



No. S067490  
Vancouver Registry

In The Supreme Court of British Columbia

**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

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**ORDER MADE AFTER APPLICATION  
APPROVAL OF NOTICE**

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BEFORE

CHIEF JUSTICE HINKSON

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)  
)

FEB 08 2021

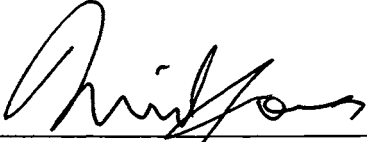
ON THE APPLICATION of the plaintiff without a hearing an on reading the materials filed by David G.A. Jones for the plaintiff.

**THIS COURT ORDERS that:**

1. For the purposes of this Order, except to the extent that they are modified in this Order, the definitions set out in the settlement agreement entered into with Air Canada, and AC Cargo Limited Partnership, dated November 17, 2020 and attached to this Order as **Schedule “A”** (the “Settlement Agreement”) apply to and are incorporated into this Order.
2. The customer information provided by any Defendant who has entered into a settlement with the Plaintiff, and International Air Transport Association (“IATA”), a non-party to this litigation, produced as the result of the order of the Honourable Madam Justice Leitch made May 2, 2008 in the Ontario Court (the “May 2 Order”), attached as **Schedule “B”**, can be used by Epiq Class Action and Claims Solutions, Inc. (formerly known as The Garden City Group LLP) subject to the same terms and conditions as the May 2 Order, for the limited purpose of disseminating the long form notice of hearing (the “Long Notice”), the abbreviated notice of hearing (the “Abbreviated Notice” and the publication notice (the “Publication Notice”) (collectively, the “Notices of Hearing”) in accordance with this Order.
3. The Long Notice is hereby approved in the form attached as **Schedule “C”**.
4. The Abbreviated Notice is hereby approved in the form attached as **Schedule “D”**.
5. The Publication Notice is hereby approved in the form attached as **Schedule “E”**.
6. The plan of dissemination (“Plan of Dissemination”) is approved in the form attached as **Schedule “F”** and that the Notices of Hearing shall be disseminated in accordance with the Plan of Dissemination.

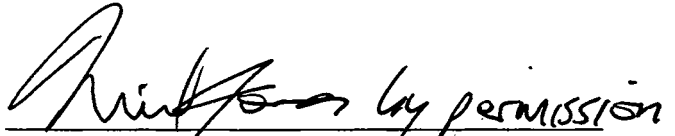
7. This Order is contingent upon parallel orders being made by the Ontario Court and the Quebec Court, and the terms of this order shall not be effective unless and until such order is made by the Ontario Court and the Quebec Court.

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:



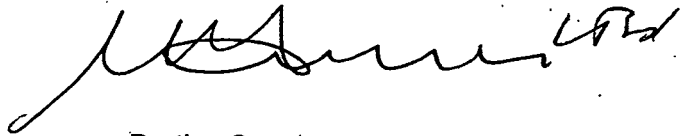
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Signature of lawyer for the plaintiff

David G.A. Jones



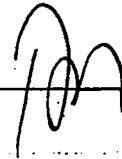
\_\_\_\_\_  
Signature of lawyer for Air Canada and AC Cargo Limited Partnership

Danielle Royal



By the Court

\_\_\_\_\_  
Registrar



## **Schedule “A”**

### **CANADIAN AIR CARGO SHIPPING SERVICES CLASS ACTION MULTI-JURISDICTIONAL SETTLEMENT AGREEMENT**

Between:

AIRIA BRANDS INC., STARTECH.COM LTD., QCS-QUICK CARGO SERVICE GMBH,  
KAREN MCKAY and CARTISE SPORTS INC.

and

AIR CANADA

(the “**Settling Defendant**”)

Executed November 17, 2020

**CANADIAN AIR CARGO SHIPPING SERVICES CLASS ACTION  
MULTI-JURISDICTIONAL SETTLEMENT AGREEMENT**

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**CANADIAN AIR CARGO SHIPPING SERVICES CLASS ACTION  
MULTI-JURISDICTIONAL SETTLEMENT AGREEMENT**

**RECITALS**

A. **WHEREAS** the Actions have been commenced in the Courts alleging that the Defendants, including the Settling Defendant, participated in an unlawful conspiracy pursuant to which the Settling Defendant and its alleged co-conspirators, including the Defendants, agreed to, among other things, fix, raise, maintain or stabilize the prices of Airfreight Shipping Services in violation of Part VI of the *Competition Act* and the common law and/or civil law;

B. **WHEREAS**, as of December 1, 2009, the operations of AC Cargo Limited Partnership were wound up into Air Canada and are now operated as a division of Air Canada;

C. **WHEREAS** the Ontario Action was certified as a national class proceeding under the Ontario *Class Proceedings Act, 1992* by Order dated August 26, 2015 and amended December 21, 2018. The certified class being defined as follows:

Persons who purchased Airfreight Shipping Services\* during the period January 1, 2000 to September 11, 2006, including those persons who purchased Airfreight Shipping Services through freight forwarders, from any air cargo carrier, including, without limitation, the defendants, but not including Integrated Air Cargo Shippers\*\*.

Excluded from the Class are:

- a) Defendants and their unnamed co-conspirators\*\*\* and their respective parents, employees, subsidiaries, affiliates, officers, and directors,
- b) persons currently resident in Australia who paid identified amounts totalling more than AUD\$20,000 for the carriage of goods to or from Australia, including in each instance a component by air during the period January 1, 2000 to January 11, 2007,
- c) persons who commence litigation in respect of Airfreight Shipping Services in a jurisdiction other than Canada prior to the conclusion of the trial of the common issues, and

d) persons who timely and validly opted out of the litigation pursuant to the order of the Ontario court dated March 6, 2008.

\*Airfreight Shipping Services are defined as airfreight cargo shipping services for shipments to or from Canada (excluding shipments to and from the United States).

\*\*Integrated Air Cargo Shipper is defined as an air cargo shipper that manages an integrated system of people, airplanes, trucks, and all other resources necessary to move airfreight cargo from a customer's point of origin to the delivery destination, and for greater certainty includes but is not limited to FedEx, UPS, DHL, and TNT,

\*\*\*Unnamed co-conspirators are defined as 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.

D. **AND WHEREAS** the Settling Defendant expressly denies and does not admit, through the execution of this Settlement Agreement or otherwise, any allegation of unlawful conduct alleged in the Actions;

E. **AND WHEREAS** the Plaintiffs have entered into a proposed settlement with British Airways PLC, which settlement is subject to the approval of the Ontario Court and has not yet become effective in accordance with its terms;

F. **AND WHEREAS** if this Settlement Agreement and the proposed settlement between the Plaintiffs and British Airways PLC are approved and become effective with their terms, and neither are terminated in accordance with their terms, the Actions shall be resolved in their entirety;



G. **AND WHEREAS** the Plaintiffs, Class Counsel and the Settling Defendant agree that neither the fact of this Settlement Agreement nor any statement made in the negotiation thereof shall be deemed or construed to be an admission by or evidence against the Settling Defendant or evidence of the truth of any of the Plaintiffs' allegations against the Settling Defendant, which the Settling Defendant expressly denies;

H. **AND WHEREAS** the Settling Defendant would assert a number of defences to the Plaintiffs' claims if the Actions proceeded further as against it;

I. **AND WHEREAS**, despite the Settling Defendant's belief that it is not liable in respect of the claims as alleged in the Actions and have good defences thereto, the Settling Defendant is entering into this Settlement Agreement to avoid the further expense, inconvenience, and burden of this litigation and any other present or future litigation arising out of the facts that gave rise to this litigation and to achieve a final resolution of all claims asserted or which could have been asserted against it by the Plaintiffs on their own behalf and on behalf of the Settlement Class, and to avoid the risks inherent in uncertain, complex and protracted litigation, and thereby to put to rest this dispute with valued business customers;

J. **AND WHEREAS** the Plaintiffs have agreed to accept this settlement, in part, because of the value of the Settlement Amount to be paid by the Settling Defendant under this Settlement Agreement, the attendant risks of litigation in light of the potential defences that may be asserted by the Settling Defendant, and the desirability of permitting the settlement to be consummated as provided by the terms of this Settlement Agreement;

K. **AND WHEREAS** the deadline for Settlement Class Members to opt-out of the Actions has passed and 9 Persons exercised the right to opt-out of the Actions;

L. **AND WHEREAS** arm's-length settlement negotiations have taken place between the Settling Defendant and the Plaintiffs, and this Settlement Agreement, which embodies all of the terms and conditions of the settlement between the Settling Defendant and the Plaintiffs, both individually and on behalf of the Settlement Class, has been reached, subject to approval of the Courts;

M. **AND WHEREAS** Class Counsel, on their own behalf and on behalf of the Plaintiffs and the proposed Settlement Class, have reviewed and fully understand the terms of this Settlement Agreement and, based on their analyses of the facts and law applicable to the Plaintiffs' claims, having regard to the burdens and expense in prosecuting the Actions, including the risks and uncertainties associated with trials and appeals, the Plaintiffs and Class Counsel have concluded that a settlement with the Settling Defendant according to the terms set forth below is fair, reasonable and in the best interests of the Plaintiffs and the Settlement Class;

N. **AND WHEREAS** the Plaintiffs and the Settling Defendant therefore wish to, and hereby do, finally resolve, without admission of liability, all of the Actions and the Released Claims as against the Settling Defendant, subject to the approval of the Courts;

O. **AND WHEREAS** for the purposes of settlement only and contingent on approval by the Courts as provided for in this Settlement Agreement, the Parties have consented to certification (or authorization in Quebec) of the Actions as class proceedings and have consented to a Settlement Class in each of the Actions;

P. **AND WHEREAS** the Plaintiffs assert that they are adequate class representatives for the Settlement Classes and will seek to be appointed representative plaintiffs in their respective Actions;

Q. **AND WHEREAS** the Settling Defendant does not hereby attorn to the jurisdiction of the Courts or any other court or tribunal in respect of any civil, criminal or administrative process except to the extent it has previously done so in the Actions and as is expressly provided in this Settlement Agreement with respect to the Actions;

**NOW THEREFORE**, in consideration of the covenants, agreements and releases set forth herein, the receipt and sufficiency of which is hereby acknowledged, **IT IS HEREBY AGREED** by and among the Plaintiffs and the Settling Defendant that the Ontario Action and BC Action be settled and dismissed with prejudice as to the Settling Defendant and AC Cargo Limited Partnership only, and the Quebec Action be settled with prejudice as against the Settling Defendant and AC Cargo Limited Partnership, all without costs as to the Plaintiffs, the Settlement Class or the Settling Defendant subject to the approval of the Courts and on the terms and conditions of this Settlement Agreement, as follows:

### **SECTION 1 - DEFINITIONS**

For the purpose of this Settlement Agreement only, including the recitals and schedule hereto:

- (a) ***Actions*** means the Ontario Action, the Quebec Action and the BC Action.
- (b) ***Administration Expenses*** means all fees, disbursements, expenses, costs, taxes and any other amounts incurred or payable by the Plaintiffs, Class Counsel or otherwise for the approval, implementation and operation of this Settlement Agreement or in relation to the Settlement Fund, including the costs of notices and claims administration, but excluding Class Counsel Fees and Class Counsel Disbursements.
- (c) ***Airfreight Shipping Services*** means airfreight cargo shipping services for shipments within, to, or from Canada, but specifically excluding 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.

- (d) **Approval Hearings** means the hearings of motions brought by Class Counsel for the certification (and authorization in Quebec) of the Actions as a class proceeding on the basis of this Settlement Agreement and for the Courts' approval of the settlement provided for in this Settlement Agreement.
- (e) **Approval Orders** means orders of the Courts, substantially in the form attached as Schedule "B" hereto, or such other form of order as agreed upon by the Plaintiffs and the Settling Defendant approving this Settlement Agreement.
- (f) **BC Action** means the proceeding commenced in the British Columbia Supreme Court, under Vancouver Registry No. S067490.
- (g) **BC Counsel** means Camp Fiorante Matthews Mogerman.
- (h) **BC Court** means the Supreme Court of British Columbia.
- (i) **BC Settlement Class** means 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. 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.

- (j) **Claim** shall have the meaning attributed to it in Section 1(II)
- (k) **Claims Administrator** means the Person proposed by Class Counsel and appointed by the Courts to administer the Settlement Fund in accordance with the provisions of this Settlement Agreement and the Distribution Protocol, and any employees of such Person.
- (l) **Class Counsel** means Ontario Counsel, Quebec Counsel and BC Counsel.
- (m) **Class Counsel Disbursements** include the disbursements and applicable taxes incurred by Class Counsel in the prosecution of the Actions, as well as any adverse costs awards issued against the Plaintiffs in the Actions.
- (n) **Class Counsel Fees** means the fees of Class Counsel, and any applicable taxes or charges thereon, including any amounts payable as a result of the Settlement Agreement by Class Counsel or the Settlement Class Members to any other body or Person, including the Fonds d'aide aux actions collectives in Quebec.
- (o) **Counsel for the Settling Defendant** means Stikeman Elliott LLP.
- (p) **Courts** means the Ontario Court, the Quebec Court and the BC Court.
- (q) **Defendants** means the entities named as defendants in any of the Actions. For greater certainty, Defendants includes the Settling Defendant and the Settled Defendants.

