12. As of the date of this Order, the Releasing Parties shall not commence any Claim within the scope of the Released Claims against any Released Party any Released Claim.

13. The Plaintiff in this Action and the Québec Settlement Class Members renounce the benefit of solidarity against the Non-Settling Defendants with respect to the facts and deeds or other conduct of Polar.

14. Any action in warranty or other joinder of parties to obtain any contribution or indemnity from Released Parties or relating to the Released Claims shall be inadmissible and void in the context of this Action.

15. Any future right by the Non-Settling Defendants to examine on discovery a

representative of Polar will be determined according to the provisions of the *Code of Civil Procedure*, and Polar shall reserve their right to oppose such an examination under the *Code of Civil Procedure*.

16. A Non-Settling Defendant may effect service of the motion(s) referred to in paragraph 16 on Polar by service on counsel of record for Polar in this Action.

17. For purposes of enforcement of this Order, this Court will retain an ongoing supervisory role and Polar will attorn to the jurisdiction of this Court for this purpose.

18. The Settlement Amount must be held in trust for the benefit of the Québec 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 Polar.

19. This Action be and is hereby dismissed against Polar and Atlas without costs and with prejudice.

[7] The costs associated with this Motion will be addressed in the decision rendered on the Motion of Plaintiff's attorney for fee approval;

  
CHANTAL CORRIVEAU, J.S.C.

Me Irwin I. Liebman  
LIEBMAN LÉGAL INC.  
Attorney for Plaintiff

Me Julie Chenette  
CHENETTE, BOUTIQUE DE LITIGE INC.  
Attorney for Polar Air Cargo LLC and  
Atlas Air Worldwide Holdings Inc.

Date of hearing: January 30, 2015