- (r) ***Distribution Protocol*** means the plan for distributing the Settlement Fund to Settlement Class Members as approved by the Courts.
- (s) ***Effective Date*** means (i) the date upon which the ability to appeal, if an appeal lies therefrom, from the last obtained Approval Order has expired without any appeal being taken; or (ii) if any appeals have been taken from an Approval Order, the date upon which all such appeals are concluded by way of a Final (as defined in Section 1(v)) order or judgment. For the purposes of this paragraph, an “appeal” shall not include any appeal that concerns only the issue of Class Counsel Fees or the Distribution Protocol.
- (t) ***Epiq*** means Epiq Class Action and Claims Solutions, Inc. (formerly known as Garden City Group, LLC).
- (u) ***Execution Date*** means the date of the execution of this Settlement Agreement by counsel for all the Plaintiffs and the Settling Defendant.
- (v) ***Final***, when used in relation to a court order or judgment, means that all rights of appeal from such order or judgment have expired or have been exhausted (including a right of appeal arising after the granting of leave if leave to appeal is required), and the ultimate court of appeal to which an appeal (if any) was taken has upheld such order or judgment.
- (w) ***Foreign Claim*** shall have the meaning attributed to it in Section 4.1(a)(i).
- (x) ***Non-Settling Defendants*** means any Defendant that is not (i) the Settling Defendant; (ii) a Settled Defendant; or (iii) a Defendant against whom the Actions have been dismissed, settled or discontinued, either before or after the Execution Date.

- (y) ***Ontario Action*** means the proceeding commenced in the Ontario Court bearing Court File No. 50389CP (London).
- (z) ***Ontario Counsel*** means Siskinds LLP.
- (aa) ***Ontario Court*** means the Ontario Superior Court of Justice.
- (bb) ***Ontario Settlement Class*** means 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. 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.
- (cc) ***Party and Parties*** means the Settling Defendant, the Plaintiffs, and, where necessary, the Settlement Class Members.
- (dd) ***Person*** means an individual, corporation, partnership, limited partnership, limited liability company, association, joint stock company, estate, legal representative, trust, trustee, executor, beneficiary, unincorporated association, government or any political subdivision or agency thereof, and any other business or legal entity and their heirs, predecessors, successors, representatives, or assignees.
- (ee) ***Plaintiffs*** means Airia Brands Inc., StarTech.com Ltd., QCS-Quick Cargo Service GmbH, Karen McKay and Cartise Sports Inc., individually and collectively.

- (ff) ***Proportionate Liability*** means the proportion of any judgment that, had the Settling Defendant not settled, the Ontario or BC Courts would have apportioned to the Settling Defendant and/or the Released Parties, whether pursuant to *pro rata*, proportionate fault, *pro tanto*, or another method.
  
- (gg) ***Purchase Period*** means January 1, 2000 up to and including September 11, 2006.
  
- (hh) ***Quebec Action*** means the proceeding commenced in the Quebec Court, under Court File No. 500-06-000344-065.
  
- (ii) ***Quebec Counsel*** means Liebman Legal Inc.
  
- (jj) ***Quebec Court*** means the Quebec Superior Court.
  
- (kk) ***Quebec Settlement Class*** means all individuals resident in the province of Quebec and all legal persons resident in Quebec established for a private interest, partnership or association in the province of Quebec which, at all times between May 5, 2005 and May 5, 2006, had under its direction or control no more than 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, during the Purchase Period. Excluded from the Quebec 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 Quebec Action in accordance with the order of the Quebec Court dated April 14, 2008.



(II) ***Released Claims*** means any and all manner of claims, demands, actions, suits, causes of action, whether class, individual or otherwise in nature, whether personal or subrogated, damages whenever incurred, liabilities of any nature whatsoever, including interest, costs, expenses, class administration expenses (including Administration Expenses), penalties, and lawyers' fees (including Class Counsel Fees and Class Counsel Disbursements), known or unknown, suspected or unsuspected, in law, under statute or in equity, in this or any other Canadian or foreign jurisdiction (all of the foregoing, collectively, "Claims" or, individually, a "Claim"), that Releasing Parties, or any of them, whether directly, indirectly, derivatively, or in any other capacity, ever had, now have, or hereafter can, shall, or may have, relating in any way to any conduct anywhere, from the beginning of time through the pendency of the Actions in respect of the conduct alleged (or which could have been alleged) in the Actions, or as a result of or in connection with any other alleged unlawful horizontal or vertical anticompetitive conduct in connection with the purchase, sale, pricing, discounting, marketing, distributing of or compensation for, Airfreight Shipping Services, specifically including, without limitation, Claims in any way related to air cargo rates or prices, fuel surcharges, security surcharges, customs surcharges or fees, war risk surcharges, navigation surcharges, commissions, incentives, rebates, discounts, credits, yields or any other element of the price of or compensation related to Airfreight Shipping Services or relating to any conduct alleged (or which could have been alleged) in the Actions including, without limitation, Claims, whether in Canada or elsewhere, resulting from or relating to the purchase of Airfreight Shipping Services, including future Claims relating to continuing acts or practices alleged to have occurred during the pendency of the Actions. For greater certainty, and without limiting the scope of the Released Claims, nothing herein authorizes or allows any Party to contravene the *Competition Act*. Nothing

herein shall release any Claims for negligence, breach of contract, bailment, failure to deliver, lost goods, delayed or damaged goods or comparable claim between any of the Releasing Parties and Released Parties relating to Airfreight Shipping Services.

- (mm) **Released Parties** means, jointly and severally, individually and collectively, the Settling Defendant, AC Cargo Limited Partnership and all of their present and former, direct and indirect, parents, subsidiaries, divisions, affiliates, partners, insurers, and all other Persons, partnerships or corporations with whom any of the former have been, or are now, affiliated and their respective past, present and future officers, directors, employees, agents, shareholders, attorneys, trustees, servants and representatives, and the predecessors, successors, purchasers, heirs, executors, administrators and assigns of each of the foregoing, excluding always the Non-Settling Defendants.
- (nn) **Releasing Parties** means, jointly and severally, individually and collectively, the Plaintiffs and the Settlement Class Members, on behalf of themselves and any Person or entity claiming by or through them as a parent, subsidiary, affiliate, predecessor, successor, shareholder, partner, director, owner of any kind, agent, principal, employee, contractor, attorney, heir, executor, administrator, insurer, devisee, assignee, or representative of any kind.
- (oo) **Settled Defendants** means Deutsche Lufthansa AG, Lufthansa Cargo AG, Swiss International Air Lines Ltd., Japan Airlines International Co., Ltd., Scandinavian Airlines System, Cargolux Airline International, Qantas Airways Limited, Singapore Airlines Ltd., Singapore Airlines Cargo PTE Ltd., Societe Air France, Koninklijke Luchtvaart Maatschappij N.V. (KLM), Royal Dutch Airlines, Martinair Holland N.V., LAN Airlines

S.A., LAN Cargo S.A., Polar Air Cargo LLC, Atlas Air Worldwide Holdings Inc., Korean Air Lines Co., Asiana Airlines Inc., Cathay Pacific Ltd. and British Airways PLC. Notwithstanding the foregoing, if the proposed settlement between the Plaintiffs and British Airways PLC does not become effective in accordance with its terms or is terminated in accordance with its terms, British Airways PLC shall cease being a Settled Defendant.

- (pp) **Settlement Agreement** means this agreement, including the recitals and schedule.
- (qq) **Settlement Amount** means CAD\$7,000,000 paid in installments as described in Section 2.2(c).
- (rr) **Settlement Class Member** means a member of the Ontario Settlement Class, Quebec Settlement Class or BC Settlement Class.
- (ss) **Settlement Fund** means the escrow account established pursuant to Section 2.1 of this Settlement Agreement, including all monies held therein in accordance with the terms of this Settlement Agreement. The Settlement Fund shall be maintained in Canadian currency.
- (tt) **Settling Defendant** means Air Canada.

## SECTION 2- SETTLEMENT BENEFITS

### 2.1 The Settlement Fund

- (a) The Settlement Fund shall be established as an escrow account at a Canadian financial institution designated by Class Counsel and administered by Class Counsel until the Courts have appointed a Claims Administrator, at which time Class Counsel will cede control to the Claims Administrator. The Settlement Fund shall be administered pursuant to this Settlement Agreement and subject to the Ontario Court's continuing supervision and

control. No monies shall be paid from the Settlement Fund, except in accordance with this Settlement Agreement, or in accordance with orders of the Ontario Court obtained after notice to the Parties.

- (b) Class Counsel and Claims Administrator shall cause the Settlement Fund to be invested in guaranteed investment vehicles or liquid money market accounts or equivalent securities with a rating equivalent to or better than that of a Canadian Schedule I bank (a bank listed in Schedule I of the *Bank Act*, S.C. 1991, c. 46). All interest earned on the Settlement Fund shall become and remain part of the Settlement Fund.
- (c) The Plaintiffs and the Settling Defendant acknowledge that the Settlement Class includes both shippers and freight forwarders, and both customers and non-customers of the Settling Defendant, and that the Settlement Agreement makes no determination as to which Settlement Class Members are entitled to distribution of the Settlement Fund, or as to the formula for determining the amounts to be distributed and the Settling Defendant bears no responsibility for the determination of claim amounts or the Distribution Protocol. At a time within their discretion, on notice to the Settling Defendant and after providing the motion material in draft to the Settling Defendant for review, the Plaintiffs shall submit a Distribution Protocol to the Courts for approval. The Distribution Protocol will be in the form attached hereto as Schedule "E" or such other form agreed between the Plaintiffs and the Settling Defendant.
- (d) After the Effective Date, the Settlement Fund shall be distributed in accordance with the Distribution Protocol.

## **2.2 Payment of the Settlement Benefits**

- (a) Except as otherwise provided herein, the Settling Defendant agrees to pay the Settlement Amount in full satisfaction of all Released Claims against the Released Parties.
- (b) Except as otherwise provided herein, the Settling Defendant shall have no obligation to pay any amount in addition to the Settlement Amount, for any reason, pursuant to or in furtherance of this Settlement Agreement. For greater certainty, but without limiting the generality of the foregoing, the Settling Defendant shall have no responsibility or liability as a result of any decrease or depreciation of the value of the Settlement Fund, howsoever caused, including, but not limited to, a decrease or depreciation in the value of any investments purchased by Class Counsel or the Claims Administrator, or the payment of any Class Counsel Fees, Class Counsel Disbursements, or any Administration Expenses, except as otherwise provided herein.
- (c) The Settling Defendant, directly or through its counsel or designee, shall wire transfer the Settlement Amount in three equal installments into the Settlement Fund on: (i) the later of thirty (30) days after the Date of Execution or November 15, 2020; (ii) April 15, 2021; and (iii) October 15, 2021.
- (d) If the Settlement Agreement is terminated or otherwise fails to take effect pursuant to Section 10, the Settlement Fund shall be returned to the Settling Defendant pursuant to Section 10.2(b)(iii) of this Settlement Agreement.

## **2.3 Taxes**

- (a) All taxes (including any interest and penalties) due with respect to the income earned by the Settlement Fund shall be paid from the Settlement Fund. Except as provided for in

Section 10.2(b)(iii), none of the income earned by the Settlement Fund, including interest earned thereon, will be reported as taxable to the Settling Defendant.

- (b) Except as provided for in Section 10.2(b)(iii), Class Counsel and/or the Claims Administrator shall be solely responsible for filing all informational and other tax returns necessary to report any net taxable income earned by the Settlement Fund and shall file all informational and other tax returns necessary to report any income earned on the Settlement Fund and shall be solely responsible for taking out of the Settlement Fund, as and when legally required, any tax payments, including interest and penalties due on income earned by the Settlement Fund.
- (c) Except as provided for in Section 10.2(b)(iii), the Settling Defendant shall have no responsibility to make any filings relating to the Settlement Fund, will not be considered a payee of any income earned on the Settlement Fund, and will have no responsibility to pay tax on any interest or income earned by the Settlement Fund or pay taxes, if any, on the Settlement Fund.

### **SECTION 3- RELEASES AND DISMISSALS**

#### **3.1 Release of Released Parties**

- (a) Upon the Effective Date, subject to Section 3.2 and in consideration of payment of the Settlement Amount, and for other valuable consideration set forth in the Settlement Agreement, the Releasing Parties shall be deemed to, and do hereby, release and forever discharge the Released Parties of and from any and all Released Claims. The Parties shall use their best efforts to have the terms of the release contemplated herein incorporated into the Approval Orders. It is a material term of the Settlement Agreement that the Courts

include the release of the Released Parties of all the Released Claims provided for in this Settlement Agreement in the Approval Orders.

- (b) The Plaintiffs and Settlement Class Members acknowledge that they may hereafter discover facts in addition to, or different from, those facts which they know or believe to be true with respect to the subject matter of the Settlement Agreement, and that it is their intention to, and they do hereby, release fully, finally and forever all Released Claims as set out in this Section 3.1, and in furtherance of such intention, this release shall be and remain in effect notwithstanding the discovery or existence of any such additional or different facts.

### **3.2 Covenant Not To Sue**

- (a) Notwithstanding Section 3.1, upon the Effective Date, for any Settlement Class Members resident in any jurisdiction where the release of one tortfeasor is a release of all other tortfeasors, the Releasing Parties do not release the Released Parties but instead covenant and undertake not to sue, make in any way any Claim within the scope of the Released Claims or to threaten, commence, or continue any Claim within the scope of the Released Claims in any jurisdiction against the Released Parties. The Parties shall use their best efforts to have the terms of the covenant not to sue contemplated herein incorporated into the Approval Orders.
- (b) With respect to the Settlement Class Members resident in any jurisdiction where the release of one tortfeasor is a release of all other tortfeasors, the Plaintiffs and Settlement Class Members acknowledge that they may hereafter discover facts in addition to, or different from, those facts which they know or believe to be true with respect to the subject matter

of the Settlement Agreement, and that it is their intention to fully, finally and forever covenant and undertake not to sue or make any Claim within the scope of the Released Claims against the Released Parties as set out in this Section 3.2, and in furtherance of such intention, this covenant not to sue shall be and remain in effect notwithstanding the discovery or existence of any such additional or different facts.

### **3.3 No Further Claims**

- (a) Upon the Effective Date, the Releasing Parties shall not now or hereafter commence, 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 Claim within the scope of the Released Claims against any Released Party or any other Person who may claim contribution or indemnity from any Released Party in respect of any Released Claim, except for the continuation of the Actions against the Non-Settling Defendants.

### **3.4 Dismissal of Actions as Against the Settling Defendant**

- (a) Except as provided herein, upon the Effective Date, the BC Action and the Ontario Action shall be dismissed, without costs and with prejudice, as against the Settling Defendant and AC Cargo Limited Partnership.
- (b) Except as provided herein, upon the Effective Date, the Quebec Action shall be settled, without costs and with prejudice, as against the Settling Defendant and AC Cargo Limited Partnership.



### **3.5 Dismissal of Released Claims as Against the Released Parties**

- (a) Upon the Effective Date, Settlement Class Members shall be deemed to irrevocably consent to the dismissal as against the Released Parties, without costs and with prejudice, of any and all of the Settlement Class Members' Released Claims in any jurisdiction.
- (b) Upon the Effective Date, any and all of the Settlement Class Members' Released Claims commenced in each of the Court's respective jurisdictions shall be dismissed against the Released Parties, without costs and with prejudice.

### **3.6 Claims Against Other Entities Reserved**

- (a) Except as provided herein, this Settlement Agreement does not settle, compromise, release or limit in any way whatsoever any claim by Settlement Class Members against any Person, other than the Released Parties.

## **SECTION 4 - BAR ORDER**

### **4.1 Ontario and BC Bar Order**

- (a) The Plaintiffs in the Ontario and BC Actions shall seek a bar order from the Ontario and BC Courts providing for the following:
  - (i) 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, in respect of any Released Claims, by any Non-Settling Defendant or any other Person against a Released Party, or by a Released Party against any Non-Settling Defendant or any other Person, are barred, prohibited and enjoined. If contrary to the Ontario and BC Approval Orders a foreign court permits a Releasing Party to bring a claim in respect of a Released Claim against a Non-Settling

Defendant, another Defendant or a Released Party in a jurisdiction outside of Ontario or BC (the “Foreign Claim”), that Non-Settling Defendant, other Defendant or Released Party will not be prohibited by the Ontario and BC Approval Order from bringing a claim for contribution, indemnity or other claims over against a Released Party or other Person, including a Non-Settling Defendant or other Defendant, in respect of the Foreign Claim, to the extent such a claim exists under the applicable law;

- (ii) that if, in the absence of Section 4.1(a)(i) above, a Person or Persons 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, in any Canadian or foreign jurisdiction:
  - (A) the Releasing Party or Releasing Parties (including without limitation the Plaintiffs in the Ontario and BC Actions and the Ontario and BC Settlement Class Members) are prohibited and barred from bringing or pursuing the claim that gives rise to the claim for contribution, indemnity, or other claim over against any one or more of the Released Parties;
  - (B) for greater certainty, the Releasing Parties shall not be entitled to claim or recover from that Person or Persons 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;

(C) for greater certainty, the Plaintiffs in the Ontario and BC Actions and the Ontario and 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 Plaintiffs in the Ontario and BC Actions and the Ontario and BC Settlement Class Members, if any; and

(D) the Ontario and BC Courts shall have full authority to determine the Proportionate Liability at the trial or other disposition of the Ontario or BC Action, whether or not the Released Parties remain in the Ontario or BC Action or appear at the trial or other disposition, and the Proportionate Liability shall be determined as if the Released Parties are parties to the Ontario or BC Action for that purpose and any such finding by the Ontario or BC Court in respect of the Proportionate Liability shall only apply in the Ontario or BC Action and shall not be binding upon the Released Parties in any other proceedings;

(iii) that if, in the absence of Section 4.1(a)(i) above, 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 the Ontario and BC Approval Orders 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 Ontario and BC Actions.

#### **4.2 Quebec Waiver or Renunciation of Solidarity**

(a) The Plaintiff in the Quebec Action shall seek an order from the Quebec Court providing for the following:

- (i) the Plaintiff in the Quebec Action and the Quebec Settlement Class Members expressly waive and renounce the benefit of solidarity against the Non-Settling Defendants with respect to the facts and deeds or other conduct of the Settling Defendant;
- (ii) the Plaintiff in the Quebec Action and the Quebec Settlement Class Members shall henceforth only be able to claim and recover damages, including punitive damages, attributable to the conduct of and/or sales by the Non-Settling Defendants, and/or any other applicable measure of proportionate liability of the Non-Settling Defendants; and
- (iii) any action in warranty or other joinder of parties to obtain any contribution or indemnity from the Settling Defendant or relating to the Released Claims shall be inadmissible and void in the context of the Quebec Action.

#### **4.3 Material Term**

(a) The Parties acknowledge that the bar orders, waivers and renunciations of solidarity contemplated in this Section 4 shall be considered a material term of the Settlement Agreement and the failure of any Court to approve the bar orders, waivers and

renunciations of solidarity contemplated herein shall give rise to a right of termination pursuant to Section 10.1(a) of this Settlement Agreement.

## **SECTION 5- SETTLEMENT APPROVAL**

### **5.1 Best Efforts**

- (a) The Parties shall use their best efforts to effectuate the settlement provided for in this Settlement Agreement, secure the prompt, complete and final dismissal with prejudice of the Ontario and BC Actions as against the Settling Defendant and AC Cargo Limited Partnership, and secure a prompt, complete declaration of settlement out of court of the Quebec Action as against the Settling Defendant and AC Cargo Limited Partnership.

### **5.2 Approval Hearings**

- (a) As soon as practicable after the Execution Date, the Plaintiffs shall bring motions before the Courts for orders approving the notices described in Section 6.1(a). If the notices are approved by the Ontario Court, the Plaintiffs and the Settling Defendant shall jointly seek entry of an order in the form attached hereto as Schedule "A" or such other form as agreed upon by the Plaintiffs and the Settling Defendant. If the notices are approved by the BC and Quebec Courts, the Plaintiffs and the Settling Defendant shall jointly seek entry of orders that mirror the substance and form of the Ontario order.
- (b) As soon as practicable after the orders referred to in Section 5.2(a) have been issued and the notices described in Section 6.1(a) have been published, the Plaintiffs shall bring motions before the Courts for the Approval Hearings.
- (c) The Plaintiffs agree that, for settlement purposes, the only classes that they will seek to assert are the Ontario, BC and Quebec Settlement Classes.

- (d) If this Settlement Agreement is approved by the Ontario Court, the Plaintiffs and the Settling Defendant shall jointly seek entry of an Approval Order in the form attached hereto as Schedule “B” or such other form as agreed upon by the Plaintiffs and the Settling Defendant. If this Settlement Agreement is approved by the BC and Quebec Courts, the Plaintiffs and the Settling Defendant shall jointly seek entry of Approval Orders that mirror the substance and form of the Ontario Approval Order.

### **5.3 Pre-Motion Confidentiality**

- (a) Until the first motion required by Section 5.2(a) is filed, this Settlement Agreement and all of its terms shall be kept confidential and shall not be disclosed by either the Plaintiffs, Class Counsel or the Settling Defendant, without the prior written consent of Counsel for the Settling Defendant or Class Counsel respectively, except as may be required for the purposes of on-going securities disclosure obligations, financial reporting or the preparation of financial records (including without limitation tax returns and financial statements), as necessary to give effect to its terms, or as otherwise required by law.

## **SECTION 6- NOTICE TO SETTLEMENT CLASS**

### **6.1 Notices Required**

- (a) The proposed Settlement Class shall be given a single notice of: (1) the proposed certification of the Settlement Class as against the Settling Defendant, for settlement purposes only; (2) the date and location of the Approval Hearings; (3) the core elements of the Settlement Agreement and the Distribution Protocol; and (4) if brought with the Approval Hearings, the hearings to approve Class Counsel Fees and Class Counsel Disbursements.

## **6.2 Form and Distribution of Notices**

- (a) The notice of hearing will be in the form attached hereto as Schedules “C1” to “C3” or such other form as agreed upon by the Plaintiffs and the Settling Defendant and approved by the Courts.
- (b) The notice of hearing will be disseminated in accordance with the plan of dissemination attached hereto as Schedule “D” or such other form as agreed upon by the Plaintiffs and the Settling Defendant and approved by the Courts.
- (c) Class Counsel shall use their reasonable best efforts to coordinate the provision of notice pertaining to this Settlement Agreement with the provision of notice of the proposed settlement agreement between the Plaintiffs and British Airways PLC.
- (d) The Settling Defendant consents to Epiq using the Settling Defendant’s customer information provided to Epiq in accordance with the order of the Ontario Court, dated May 2, 2008 for the purpose of facilitating the dissemination of the notices required in Section 6.1(a).

## **SECTION 7 – ADMINISTRATION AND IMPLEMENTATION**

### **7.1 Mechanics of Administration**

- (a) Except to the extent provided for in this Settlement Agreement, the mechanics of the implementation and administration of this Settlement Agreement shall be determined by the Courts on motions brought by Class Counsel on notice to the Settling Defendants.

### **7.2 Information and Assistance**

- (a) After the Execution Date, the Settling Defendant will make itself reasonably available to any Court-appointed notice provider and/or the Claims Administrator to respond to

reasonable questions respecting the information provided by the Settling Defendant to Epiq in accordance with the order of the Ontario Court dated May 2, 2008.

- (b) The information provided by the Settling Defendant to Epiq in accordance with the order of the Ontario Court, dated May 2, 2008 may be used to:
  - (i) facilitate the dissemination of the notices required in Section 6.1; and
  - (ii) in the event that the proposed settlement agreement between the Plaintiffs and British Airways PLC does not become effective in accordance with its terms, advise Settlement Class Members who purchased Airfreight Shipping Services from the Settling Defendant during the Purchase Period of any subsequent settlement agreement with British Airways PLC, any related approval hearings, and any other major steps in the Actions; and
  - (iii) facilitate the claims administration process with respect to this Settlement Agreement and the proposed settlement between the Plaintiffs and British Airways PLC, and, in the event that the proposed settlement between the Plaintiffs and British Airways PLC does not become effective in accordance with its terms, any subsequent settlement and/or court award achieved in the Actions.

## **SECTION 8- CLASS COUNSEL FEES AND ADMINISTRATION EXPENSES**

### **8.1 Class Counsel Fees**

- (a) Class Counsel shall seek the approval of the Courts of their Class Counsel Fees and Class Counsel Disbursements. Class Counsel may seek such approval contemporaneously with the Approval Hearings or at such other time as they shall determine in their sole discretion.



Class Counsel shall provide a courtesy copy of the motion to Counsel for the Settling Defendants.

- (b) Class Counsel shall be reimbursed and paid for approved Class Counsel Fees and Class Counsel Disbursements solely out of the Settlement Fund after the Effective Date. No Class Counsel Fees or Class Counsel Disbursements shall be paid from the Settlement Fund prior to the Effective Date.
- (c) The Settling Defendant shall not be liable for any Class Counsel Fees, Class Counsel Disbursements, costs of notices or the Plaintiffs' or Settlement Class Members' experts, advisors, agents, or representatives. For greater certainty, other than the payment of the Settlement Amount, the Settling Defendant shall have no further liabilities or debts in respect of this Settlement Agreement or the administration thereof.

## **8.2 Administration Expenses**

- (a) Class Counsel shall use their reasonable best efforts to coordinate the claims administration process pertaining to this Settlement Agreement with the claims administration process pertaining to the proposed settlement agreement between the Plaintiffs and British Airways PLC.
- (b) Aside from payment of the Settlement Amount, the Settling Defendant is not liable to pay any further amount on account of any Administrative Expenses, Class Counsel Fees, or Class Counsel Disbursements, including the cost of notice.

## **SECTION 9 - IMPLICATIONS OF SETTLEMENT**

### **9.1 No Admission of Liability**

- (a) The Plaintiffs and the Settling Defendant expressly reserve all of its rights if this Settlement Agreement is terminated or otherwise fails to take effect for any reason. Further, the Plaintiffs and the Settling Defendant agree that, whether or not this Settlement Agreement is finally approved, is terminated, or otherwise fails to take effect for any reason, this Settlement Agreement and anything contained herein, and any and all negotiations, Documents, discussions and proceedings associated with this Settlement Agreement, and any action taken to carry out this Settlement Agreement, shall not be deemed, construed or interpreted to be an admission of any violation of any statute or law of any jurisdiction, or of any wrongdoing or liability by the Settling Defendant or any Released Party, or of the truth of any of the claims or allegations contained in the Actions or any other pleading filed by the Plaintiffs or any Settlement Class Member.

### **9.2 Agreement Not Evidence**

- (a) The Plaintiffs and the Settling Defendant agree that, whether or not this Settlement Agreement is finally approved, is terminated, or otherwise fails to take effect for any reason, this Settlement Agreement and anything contained herein, and any and all negotiations, Documents, discussions and proceedings associated with this Settlement Agreement, and any action taken to carry out this Settlement Agreement, shall not be referred to, offered as evidence or received in evidence in any pending or future civil, criminal or administrative action or proceeding, except in a proceeding to enforce this Settlement Agreement, or to defend against the assertion of Released Claims, or as otherwise required by law.

### **9.3 No Further Litigation**

- (a) Except as otherwise provided in this Settlement Agreement, no Class Counsel nor anyone currently or hereafter employed by, or a partner with Class Counsel, may directly or indirectly participate or be involved in or in any way assist with respect to any Claim made or action within the scope of the Released Claims commenced by any Person including in respect of litigation in any jurisdictions outside of Canada. Moreover, unless otherwise ordered by a court, no Class Counsel nor anyone currently or hereafter employed by or a partner with Class Counsel, may divulge to anyone for any purpose any information, including, without limitation, Documents obtained in the course of the Actions or the negotiation and preparation of this Settlement Agreement, except to the extent such information is otherwise publicly available.
- (b) Section 9.3(a) does not apply to the involvement of any Person in the continued prosecution of the Actions against any Non-Settling Defendants.
- (c) Section 9.3(a) shall be inoperative to the extent that it is inconsistent with BC Counsel's obligations under Section 3.2-10 of the Law Society of British Columbia's *Code of Professional Conduct for British Columbia*.

## **SECTION 10- TERMINATION OF SETTLEMENT AGREEMENT**

### **10.1 Right of Termination**

- (a) Only if one or more of the following events occur, the Plaintiffs and the Settling Defendant shall each, in their respective sole discretion, have the option to terminate this Settlement Agreement in its entirety:

- (i) any Court declines to approve this Settlement Agreement or any material part hereof;
  - (ii) any Court declines to sign the Approval Order;
  - (iii) any Approval Order is materially modified or set aside on appeal; or
  - (iv) any Court declines to dismiss the Ontario or BC Action or settle with prejudice the Quebec Action as against the Settling Defendant and/or AC Cargo Limited Partnership.
- (b) In addition, if the Settlement Amount is not paid in accordance with Section 2.2(a) and Section 2.2(c), the Plaintiffs shall have the right to terminate this Settlement Agreement or move before the Ontario Court to enforce the terms of this Settlement Agreement.
- (c) Any order, ruling or determination made by any Court with respect to Class Counsel Fees, Class Counsel Disbursements or the Distribution Protocol shall not be deemed to be a material modification of all, or a part, of this Settlement Agreement and shall not provide any basis for the termination of this Settlement Agreement.
- (d) If pursuant to Section 10.1(a) or (b) above, the Plaintiffs or the Settling Defendant wish to terminate the Settlement Agreement, notice of such decision to terminate the Settlement Agreement must be provided in writing to the Plaintiffs or the Settling Defendant, as applicable, within thirty (30) days of an event under Section 10.1(a) or (b) having occurred.

## **10.2 Effect of Termination Generally**

- (a) Except as provided in Section 10.3(a), if this Settlement Agreement is terminated or otherwise fails to take effect for any reason, it shall have no further force and effect, shall

not be binding on the Parties, and shall not be used as evidence or otherwise in any litigation.

(b) If this Settlement Agreement is terminated in accordance with Section 10.1 or otherwise fails to take effect for any reason:

(i) the Parties will cooperate in seeking to have any issued Approval Order set aside and declared null and void and of no force or effect, and without prejudice to any position that any of the Parties may later take on any issue in the Actions or any other litigation. Any Person attempting to rely on such Approval Order shall be estopped from doing so;

(ii) Class Counsel shall forthwith deliver consents in writing authorizing the Settling Defendant to bring motions before the Courts for orders:

(A) declaring this Settlement Agreement to be null and void and of no force or effect (except for the provisions set out in Section 10.3(a));

(B) setting aside any Approval Order;

(C) setting aside any order approving Class Counsel Fees; and

(D) directing that the balance in the Settlement Fund less any deductions provided for in this Settlement Agreement be paid to the Settling Defendant, including interest.

(iii) Class Counsel or the Claims Administrator, as applicable, shall thereupon pay to the Settling Defendant the Settlement Fund, including interest. Despite Section

2.2(d), if the Settlement Agreement is terminated, to the extent the Settlement Fund is paid to the Settling Defendant, the Settling Defendant shall be responsible for the payment of taxes owed with respect to income on the returned Settlement Fund.

### **10.3 Survival of Provisions After Termination**

- (a) If this Settlement Agreement is terminated or otherwise fails to take effect for any reason, the provisions of Sections 2.2(d), 9.1, 9.2, and 10.2 and the definitions in Section 1 applicable thereto shall survive the termination and continue in full force and effect.

## **SECTION 11 - MISCELLANEOUS**

### **11.1 Governing Law**

- (a) Subject to Section 11.1(b), this Settlement Agreement shall be governed by and construed and interpreted in accordance with the laws of the Province of Ontario and the laws of Canada applicable therein.
- (b) Notwithstanding Section 11.1(a), for matters relating specifically to the BC Action or the Quebec Action, the BC Court or Quebec Court, as applicable, shall apply the law of its own jurisdiction and the laws of Canada applicable therein.

### **11.2 Ongoing Jurisdiction and Motions for Directions**

- (a) Each of the Courts shall retain exclusive jurisdiction over the Action commenced in its jurisdiction and the Parties thereto and the application brought in those Actions for approval of Class Counsel Fees pursuant to Section 8.1.
- (b) The Plaintiffs and the Settling Defendant intend and agree that no Court shall make any order or give any direction in respect of any matter of shared jurisdiction unless that order

or direction is conditional upon a complementary order or direction being made or given by the other Court(s) with which it shares jurisdiction over that matter.

- (c) Notwithstanding the above, unless the Courts require otherwise, the Ontario Court shall exercise jurisdiction with respect to interpretation, implementation, administration, and enforcement of the terms of this Settlement Agreement, and the Parties submit to the jurisdiction of the Ontario Court for purposes of interpreting, implementing, administering, and enforcing the settlement provided for in this Settlement Agreement.
- (d) The Plaintiffs or the Settling Defendant may apply to the Ontario Court for directions in respect of the interpretation, implementation, administration or enforcement of this Settlement Agreement.
- (e) All motions contemplated by this Settlement Agreement shall be on notice to the Plaintiffs and the Settling Defendant.

### **11.3 Interpretation**

- (a) The division of this Settlement Agreement into Sections and the insertion of headings are for convenience of reference only and shall in no way define, extend, or describe the scope of this Settlement Agreement or the intent of any provision thereof.
- (b) The terms “Settlement Agreement,” “hereof,” “hereunder,” “herein,” and similar expressions refer to this Settlement Agreement and not to any particular Section or other portion of this Settlement Agreement.
- (c) In the computation of time in this Settlement Agreement, except where a contrary intention appears,

- (i) where there is a reference to a number of days between two events, the number of days shall be counted by excluding the day on which the first event happens and including the day on which the second event happens, including all calendar days; and
- (ii) only in the case where the time for doing an act expires on a holiday (as “holiday” is defined in the *Interpretation Act*, RSC 1985, c I-21), the act may be done on the next day that is not a holiday.

#### **11.4 Language**

- (a) The Plaintiffs and the Settling Defendant acknowledge that they have required and consented that this Settlement Agreement be prepared in English.

#### **11.5 Entire Agreement**

- (a) This Settlement Agreement, including the recitals herein, constitutes the entire agreement among the Plaintiffs and the Settling Defendant, and no representations, warranties, or inducements have been made to any Party concerning this Settlement Agreement, other than the representations, warranties, and covenants contained and memorialized in this Settlement Agreement. This Settlement Agreement supersedes any and all prior and contemporaneous agreements, understandings, undertakings, negotiations, representations, warranties, promises, and inducements concerning the Actions.
- (b) The Plaintiffs and the Settling Defendant further agree that the language contained in or not contained in previous drafts of this Settlement Agreement, or any agreement in principle, shall have no bearing upon the proper interpretation of this Settlement Agreement.



- (c) The recitals to this Settlement Agreement are material and integral parts hereof and are fully incorporated into, and form part of, this Settlement Agreement.

#### **11.6 Binding Effect**

- (a) This Settlement Agreement shall be binding upon, and enure to the benefit of the Releasing Parties, the Released Parties and all of their successors and assigns. Without limiting the generality of the foregoing, each and every covenant and agreement made herein by the Plaintiffs shall be binding upon all Releasing Parties and every covenant and agreement made herein by the Settling Defendant shall be binding upon all of the Released Parties.
- (b) This Settlement Agreement has been the subject of negotiations and discussions among the undersigned, each of which has been represented and advised by competent counsel, so that any statute, case law, or rule of interpretation or construction that would or might cause any provision to be construed against the drafter of this Settlement Agreement shall have no force and effect.
- (c) This Settlement Agreement constitutes a transaction in accordance with *Civil Code of Quebec* art. 2631 et seq., and the Plaintiffs and the Settling Defendant are hereby renouncing any errors of fact, of law, and/or of calculation.
- (d) This Settlement Agreement may not be modified or amended except in writing and on consent of all the Plaintiffs and the Settling Defendant and any such modification or amendment must be approved by the Ontario Court.

#### **11.7 Notice**

- (a) Any and all notices, requests, directives, or communications required by this Settlement Agreement shall be in writing and shall, unless otherwise expressly provided herein, be

given personally, by express courier, by postage prepaid mail, by facsimile transmission, or by email .pdf files, and shall be addressed as follows:

If to: THE PLAINTIFFS and/or CLASS COUNSEL,

Charles M. Wright & Linda J. Visser  
Siskinds<sup>LLP</sup>  
680 Waterloo Street  
London, ON N6A 3V8  
Tel.: (519) 672-2121  
Fax: (519) 672-6065  
Email: [charles.wright@siskinds.com](mailto:charles.wright@siskinds.com)  
[linda.visser@siskinds.com](mailto:linda.visser@siskinds.com)

Irwin I. Liebman  
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Montréal, QC H3Z 2P9  
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David Jones  
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If to: AIR CANADA

Katherine Kay  
Danielle Royal  
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5300 Commerce Court West  
199 Bay Street  
Toronto, ON M5L 1B9  
Tel: (416) 869-5507  
Fax: (416) 869-5254  
Email: [kkay@stikeman.com](mailto:kkay@stikeman.com)  
[droyal@stikeman.com](mailto:droyal@stikeman.com)

or to any such address or individual as may be designated by further notice in writing given by any Party to another.

### **11.8 Survival**

- (a) The representations and warranties contained in this Settlement Agreement shall survive its execution and implementation.

### **11.9 Acknowledgements**

- (a) Each of the Plaintiffs and the Settling Defendant hereby affirms and acknowledges that:
  - (i) he, she or a representative of the Party with the authority to bind the Party with respect to the matters set forth herein has read and understood this Settlement Agreement;
  - (ii) the terms of this Settlement Agreement and the effects thereof have been fully explained to him, her or the Party's representative by his, her or its counsel;
  - (iii) he, she or the Party's representative fully understands each term of this Settlement Agreement and its effect; and
  - (iv) no Party has relied upon any statement, representation or inducement (whether material, false, negligently made or otherwise) of any other Party, beyond the terms of this Settlement Agreement, with respect to the first Party's decision to execute this Settlement Agreement.

### **11.10 Authorized Signatures**

- (a) Each of the undersigned represents that he or she is fully authorized to enter into the terms and conditions of, and to execute, this Settlement Agreement.

**11.11 Counterparts**

- (a) This Settlement Agreement may be executed in one or more counterparts. All executed counterparts and each of them shall be deemed to be one and the same instrument.
- (b) For purposes of executing this Settlement Agreement a facsimile or electronic signature shall be deemed an original signature.

**11.12 Execution Date**

- (a) The Plaintiffs and the Settling Defendant have executed this Settlement Agreement as of the date on the cover page.

IN WITNESS WHEREOF, the Plaintiffs and the Settling Defendant hereto have caused this Settlement Agreement to be executed, by their duly authorized counsel, as follows:

**AIRIA BRANDS INC., STARTECH.COM LTD., and QCS-QUICK CARGO SERVICE GMBH**, on their own behalf and on behalf of the Ontario Settlement Class, by their counsel

Name of Authorized Signatory: Charles M. Wright

Signature of Authorized Signatory: CMW for Siskinds LLP  
Siskinds LLP  
Ontario Counsel

**CARTISE SPORTS INC.**, on its own behalf and on behalf of the Quebec Settlement Class, by its counsel

Name of Authorized Signatory: Charles M. Wright

Signature of Authorized Signatory: CMW for Liebman  
Liebman Legal Inc  
Quebec Counsel

**KAREN MCKAY**, on her own behalf and on behalf of the BC Settlement Class, by her counsel

Name of Authorized Signatory: Charles M. Wright

Signature of Authorized Signatory: CMW for CFMM -  
Camp Fiorante Mathews Mogerman  
BC Counsel

**AIR CANADA**, by its counsel

Name of Authorized Signatory: Katherine L. Kay

Signature of Authorized Signatory: Stikeman Elliott LLP per [Signature]  
Stikeman Elliott LLP

**SCHEDULE “A”**

Court File No. 50389CP

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

THE HONOURABLE ) \_\_\_\_\_, THE \_\_\_\_ DAY  
)  
JUSTICE GRACE ) OF \_\_\_\_\_, 2020

B E T W E E N :

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 approving the publication,  
abbreviated, and long-form notices of the settlement approval hearing (“Notices of Hearing”) and

approving the plan of dissemination of those notices (“Plan of Dissemination”), was heard this day at the Court House, 80 Dundas Street, London, Ontario.

**ON READING** the materials filed, including the settlement agreement with Air Canada (the “Settling Defendant”) dated November 17, 2020 attached to this Order as Schedule “A” (the “Settlement Agreement”), and on hearing the submissions of counsel for the Plaintiffs and Counsel for the Settling Defendant;

**AND ON BEING ADVISED** that the Plaintiffs and the Settling Defendant consent to this Order and British Airways PLC takes no position on this motion:

1. **THIS COURT ORDERS** that, for the purposes of this Order, except to the extent that they are modified in this Order, the definitions set out in the Settlement Agreement apply to an are incorporated into this Order.
2. **THIS COURT ORDERS** that the customer information provided by any Defendant who has entered into a settlement with the Plaintiffs and International Air Transport Association, a non-party to this action, in accordance with the Order dated May 2, 2008, attached hereto as Schedule “B” (the "May 2 Order"), can be used by Epiq Class Action and Claims Solutions, Inc (formerly known as The Garden City Group LLP) for the limited purpose of disseminating the Notice of Hearing in accordance with the Order, subject to the same terms and conditions as the May 2 Order;
3. **THIS COURT ORDERS** that the publication, abbreviated, and long-form Notices of Hearing are approved substantially in the form attached hereto as Schedules “C” to “E”.

4. **THIS COURT ORDERS** that the Plan of Dissemination is approved in the form attached hereto as Schedule “F” and that the Notices of Hearing shall be disseminated in accordance with the Plan of Dissemination.
  
5. **THIS COURT ORDERS** that this Order is contingent upon parallel orders being made by the BC Court and the Quebec Court, and the terms of this Order shall not be effective unless and until such orders are made by the BC Court and the Quebec Court.

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The Honourable Justice Grace



**SCHEDULE “B”**

Court File No. 50389CP

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

THE HONOURABLE  
JUSTICE GRACE

)  
)

●, THE ● DAY  
OF ●, 2020

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  
(Settlement Approval – Air Canada)**

**THIS MOTION** made by the Plaintiffs for an Order certifying the Ontario Action as a class proceeding for settlement purposes only as against Air Canada (the “Settling Defendant”) and approving the settlement agreement entered into with the Settling Defendant, was heard this day at the Court House, 80 Dundas Street, London, Ontario.

**ON READING** the materials filed, including the settlement agreement entered into between the Plaintiffs and the Settling Defendant dated as of November 17, 2020 and attached to this Order as Appendix “A” (the “Settlement Agreement”), and on hearing the submissions of counsel for the Plaintiffs and Counsel for the Settling Defendant, including that the Settling Defendant denies and does not admit, through the execution of the Settlement Agreement, and expressly denies any allegation of unlawful conduct alleged in the Ontario Action;

**AND ON BEING ADVISED** that the Plaintiffs and the Settling Defendant consent to this Order and British Airways PLC takes no position on this Order;

1. **THIS COURT ORDERS** that the definitions set out in the Settlement Agreement shall apply to and are incorporated into this Order.
2. **THIS COURT ORDERS** that this Action is certified as a class proceeding as against the Settling Defendant only and for settlement purposes only.
3. **THIS COURT ORDERS** that the Settlement Class is defined as:

All Persons, other than members of the Québec 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. 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 (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. **THIS COURT ORDERS** that Airia Brands Inc., StarTech.Com Ltd., and QCS-Quick Cargo Service GMBH are appointed as the representative plaintiffs for the Ontario Settlement Class.

5. **THIS COURT ORDERS** that, for settlement purposes, the following issue is common to the Ontario Settlement Class:

Did the Settling Defendant 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?

6. **THIS COURT ORDERS** that the Settlement Agreement is fair, reasonable and in the best interests of the Ontario 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 Ontario 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 this Order, including the Settlement Agreement, is binding upon each Ontario 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 this Action.

10. **THIS COURT ORDERS** that, upon the Effective Date, each Ontario Settlement Class Member 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 in any jurisdiction.
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, subject to paragraph 13 and upon the Effective Date, the Releasing Parties shall be deemed to, and do hereby, release and forever discharge the Released Parties of and from any and all Released Claims.
13. **THIS COURT ORDERS** that the use of the terms "Releasing Parties" and "Released Claims" in this Order does not constitute a release of Claims by those Ontario Settlement Class Members who are resident in any jurisdiction where the release of one tortfeasor is a release of all tortfeasors.
14. **THIS COURT ORDERS** that, upon the Effective Date, for any Ontario Settlement Class Member who is resident in any jurisdiction where the release of one tortfeasor is a release of all tortfeasors, the Releasing Parties do not release the Released Parties but instead covenant and undertake not to sue, make in any way any Claim within the scope of the

Released Claims or to threaten, commence, or continue any Claim within the scope of the Released Claims in any jurisdiction against the Released Parties.

15. **THIS COURT ORDERS** that, upon the Effective Date, the Releasing Parties shall not now or hereafter commence, 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 Claim within the scope of the Released Claims against any Released Party or any other Person who may claim contribution or indemnity from any Released Party in respect of any Released Claim, except for the continuation of the Actions against the Non-Settling Defendants and, in the event that the Ontario Action is decertified, continuation of the Claims as alleged in the Actions against the Non-Settling Defendants in the form of individual claims, group proceedings, test cases, or otherwise.
  
16. **THIS COURT ORDERS** that, notwithstanding the continuation of the Actions against the Non-Settling Defendants or, in the event that the Ontario Action is decertified, continuation of the Claims as alleged in the Actions against the Non-Settling Defendants in the form of individual claims, group proceedings, test cases, or otherwise, 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, in respect of any Released Claims, by any Non-Settling Defendant or any other Person against a Released Party, or by a Released Party against any Non-Settling Defendant or any other Person, are barred, prohibited and enjoined. If contrary to this Order a foreign court permits a Releasing Party to bring a claim in respect of a Released Claim against a Non-Settling Defendant, another Defendant or a Released Party in a jurisdiction outside of Ontario (the "Foreign Claim") then that Non-Settling

Defendant, other Defendant or Released Party will not be prohibited by this Order from bringing a claim for contribution, indemnity or other claims over against a Released Party or other Person, including a Non-Settling Defendant or other Defendant, in respect of the Foreign Claim, to the extent such a claim exists under the applicable law.

17. **THIS COURT ORDERS** that if, in the absence of paragraph 16 above, a Person or Persons 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, in any Canadian or foreign jurisdiction:

- (a) the Releasing Party or Releasing Parties (including without limitation the Plaintiffs in this Action and the Ontario Settlement Class Members) are prohibited and barred from bringing or pursuing the claim that gives rise to the claim for contribution, indemnity, or other claim over against any one or more of the Released Parties;
- (b) for greater certainty, the Releasing Parties shall not be entitled to claim or recover from that Person or Persons 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;
- (c) for greater certainty, the Plaintiffs in this Action and the Ontario 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 in this Action and the Ontario Settlement Class Members, if any;

- (d) this Court shall have full authority to determine the Proportionate Liability at the trial or other disposition of this Action, whether or not the Released Parties remain in this Action or 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 this Action and shall not be binding upon the Released Parties in any other proceedings.

18. **THIS COURT ORDERS** that 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 this Action.

19. **THIS COURT ORDERS** that for purposes of enforcement of this Order, this Court will retain an ongoing supervisory role and the Settling Defendant will attorn to the jurisdiction of this Court for this purpose.

20. **THIS COURT ORDERS** that, except as provided in this Order and the Settlement Agreement, this Order does not affect any claims or causes of action that any Ontario

Settlement Class Member has or may have against the Non-Settling Defendants or unnamed co-conspirators in this Action.

21. **THIS COURT ORDERS** that the Released Parties have no responsibility for and no liability whatsoever with respect to the administration of the Settlement Agreement.
22. **THIS COURT ORDERS** that the Settlement Amount be held in trust for the benefit of the Settlement Class, pending further order of this Court, which shall be sought by the Plaintiffs on a motion in the Action brought on notice to the Settling Defendant.
23. **THIS COURT ORDERS** that, after the Effective Date, the Settlement Amount may be used to pay Class Counsel Disbursements incurred for the benefit of the Settlement Class in the continued prosecution of the Ontario Action against the Non-Settling Defendants. This paragraph shall not be interpreted as affecting the rights of the Plaintiffs or the Settlement Class to claim such Class Counsel Disbursements in the context of a future costs award in their favour against the Non-Settling Defendants, or the rights of the Non-Settling Defendants to oppose and resist any such claim.
24. **THIS COURT ORDERS** that, upon the Effective Date, this Action be and is hereby dismissed against the Settling Defendant and AC Cargo Limited Partnership without costs and with prejudice.
25. **THIS COURT ORDERS** that this Order shall be declared null and void in the event that the Settlement Agreement is terminated in accordance with its terms.



26. **THIS COURT ORDERS** that the approval of the Settlement Agreement and any reasons given by this Court in relation thereto, except any reasons given in connection with paragraphs 16 to 18 of this Order, are without prejudice to the rights and defences of the Non-Settling Defendants in connection with the ongoing Ontario Action and, without restricting the generality of the foregoing, may not be relied on by any Person to establish jurisdiction, the criteria for certification (including class definition) or the existence or elements of the causes of action asserted in the Ontario Action as against the Non-Settling Defendants.
27. **THIS COURT ORDERS** that this Order is contingent upon parallel orders being made by the BC Court and the Quebec Court, and the terms of this Order shall not be effective unless and until such orders are made by the BC Court and the Quebec Court.

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The Honourable Justice Grace

## SCHEDULE "C1"

# Did you purchase airfreight shipping services within, to, or from Canada (except to/from the United States) between January 2000 and September 2006?



If so, you might be affected by class action settlements with British Airways PLC ("British Airways") and Air Canada. Pursuant to the settlements, British Airways agreed to pay CAD\$9,000,000 and Air Canada agreed to pay CAD\$7,000,000.

The settlement amounts will be paid in three installments over the period from 15 October 2020 to 15 October 2021. The settlements are compromises of disputed claims and are not admissions of liability or wrongdoing and British Airways or Air Canada expressly deny any liability or wrongdoing.

Both settlements require court approval in Ontario. The Air Canada settlement also requires approval in British Columbia and Quebec. The Ontario approval hearing is scheduled for February 11, 2021 at 10:00 a.m. The British Columbia approval hearing is scheduled for X at X. The Quebec approval hearing is scheduled for X at X.

At the approval hearings, the courts will also be asked to approve a protocol for distributing the settlement funds.

For more information about the settlements, your options in relation to the settlements, and deadlines for acting:

w: [www.aircargosettlement2.com](http://www.aircargosettlement2.com)

e: [aircargo@siskinds.com](mailto:aircargo@siskinds.com)

p: 1-800-461-6166 x 2455

**You are represented by Siskinds LLP, Liebman Legal,  
and Camp Fiorante Matthews Mogerman LLP**

# Did you purchase Airfreight Shipping Services between January 2000 and September 2006?

If so, you could be affected by proposed class action settlements.



## What is this litigation about?

Class actions were commenced in Canada alleging an unlawful conspiracy to fix prices for Airfreight Shipping Services. Airfreight Shipping Services are air cargo shipments to/from Canada (except to/from the United States) between January 2000 and September 2006 (see the long-form notice at [www.aircargosettlement2.com](http://www.aircargosettlement2.com) for the full definition).

## What settlements have been reached?

Settlements were reached with British Airways PLC ("British Airways") and Air Canada. Both settlements are subject to court approval. If approved, the settlements will resolve the litigation in its entirety.

Under the terms of their settlement agreements, British Airways agreed to pay CAD\$9,000,000 and Air Canada agreed to pay CAD\$7,000,000. The settlement funds will be paid in three installments over the period from 15 October 2020 to 15 October 2021.

The settlements represent a resolution of disputed claims and are not an admission of liability or wrongdoing and British Airways or Air Canada expressly deny any liability or wrongdoing.

## What should I know about the approval hearings?

Both settlements must be approved by the Ontario court. The Air Canada settlement must also be approved by the British Columbia and Quebec courts. At the approval hearings, the courts will determine whether the settlements are fair, reasonable, and in the best interests of Settlement Class Members.

Class Counsel's legal fees and disbursements must also be approved by the courts. Class Counsel will request that legal fees of up to 25% of the British Airways and Air Canada settlement funds, plus disbursements and applicable taxes, be approved and paid out of the settlement funds.

The Ontario approval motion will take place by video conference on February 11, 2021 at 10:00 a.m. The British Columbia approval motion will take place on [redacted] at [redacted]. The Quebec approval hearing will take place on [redacted] at [redacted].

## How will the settlement funds be distributed?

Previous settlements were reached with 12 groups of defendants. In 2019, those settlement funds were distributed to eligible Settlement Class Members, less fees, disbursements and a litigation reserve fund.

At the approval motion, the courts will also be asked to approve a second protocol for distributing the Net Settlement Funds to Settlement Class Members. The Net Settlement Funds include (i) the British Airways and Air Canada settlement amounts, less approved legal fees and expenses; (ii) residual settlement funds from the first distribution; and (iii) the remainder of the litigation reserve fund. A copy of the proposed distribution protocol is available at [www.aircargosettlement2.com](http://www.aircargosettlement2.com).

The Net Settlement Funds will be distributed in the same manner as in the first distribution (see the long-form notice at [www.aircargosettlement2.com](http://www.aircargosettlement2.com) for more information).

Persons who filed a claim in the first distribution ("Original Claimants") will be able to rely on information provided in their previous claim form, but will be required to confirm their contact information and provide a statement of release. Persons who did not file a claim in the first distribution will need to file a claim to be eligible for payment.

Original Claimants who were issued a minimum payment of \$20 in the first distribution, notwithstanding that their pro rata entitlement was less than \$20 will have to account for the excess payment in this distribution. For example, if the Original Claimant's pro rata entitlement under the First Distribution was \$15, but the Original Claimant was paid \$20, and the Original Claimant's pro rata entitlement under the Second Distribution is \$30, the Original Claimant will only be paid an additional \$25.

All valid Claims will be assigned a minimum value of \$20. However, if the pro rata distribution would result in a payment of less than \$10 to an Original Claimant, no additional payment will be issued to that claimant.

Another notice will be provided regarding the process for applying to receive settlement funds. In the interim, you should keep copies of all relevant records.

## What are my options?

You may express your views to the courts on the proposed settlements, distribution protocol, or Class Counsel's fee request. If you wish to do so, you must act by [redacted].

You may (but do not need to) attend the approval hearing. Please contact Class Counsel for additional details.

## What if I have questions?

Visit us at [www.aircargosettlement2.com](http://www.aircargosettlement2.com), email [aircargo@siskinds.com](mailto:aircargo@siskinds.com) or call 1-800-461-6166 x 2455.

**NOTICE OF SETTLEMENT APPROVAL HEARING  
IN THE CANADIAN AIR CARGO PRICE-FIXING CLASS ACTIONS**

**Please read this notice carefully. It may affect your legal rights.**

**A. WHO IS AFFECTED BY THIS NOTICE?**

This notice affects anyone 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 during the period from January 1, 2000 to September 11, 2006, and have not already excluded themselves from the class actions (the "Settlement Class" or "Settlement Class Members").

Airfreight Shipping Services means airfreight cargo shipping services for shipments within, to, or from Canada, but excludes airfreight shipping services for shipments:

- a) with an origin point in Canada and a destination point in the United States; or
- b) with an origin point in the United States and a destination point in Canada,

but includes airfreight cargo shipping services in which the freight:

- c) travelled by truck from Canada to the United States, and then by air from the United States to a third country; or
- d) travelled by air from a third country to the United States, and then by truck from the United States to Canada.

**B. WHAT IS A CLASS ACTION?**

A class action is a lawsuit filed by one person on behalf of a large group of people.

**C. WHAT ARE THESE CLASS ACTIONS ABOUT?**

Class action lawsuits were commenced in Ontario, British Columbia and Quebec alleging that the Defendants participated in an unlawful conspiracy to fix prices of Airfreight Shipping Services from January 1, 2000 to September 11, 2006.

The Ontario action was certified as a national class proceeding in 2015. As a result, Class Counsel agreed to actively pursue the litigation in Ontario. Pending the outcome of the Ontario action, the Quebec action has been stayed and the parties have agreed not to litigate in British Columbia.

Previous settlements were reached with twelve groups of defendants and the related settlement funds have been distributed to Settlement Class Members. For information about those settlements, visit [www.aircargosettlement2.com](http://www.aircargosettlement2.com).

#### **D. WHAT NEW SETTLEMENTS HAVE BEEN REACHED IN THE CLASS ACTIONS?**

Settlements were reached with British Airways PLC (“British Airways”) and Air Canada. The settlements are subject to court approval. If approved, the settlements will resolve the litigation in its entirety.

Under the terms of their settlement agreements, British Airways agreed to pay CAD\$9,000,000 and Air Canada agreed to pay CAD\$7,000,000 in exchange for a full release of the claims against them relating to the alleged price-fixing of Airfreight Shipping Services. The settlement funds will be paid in three installments over the period from 15 October 2020 to 15 October 2021. British Airways also agreed to provide cooperation to the plaintiffs.

The settlements represent a resolution of the disputed claims. British Airways and Air Canada do not admit and expressly deny any wrongdoing or liability.

Copies of the settlement agreements are available at [www.aircargosettlement2.com](http://www.aircargosettlement2.com).

#### **E. WHAT SHOULD I KNOW ABOUT THE APPROVAL HEARINGS?**

Both settlements must be approved by the Ontario court. The Air Canada settlement must also be approved by the British Columbia and Quebec courts. At the approval hearings, the courts will determine whether the settlements are fair, reasonable, and in the best interests of Settlement Class Members.

Class Counsel’s legal fees and disbursements must also be approved by the courts. Class Counsel will collectively be requesting that legal fees of up to 25% of the British Airways and Air Canada settlement funds, plus disbursements and applicable taxes, be approved and paid out of the settlement funds.

The Ontario approval motion will take place by video conference on February 11, 2021 at 10:00 a.m. The British Columbia approval motion will take place on ● at ●. The Quebec approval hearing will take place on ● at ●.

#### **F. PROPOSED DISTRIBUTION OF THE SETTLEMENT FUNDS**

Previous settlements were reached with 12 groups of defendants. In 2019, those settlement funds were distributed to eligible Settlement Class Members, less fees, disbursements and a litigation reserve fund.

At the approval motions, the courts will also be asked to approve a second protocol for distributing the current Net Settlement Funds to Settlement Class Members. The Net Settlement Funds include (i) the British Airways and Air Canada settlement amounts, less approved legal fees and expenses; (ii) residual settlement funds from the first distribution; and (iii) the remainder of the litigation reserve fund.

The Net Settlement Funds will be distributed in the same manner as in the first distribution. The following is a summary of the proposed distribution. A copy of the proposed distribution protocol is available at [www.aircargosettlement2.com](http://www.aircargosettlement2.com).

### **Persons Eligible to Claim**

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

### Distribution of Settlement Funds

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 a Settlement Class Member's Eligible Airfreight Shipping Services Purchases as against the value of all claimants' Eligible Airfreight Shipping Services Purchases.

To calculate Eligible Airfreight Shipping Services Purchases, Settlement Class Members will be categorized based on their position in the distribution chain and the following percentages will be applied their Airfreight Shipping Services Purchases. Settlement Class Members may fall into more than one category.

Purchaser Type	Description	Percentage
Direct Purchaser Shippers	Settlement Class Members who purchased Airfreight Shipping Services direct from an air cargo carrier, for shipments by that Settlement Class Member.	100%
Shippers	Settlement Class Members who purchased Airfreight Shipping Services from a Freight Forwarder.	75%
Freight Forwarders	Settlement Class Members who purchased Airfreight Shipping Services direct from an air cargo carrier, for resale to Shippers.	25%
Freight Forwarders who provided customer information in the first distribution		35%

### Sample Calculation

If a Settlement Class Member purchased \$10,000 of Airfreight Shipping Services directly from an air cargo carrier and \$20,000 of Airfreight Shipping Services from a Freight Forwarder, its Eligible Airfreight Shipping Services Purchases for the purposes of determining its *pro rata* share of the Net Settlement Funds would be calculated as follows:

- d)  $\$10,000 \times 1.00$  (representing the categorization of the purchaser as a Direct Purchaser Shipper) = \$10,000;
- e)  $\$20,000 \times .75$  (representing the categorization of the purchaser as a Shipper) = \$15,000;
- f)  $\$10,000 + \$15,000 = \$25,000$ .

Assuming all valid claims totalled \$100 million, this Settlement Class Member would be entitled to 0.025% of the Net Settlement Funds.

### **Persons Who Claimed in the First Distribution**

Persons who were issued payment in the first distribution (“Original Claimants”) will be able to rely on information provided in their previous claim form, but will be required to confirm their contact information and provide a statement of release.

Original Claimants who were issued a minimum payment of \$20 in the first distribution, notwithstanding that their *pro rata* entitlement was less than \$20, will have to account for the excess payment in this distribution. For example, if the Original Claimant’s *pro rata* entitlement under the First Distribution was \$15, but the Original Claimant was paid \$20, and the Original Claimant’s *pro rata* entitlement under the Second Distribution is \$30, the Original Claimant will only be paid an additional \$25.

### **Minimum Payments**

Subject to further order of the Ontario Court, all valid Claims will be assigned a minimum value of \$20. However, if the *pro rata* distribution would result in a payment of less than \$10 to an Original Claimant, no additional payment will be issued to that claimant.

### **Filing a Claim**

Another notice will be provided regarding the process for applying to receive settlement funds. In the interim, you should keep copies of all relevant records.

### **Residual Funds**

To the extent that the full Net Settlement Funds are not paid out due to uncashed cheques, residual interest or otherwise, subject to further Order of the court, such monies shall be paid to Pro Bono Canada if the amount is equal or less than \$10,000, less any amounts payable to the Quebec Fonds d’aide aux actions collectives. For distribution of any amount above \$10,000, further direction of the court shall be sought.

## **G. WHAT ARE MY OPTIONS?**

You do not have to do anything to stay in the class action. The time to opt-out (exclude yourself) from the class action has already expired. Settlement Class Members who have not opted-out will be bound by the settlement agreements and any court orders in the class actions.

If you want to object to the proposed settlements, fee request or distribution protocol at the approval hearings, you must send a letter to Class Counsel at the addressed listed below, postmarked no later than ●.

You may (but do not need to) attend the settlement approval hearing. If you want to attend the hearing, please contact Class Counsel for additional details.



## **H. WHO ARE LAWYERS WORKING ON THESE CLASS ACTIONS AND HOW ARE THEY PAID?**

The following law firms represent Settlement Class Members and are available to answer questions about the proposed settlement:

Settlement Class Members outside British Columbia and Quebec:

- 1-800-461-6166 ext. 2455
- [aircargo@siskinds.com](mailto:aircargo@siskinds.com)
- Siskinds LLP, 680 Waterloo Street, London, ON, N6A 3V8, Canada, Attn: Charles Wright.

British Columbia Settlement Class Members:

- (604) 689-7555
- [djones@cfmlawyers.ca](mailto:djones@cfmlawyers.ca)
- Camp Fiorante Matthews Mogerman LLP, #400 - 856 Homer Street, Vancouver, BC, V6B 2W5, Attn: David Jones.

Quebec Settlement Class Members:

- (514) 846-0666
- [moe@liebmanlegal.com](mailto:moe@liebmanlegal.com)
- Liebman Legal Inc., 1 Westmount Square #350, Montreal, QC, H3Z 2P9, Attn: Moe F. Liebman.

**You do not have to pay the lawyers working on these class actions any money.** The lawyers will be paid from the money collected in the class actions. The courts will be asked to decide how much the lawyers will be paid.

## **I. WHAT IF I HAVE MORE QUESTIONS?**

For more information, and relevant documents (including copies of the settlement agreements and proposed distribution protocol) please visit [www.aircargosettlement2.com](http://www.aircargosettlement2.com).

## **SCHEDULE "D"**

### **AIR CARGO CLASS ACTION PLAN OF DISSEMINATION**

The Notices of Hearing shall be distributed in the following manner:

Publication Notice:

1. Published once in the following newspapers, in either English or French as is appropriate for each newspaper, subject to each having reasonable publication deadlines and costs:
  - (a) The Globe and Mail (National Edition);
  - (b) The Vancouver Sun;
  - (c) Le Journal de Montreal; and
  - (d) Le Soleil.

Abbreviated Notice:

2. Sent by direct mail or email to any persons included on the mailing list maintained by Epiq Class Action and Claims Solutions, Inc. (formerly known as Garden City Group LLP) for the purposes of the Canadian Air Cargo Proceedings; and
3. Sent to the following trade organizations, in English or French, as applicable, with a request that the trade organization forward the Notice to its members:
  - (a) Freight Management Association of Canada/Association Canadienne de Gestion du Fret (in French and English);
  - (b) European Shippers' Council;
  - (c) Asian Shippers' Council;
  - (d) Korean Shippers' Council;
  - (e) Philippine Shippers' Bureau;
  - (f) Hong Kong Shippers' Council;
  - (g) Global Shippers' Forum;
  - (h) Indonesia Shippers' Council;
  - (i) Malaysia National Shippers' Council;

- (j) Singapore National Shippers' Council;
- (k) Thai National Shippers' Council;
- (l) South African Shippers' Council; and
- (m) National Shippers Strategic Transportation Council (NASSTRAC).

Online Notice:

- (a) A banner advertisement shall be published for a one-month period on the Air Cargo Week website ([www.aircargoweek.com](http://www.aircargoweek.com)), subject to reasonable placement deadlines and costs; and
- (b) An advertisement shall be published in the Payload Asia eNewsletter.

Long-Form Notice:

- 4. Posted in English and French by Class Counsel on Class Counsel's respective websites;
- 5. Posted in English and French on the website established for the purposes of the litigation: [www.aircargosettlement2.com](http://www.aircargosettlement2.com); and
- 6. Provided by Class Counsel or the Claims Administrator to any person who requests it, in English or French, as applicable.

# SCHEDULE "E"

## DISTRIBUTION PROTOCOL – SECOND DISTRIBUTION IN THE MATTER OF THE CANADIAN AIR CARGO PRICE-FIXING CLASS ACTION SETTLEMENTS

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## **GENERAL PRINCIPLES OF THE ADMINISTRATION**

1. A previous distribution (the “**First Distribution**”) occurred in the context of the following settlements:
  - (a) Deutsche Lufthansa AG, Lufthansa Cargo AG and Swiss International Air Lines Ltd., dated December 30, 2006;
  - (b) Japan Airlines International Co., Ltd., dated July 8, 2010;
  - (c) Scandinavian Airlines System, dated November 26, 2010;
  - (d) Qantas Airways Limited, dated May 6, 2011;
  - (e) Cargolux Airlines International S.A., dated May 10, 2011;
  - (f) Singapore Airlines Ltd. and Singapore Airlines Cargo Pte. Ltd., dated June 24, 2011;
  - (g) Société Air France, Koninklijke Luchtvaart Maatschappij N.V. dba KLM, Royal Dutch Airlines and Martinair Holland N.V., dated September 19, 2011;
  - (h) LAN Airlines S.A. and LAN Cargo S.A., dated December 12, 2011;
  - (i) Polar Air Cargo LLC, dated August 1, 2014;
  - (j) Korean Air Lines Co., Ltd., dated May 25, 2015;
  - (k) Asiana Airlines Inc., dated June 30, 2015;
  - (l) Cathay Pacific Airways Ltd., dated November 27, 2015.
  
2. After First Distribution, settlements were entered into with the following Defendants (the “**New Settlements**”):
  - (a) British Airways PLC, dated June 8, 2020; and
  - (b) Air Canada, dated November 17, 2020.

3. The procedures set forth herein (the “**Second Distribution**”) are intended to govern the administration of the Net Settlement Funds. The administration shall:
  - (a) implement and conform to this Distribution Protocol, and any orders of the Courts respecting this Distribution Protocol;
  - (b) employ secure, paperless, web-based systems with electronic registration and record-keeping wherever possible; and
  - (c) rely on the Airfreight Shipping Services sales information provided by the Defendants, IATA, and Freight Forwarders wherever possible.
4. Settlement Class Members seeking compensation must disclose and give credit for any compensation received through other proceedings or private out-of-class settlements in relation to their Airfreight Shipping Services, unless by such proceedings or private out-of-class settlements the Settlement Class Member’s claim was released in its entirety, in which case the Settlement Class Member shall be deemed ineligible for any further compensation.
5. In order to participate in the distribution of the Net Settlement Funds, Settlement Class Members will be required to:
  - (a) expressly consent to the jurisdiction of the Ontario Superior Court of Justice for all purposes relating to the Canadian air cargo litigation, including, without limiting the generality of the foregoing, the enforcement of the Settlement Agreements;
  - (b) expressly release the Released Parties (as defined in the Settlement Agreements) in respect of all Released Claims (as defined in the Settlement Agreements); and
  - (c) if they 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, 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.

6. Settlement Class Members who filed a Claim as part of the First Distribution can rely on that Claim in respect of the Second Distribution.

## DEFINITIONS

7. The definitions set out in the Settlement Agreements apply to and are incorporated herein. Where a term is defined in both the Settlement Agreements and in this Distribution Protocol, the definition in this Distribution Protocol shall govern.

8. For the purpose of this Distribution Protocol:

(a) *Airfreight Shipping Services* means airfreight cargo shipping services for shipments to or from Canada, but specifically excluding:

- (i) airfreight cargo shipping services for shipments between Canada and the United States; and
- (ii) 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:

- (i) 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;
- (ii) 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
- (iii) 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.

- (b) ***Airfreight Shipping Services Purchases*** means the aggregate amount actually paid by Settlement Class Members for Airfreight Shipping Services between January 1, 2000 and September 11, 2006, less any rebates or other form of discounts and taxes.
- (c) ***Claim*** means the electronic or paper form that a Settlement Class Member must complete and submit before the Claims Filing Deadline in order to be considered for settlement benefits under this Distribution Protocol.
- (d) ***Claims Filing Deadline*** means the date by which Claims (and any required supporting documentation) must be electronically submitted in order for Settlement Class Members to be considered for settlement benefits under this Distribution Protocol.
- (e) ***Decision Notice*** shall have the meaning attributed to it in paragraph 38.
- (f) ***Direct Purchaser Shipper*** means a Settlement Class Member who purchased Airfreight Shipping Services direct from an air cargo carrier, for shipments by that Settlement Class Member.
- (g) ***Eligible Airfreight Shipping Services Purchases*** shall mean the value of the Settlement Class Member's Airfreight Shipping Services Purchases in respect of which the Settlement Class Member is entitled to settlement benefits, calculated in accordance with paragraph 10;
- (h) ***First Distribution*** has the meaning set out in paragraph 1.
- (i) ***Freight Forwarder*** means a Settlement Class Member who purchased Airfreight Shipping Services direct from an air cargo carrier, for resale to Shippers.
- (j) ***Net Settlement Funds*** means:
  - (i) the aggregate of:
    - (A) the Settlement Amounts recovered pursuant to the New Settlements;



- (B) any residual funds from the First Distribution; and
  - (C) any remaining Reserve Funds; and
  - (D) accrued interest on the foregoing,
- (ii) less :
- (A) Class Counsel Fees as approved by the Courts;
  - (B) Administration Expenses; and
  - (C) taxes (including interest and penalties) accruable with respect to the income earned on the settlement funds.
- (k) ***New Claimants*** means Settlement Class Members who were not issued payments under the First Distribution but are eligible for payments under the Second Distribution.
- (l) ***New Settlements*** means the settlements listed in paragraph 2.
- (m) ***Original Claimants*** means Settlement Class Member who were issued payments under the First Distribution.
- (n) ***Reserve Funds*** means the amount of CAD \$2 million reserved in the context of the First Distribution for the benefit of the Settlement Class Members.
- (o) ***Second Distribution*** has the meaning set out in paragraph 3.
- (p) ***Settlement Agreements*** means the settlements reached with the Defendants listed in paragraphs 1 and 2.
- (q) ***Settlement Class Members*** means all persons who purchased Airfreight Shipping Services between January 1, 2000 and September 11, 2006. The following persons are excluded:
- (i) the Defendants and their respective parents, employees, subsidiaries, affiliates, officers and directors;
  - (ii) 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

(iii) persons who opted out of the proceedings.

(r) **Shipper** means a Settlement Class Member who purchased Airfreight Shipping Services from a Freight Forwarder.

## **DISTRIBUTION OF NET SETTLEMENT FUNDS**

### **Calculation of Payments**

9. Subject to paragraphs 13 and 14, the Net Settlement Funds will be distributed to Settlement Class Members *pro rata* (or proportionally) based on the value of the Settlement Class Member's Eligible Airfreight Shipping Services Purchases as against the value of all claimants' Eligible Airfreight Shipping Services Purchases. For the purposes of the distribution, Eligible Airfreight Shipping Services Purchases shall be calculated in accordance with paragraph 10.

### **Eligible Airfreight Shipping Services Purchases**

10. To calculate Eligible Airfreight Shipping Services Purchases, Settlement Class Members will be categorized based on their position in the distribution chain and the following

percentages will be applied their Airfreight Shipping Services Purchases. Settlement Class Members may fall into more than one category.

<b>Purchaser Type</b>	<b>Percentage</b>
Direct Purchaser Shippers	100%
Shippers	75%
Freight Forwarders	25%
Freight Forwarders who, in the First Distribution, provided customer information respecting their customers' Airfreight Shipping Services Purchases to the Claims Administrator	35%

11. The value of a Settlement Class Member's Airfreight Shipping Services Purchases will be converted to CAD from the original currency, at the average Bank of Canada rate for that currency between January 1, 2000 and September 11, 2006.

### **Sample Calculation**

12. If a Settlement Class Member purchased \$10,000 of Airfreight Shipping Services directly from an air cargo carrier and \$20,000 of Airfreight Shipping Services from a Freight Forwarder, its Eligible Airfreight Shipping Services Purchases for the purposes of determining its *pro rata* share of the Net Settlement Funds would be calculated as follows:

- (a)  $\$10,000 \times 1.00$  (representing the categorization of the purchaser as a Direct Purchaser Shipper) = \$10,000;
- (b)  $\$20,000 \times .75$  (representing the categorization of the purchaser as a Shipper) = \$15,000;
- (c)  $\$10,000 + \$15,000 = \$25,000$ .

## **Distribution**

13. Subject paragraph 15 and any further order of the Ontario Court following the adjudication of all claims, all valid Claims will be assigned a minimum value of \$20. The \$20 valuation target is not an estimate of any damages suffered. It is a minimum administrative threshold designed to maintain a feasible economic and administrative platform for the settlement distribution.
14. Original Claimants who were issued a minimum payment of \$20 in the First Distribution, notwithstanding that their *pro rata* entitlement was less than \$20 must account for the excess payment as part of the *pro rata* distribution. For example, if the Original Claimant's *pro rata* entitlement under the First Distribution was \$15, but the Original Claimant was paid \$20, and the Original Claimant's prorata entitlement under the Second Distribution is \$30, the Original Claimant will only be paid an additional \$25.
15. If the *pro rata* distribution would result in payments of less than \$10 to an Original Claimant, no additional payment will be issued to the Original Claimant.
16. To the extent that the full Net Settlement Funds are not paid out due to uncashed cheques, residual interest or otherwise, subject to further Order of the Ontario Court, such monies shall be paid to Pro Bono Canada if the amount is equal or less than \$10,000, less any amounts payable to the Quebec Fonds d'aide aux actions collectives, as calculated pursuant to paragraph 17. For distribution of any amount above \$10,000, further direction of the Ontario Court shall be sought.
17. The *cy pres* payments shall be less any amounts payable to the Fonds d'aide aux actions collectives, pursuant to section 42 of the *Act respecting the Fonds d'aide aux actions collectives*, CQLR c. F-3.2.0.1.1 and calculated in accordance with Article 1. (1°) of the Regulation respecting the percentage withheld by the *Fonds d'aide aux actions collectives*, R.S.Q. c. F-3.2.0.1.1, r. 2. For the purposes of calculating the amount payable to the *Fonds*

*d'aide aux actions collectives*, 23.6%<sup>1</sup> of the *cy pres* payment will be notionally allocated to Quebec.

## THE CLAIMS PROCESS

### The Claim

18. Original Claimants' Claims will be evaluated based on information provided in the First Distribution. For Original Claimants, the Claim shall require the following:
  - (a) confirmation of their current contact information; and
  - (b) a release in favour of the Released Parties in respect of all Released Claims (as those terms are defined in the Settlement Agreements).
19. For New Claimants, the Claim shall require the following:
  - (a) a declaration by the Settlement Class Member of the dollar value and currency of its Airfreight Shipping Services Purchases;
  - (b) an option for the Settlement Class Member to rely on defendant, International Air Transport Association ("IATA"), and/or Freight Forwarder data;
  - (c) a declaration that the Settlement Class Member is expressly submitting to the jurisdiction of the Ontario Court for the purposes of the Canadian air cargo litigation in order to participate in the distribution of the Net Settlement Funds;
  - (d) information that will allow the Claims Administrator to determine the proportion of Airfreight Shipping Services Purchases that were made in the capacity of a Direct Purchaser Shipper, a Freight Forwarder, and/or a Shipper;
  - (e) a declaration that the Settlement Class Member has not commenced litigation relating to Airfreight Shipping Services in another jurisdiction; or that any litigation relating to Airfreight Shipping Services commenced by the Settlement

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<sup>1</sup> 23.6% represents that portion of the Canadian population that resides in Quebec based on information from Statistics Canada's website.

Class Member in another jurisdiction has been discontinued or amended to exclude claims relating to Airfreight Shipping Services;

- (f) disclosure regarding whether the Settlement Class Member has received compensation through other proceedings or private out-of-class settlements in relation to its Airfreight Shipping Services and/or whether the Settlement Class Member's claims in relation to its Airfreight Shipping Services have been released, and details of the compensation received and the claims released;
- (g) authorization to the Claims Administrator to contact the Settlement Class Member or its representative, as the Claims Administrator deems appropriate, for more information and/or to audit the Claim;
- (h) a declaration that the information submitted in the Claim is true and correct;
- (i) a release in favour of the Released Parties in respect of all Released Claims (as those terms are defined in the Settlement Agreements); and
- (j) if the Claim Form is submitted by a related entity (i.e., a parent company claiming on behalf of a subsidiary or affiliate) or a third-party on behalf of a Settlement Class Member (i.e., a third-party claims services or a lawyer of their own choosing), the Settlement Class Member must provide a signed authorization in the form attached hereto as Schedule "A" or Schedule "B", as applicable.

### **The Online Claims Portal**

20. The Claims Administrator shall create an online claims portal that Settlement Class Members can access in order to file a Claim and shall provide the necessary administrative support to enable Settlement Class Members to do so.

21. The online claims portal shall contain fields that require the Settlement Class Member to provide all applicable information required as part of the Claim, in accordance with paragraphs 18 and 19 above.

### **The Claims Filing Process**

22. Settlement Class Members will be encouraged to complete and submit a Claim electronically using the online claims portal. Subject to further order of the Ontario Court, claims must be submitted to the online claims portal on or before the Claim Filing Deadline.
23. Subject to the discretion of the Claims Administrator, claims may not be amended after the Claims Filing Deadline. For greater clarity, “placeholder claims”—meaning inaccurate claims filed solely for the purpose of meeting the Claim Filing Deadline—will not be permitted.
24. The Claims Administrator shall provide to Original Claimants, in writing, by e-mail or regular mail, his, her or its personal user name and password to permit the Original Claimant access to the online claims portal. The Online Claim Portal shall be prepopulated with a summary of the information provided by the Original Claimant as part of the First Distribution.
25. Where a Settlement Class Member (who did not file a Claim in the First Distribution) has been identified by the Defendants, IATA, and/or a Freight Forwarder, the Claims Administrator shall provide to the Settlement Class Member, in writing, by e-mail or regular mail, his, her or its personal user name and password to permit that Settlement Class Member access to the online claims portal. Where the Defendants, IATA, and/or Freight Forwarder(s) have also provided customer information in respect of the Settlement Class Member, the fields in the online claims portal requiring the Settlement Class Member to provide the value of the Settlement Class Member’s

Airfreight Shipping Services Purchases shall be automatically populated with the information provided by the the Defendants, IATA, and/or Freight Forwarder(s), as applicable. The online claims portal shall permit Settlement Class Members to supplement or elect not to rely on the information provided by the Defendants, IATA, and/or the Freight Forwarder(s).

26. If a Settlement Class Member does not have internet access or is otherwise unable to submit a Claim using the online claims portal, the Settlement Class Member can register over the telephone with the Claims Administrator and the Claims Administrator shall send the Settlement Class Member a hardcopy claim form by mail. Subject to the direction of the Ontario Court, the completed and executed hardcopy Claim must be submitted to the Claims Administrator postmarked no later than the Claims Filing Deadline.
27. Where a Settlement Class Member has purchase records for Airfreight Shipping Services for at least two years during the period January 1, 2000 to September 11, 2006, the Settlement Class Member can use such records to extrapolate its Airfreight Shipping Services Purchases for the remainder of the period January 1, 2000 to September 11, 2006. If the Settlement Class Member's Claim is audited pursuant to paragraphs 31 to 34, the Settlement Class Member must provide a sworn statement explaining the basis for and calculation of the extrapolation of purchases.

**Assistance in Filing a Claim**

28. Settlement Class Members can contact the Claims Administrator or Class Counsel, at no charge, for assistance in the completion of their Claim.
29. Settlement Class Members may utilize third-party claims services, a lawyer of their own choosing, or similar services to file Claims. If a Settlement Class Member chooses to use a third-party claims service, a lawyer of their own choosing, or similar services, the



Settlement Class Members will be responsible for any expenses arising from those additional and individual services.

### **Scope of Claims Administration**

30. Claims filed by Original Claimants were reviewed and adjudicated in the context of the First Distribution. The procedures set forth in paragraphs 31 to 34 (audits), paragraphs 35 to 36 (deficiencies), paragraphs 37 to 39 (Claims Administrator's decision), and 40 to 45 (appeal of the Claims Administrator's decision) shall only apply to New Claimants.

### **Audits**

31. The Claims Administrator shall audit:
- (a) all Claims where the Settlement Class Member relied in whole or in part on its own purchase records, and the value of that portion of the Settlement Class Member's Eligible Airfreight Shipping Services Purchases exceeds CDN \$50,000; and
  - (b) at least 10% of other Claims where the Settlement Class Member relied in whole or in part on its own purchase records.
32. In addition, at its sole discretion, the Claims Administrator can elect to audit any other Claim. In exercising its discretion on whether to audit a Claim, the Claims Administrator will consider, among other things, whether there is any reason to believe a Claim is duplicative and/or contains inaccurate or misleading information.
33. An audit shall require proof of the Settlement Class Member's Airfreight Shipping Services Purchases:
- (a) proof of purchase of the Settlement Class Member's Airfreight Shipping Services Purchases might include invoices, receipts, air way bills, purchase records, historical accounting records, or comparable verification that is acceptable to the Claims Administrator;
  - (b) Settlement Class Members who cannot satisfy the evidentiary requirements of (a) can provide a declaration attesting to the purchase and value of the purchase, together with a credit card statement, a bank statement, cancelled cheque, wire transfer confirmations, or comparable verification that is acceptable to the Claims Administrator; or

- (c) where a Settlement Class Member has extrapolated its Airfreight Shipping Services Purchases, the Settlement Class Member must provide a sworn statement explaining the basis for and calculation of the extrapolation of purchases.
34. At its sole discretion, the Claims Administrator can reject a Claim, in whole or in part, where, in the Claims Administrator's view, the Settlement Class Member has submitted insufficient or false information or has otherwise engaged in fraudulent conduct.

### **Deficiencies**

35. If, during claims processing, the Claims Administrator finds that deficiencies exist in a Claim or other information is required (including in response to an audit), the Claims Administrator shall notify the Settlement Class Member, by email or regular mail, of the deficiencies. The Claims Administrator shall allow the Settlement Class Member thirty (30) days from the date of such notice to correct the deficiencies. If the deficiencies are not corrected within the thirty (30) day period, depending on the nature of the deficiency, the Claims Administrator may reject the Claim.
36. A deficiency shall not include missing the Claims Filing Deadline. Subject to further order of the Ontario Court, the Claims Administrator shall not accept Claims postmarked or electronically submitted after the Claims Filing Deadline.

### **Claims Administrator's Decision**

37. In respect of each Settlement Class Member who has filed a Claim in accordance with this Distribution Protocol, the Claims Administrator shall:
- (a) decide whether the Settlement Class Member is eligible to receive settlement benefits payable out of the Net Settlement Funds in accordance with this Distribution Protocol and any Court order relating to the implementation of this Distribution Protocol;

- (b) make a determination of the value of the Settlement Class Member's Airfreight Shipping Services Purchases in respect of which the Settlement Class Member is entitled to settlement benefits in accordance with this Distribution Protocol and any Court order relating to the implementation of this Distribution Protocol; and
  - (c) make a determination of the Settlement Class Member's categorization for the purposes of calculating Eligible Airfreight Shipping Services Purchases.
38. The Claims Administrator shall send to the Settlement Class Member, by email or regular mail, a decision as to the approval or rejection of the Claim and the determination of the Airfreight Shipping Services Purchases and their categorization (the "Decision Notice"). Where the Claims Administrator has rejected all or part of the Claim of the Settlement Class Member, the Claims Administrator shall include in the Decision Notice its grounds for rejecting all or part of the Claim.
39. The Claims Administrator's decision will be binding upon the Settlement Class Member, subject to the Settlement Class Member's right to appeal, as outlined in paragraphs 40 to 45.

**Appeal of the Claims Administrator's Decision**

40. Settlement Class Members shall be granted thirty (30) days from the date of the Decision Notice to appeal the rejection (in whole or in part) of their Claims.
41. Appeals will be determined by the Ontario Court or a third-party designated by the Ontario Court.
42. Appeals will be on the basis of written submissions, supported by the documentation provided to the Claims Administrator by the Settlement Class Member as part of the claims process. Settlement Class Members are not permitted to provide any new documentation as part of the appeal. Any new documentation provided as part of the appeal will not be provided to the Ontario Court for consideration.

43. The Claims Administrator must provide to the Ontario Court a copy of the documentation provided by the Settlement Class Member with the Claim or in response to requests for additional information, the Decision Notice, and any other information that might be reasonably useful in the determination of the appeal, and make written submissions to the Ontario Court as is reasonably necessary. Additionally, Class Counsel may provide written submissions to the Ontario Court or its designee as is reasonably necessary.
44. Notwithstanding the foregoing, the Ontario Court, acting in its sole discretion, can request oral submissions (to be provided via teleconference or videoconference, as requested by the Ontario Court) from the Settlement Class Member, Claims Administrator and/or Class Counsel.
45. The decision on the appeal is final and binding and shall not be subject to any further appeal or review whatsoever.

#### **Payment of Claims**

46. As soon as practicable after the claims evaluations and any appeals are completed, the Claims Administrator shall report to Class Counsel and the Ontario Court the particulars of the proposed distribution to each eligible Settlement Class Member.
47. The Claims Administrator shall make arrangements to pay approved Claims as expeditiously as possible. Payments of settlement benefits to Settlement Class Members will be made by cheque or, at the Claims Administrator's discretion, wire transfer.

#### **THE CLAIMS ADMINISTRATOR'S DUTIES AND RESPONSIBILITIES**

##### **Supervisory Powers of the Ontario Court**

48. The Claims Administrator shall administer this Distribution Protocol under the ongoing authority and supervision of the Ontario Court.

### **Investment of Settlement Funds**

49. The settlement funds shall be held in a guaranteed investment vehicle, liquid money market account or equivalent security with a rating equivalent to or better than that of a Canadian Schedule I bank (a bank listed in Schedule I of the *Bank Act*, SC 1991, c 46) held at a Canadian financial institution and all payments from the Settlement Amounts shall be made from that account.

### **Communication, Languages and Translation**

50. The Claims Administrator shall establish a toll-free number for calls from Canada.
51. The Claims Administrator shall establish a call centre capable of receiving international calls from Settlement Class Members worldwide.
52. The Claims Administrator shall dedicate sufficient personnel to respond to Settlement Class Members' inquiries (including in the call centre) in English or French, as the Settlement Class Member elects.
53. The Claims Administrator shall arrange for translation services with respect to responding to Settlement Class Members' inquiries in additional languages, on an as-needed basis.
54. All written communications from the Claims Administrator to a Settlement Class Member shall be transmitted via email if an email address has been provided, or if an email address has not been provided, by regular mail.
55. The Claims Administrator shall have no responsibility for locating Settlement Class Members for any mailing returned to the Claims Administrator as undeliverable.
56. The Claims Administrator shall have the discretion, but is not required, to reissue payments to Settlement Class Member returned as undeliverable under such policies and procedures as the Claims Administrator deems appropriate. Any costs associated with locating current address information for the Settlement Class Member shall be deducted from that Settlement Class Member's settlement benefits.

### **Taxes**

57. The Claims Administrator shall take all reasonable steps to minimize the imposition of taxes upon the Net Settlement Funds and shall have the discretion to pay any taxes imposed on such monies out of the Net Settlement Funds.

### **Reporting**

58. The Claims Administrator shall provide regular reports to Class Counsel regarding the administration.
59. The Claims Administrator shall provide any reports requested by the Ontario Court.

### **Preservation and Disposition of Claim Submissions**

60. The Claims Administrator shall preserve, in hard copy or electronic form, as the Claims Administrator deems appropriate, the submissions relating to a Claim, until three years after all settlement monies have been paid out to Settlement Class Members, and at such time shall destroy the submissions by shredding, deleting, or such other means as will render the materials permanently illegible.

### **Assistance to the Claims Administrator**

61. The Claims Administrator shall have the discretion to enter into such contracts and obtain financial, accounting, and other expert assistance as are reasonably necessary in the implementation of this Distribution Protocol.

### **Confidentiality**

62. All information received from Defendants, IATA, Freight Forwarders, or the Settlement Class Members is collected, used, and retained by the Claims Administrator pursuant to the protections of the *Personal Information Protection and Electronic Documents Act*, SC 2000 c 5 and may be used by the Claims Administrator for the sole purpose of administering this Distribution Protocol, including evaluating a Settlement Class Member's eligibility under this Distribution Protocol. The sales information provided by

Defendants and IATA and the information provided by Settlement Class Members is strictly private and confidential. Information concerning Settlement Class Members shall not be disclosed without the express written consent of the relevant Settlement Class Member, except in accordance with this Distribution Protocol and any Court order relating to the implementation of this Distribution Protocol. Any identifying information about Settlement Class Members will be kept confidential and redacted from any materials filed with the Court as part of the settlement administration process, unless otherwise directed by the Court or in accordance with this Distribution Protocol.

63. The Claims Administrator shall provide a report listing the particulars of the proposed distribution to each eligible Settlement Class Member (i.e. name of Settlement Class Member and distribution payment made to the Settlement Class Member), including identifying information respecting Settlement Class Members who reside outside Canada, to Class Counsel, the Settled Defendants and, if requested, the Courts. Such report shall be treated as if it were produced in the litigation and subject to all of the ensuing protections, including those in the *Rules of Civil Procedure*, RRO 1990, Reg. 194.

**SCHEDULE “A” – RELATED ENTITY AUTHORIZATION**

This Schedule is to be completed only if the Claim is being submitted by a parent company on behalf of a subsidiary or affiliate.

Contact Information for Person completing this authorization:

Name:	
Title/Position:	
Address:	
Email:	
Phone:	

I \_\_\_\_\_ [*name of Settlement Class Member*]  
authorize \_\_\_\_\_ [*name of representative*] to file  
a Claim in the Second Canadian Air Cargo Price-Fixing Distribution on my behalf.

I understand that all communications relating to the Claim will be directed towards my representative and that any resulting payment will be issued to my representative.

DATED at \_\_\_\_\_ [*city*], in the Province of \_\_\_\_\_, this \_\_\_\_ day of \_\_\_\_\_, 2020.

\_\_\_\_\_  
Name

\_\_\_\_\_  
Signature

I have the authority to bind the corporation



**SCHEDULE “B” – THIRD-PARTY AUTHORIZATION**

This Schedule is to be completed only if the Claim is being submitted on behalf of a Settlement Class Member by a representative (including a third-party claims service or lawyer of their own choosing).

Contact Information for Person completing this authorization:

Name:	
Title/Position:	
Address:	
Email:	
Phone:	

I, \_\_\_\_\_ [*name of Settlement Class Member*] authorize \_\_\_\_\_ [*name of representative*] to file a Claim in the Second Canadian Air Cargo Price-Fixing Distribution on my behalf.

I understand that the claims filing process was designed to enable Settlement Class Members to file Claims without the assistance of an agent and that the Settlement Class Member can contact the Claims Administrator at no charge to ask questions about the claims filing process.

I have reviewed the information to be submitted by my representative as part of the Claim Form, including the quantum of my Airfreight Shipping Services. I understand that my representative will be claiming for Airfreight Shipping Services totalling \$ \_\_\_\_\_. I can attest based on personal knowledge that the information to be submitted by the representative, including the total purchases claimed, accurately reflects my business records.

I understand that all communications relating to the Claim will be directed towards my representative and that any resulting payment will be issued to my representative.

DATED at \_\_\_\_\_ [city], in the Province of \_\_\_\_\_, this \_\_\_\_\_ day of \_\_\_\_\_, 2020.

\_\_\_\_\_  
Name

\_\_\_\_\_  
Signature

I have the authority to bind the corporation

Schedule "B"

Court File No. 50389CP



ONTARIO  
SUPERIOR COURT OF JUSTICE

) FRIDAY , the 2<sup>ND</sup> day  
)  
) of MAY , 2008

BETWEEN:

NUTECH BRANDS INC.

Plaintiff

- 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., and SWISS INTERNATIONAL AIR LINES LTD.

Defendants

Proceeding under the *Class Proceedings Act, 1992*

ORDER

THESE MOTIONS, made by the Plaintiff for an Order that the International Air Transport Association ("IATA"), a non-party to this action, provide to The Garden City Group ("Garden City") customer records it has maintained for IATA member air cargo carriers who shipped to, from or within Canada between January 1, 2000 and September 11, 2006, and for an Order that the Non-Settling Defendants provide to Garden City certain specified customer information, both for the limited purpose of disseminating a court-approved Notice of Proposed Settlement, was heard this day at the Court House, 80 Dundas Street, London, Ontario.

**ON READING** the materials filed and on hearing the submissions of Counsel for the Plaintiff and the Non-Settling Defendants:

1. **THIS COURT ORDERS AND DECLARES** that for the purposes of this Order, Non-Settling Defendants is defined as follows:

(a) **"Non-Settling Defendants"** means Air Canada, AC Cargo Limited Partnership, Societe Air France, Koninklijke Luchvaart Maatschappij N.V. dba KLM, Royal Dutch Airlines, Asiana Airlines Inc., British Airways PLC, Cathay Pacific Airways Ltd., 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., and Singapore Airlines Cargo PTE Ltd.

2. **THIS COURT ORDERS** that, subject to paragraph 7 of this Order, on or before May 15, 2008 , the Non-Settling Defendants provide to Garden City their respective customer information as set forth in Schedule "A" for the limited purpose of providing a Notice of Proposed Settlement in accordance with the Order dated March 6, 2008 (the "March 6, 2008 Order"), attached hereto as Schedule "B".

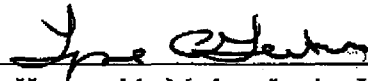
3. **THIS COURT ORDERS** that, subject to paragraph 7 of this Order, IATA, a non-party to this action, is to provide to Garden City with records it has maintained for IATA member air cargo carriers of names and addresses of customers who shipped to, from or within Canada between January 1, 2000 and September 11, 2006, for the limited purpose of providing a Notice of Proposed Settlement in accordance with the March 6, 2008 Order.

4. **THIS COURT ORDERS** that Garden City shall maintain the confidentiality of the customer information provided by the Non-Settling Defendants and by IATA in accordance with this Order and shall not disclose such information to any other person or their counsel.
5. **THIS COURT ORDERS** that within 90 days of the final disposition of the within Action, which time period may be amended by written agreement of the parties or Order of this Court, Garden City shall delete and destroy all customer information provided to it by the Non-Settling Defendants and IATA, including any copies or references thereto (the "Deletion"), and shall certify to this Court that the Deletion has occurred, and shall provide a copy of the certification of Deletion to the Non-Settling Defendants and IATA.
6. **THIS COURT ORDERS** that Garden City, Jeanne Finnegan, and any employees, subcontractors or agents thereof who will have access to the information provided pursuant to paragraphs 2 and 3 of this Order irrevocably attorn in writing to the jurisdiction of this Court for the purpose of this Order, the March 6, 2008 Order, and any issues or disputes relating thereto, including, without limiting the foregoing, this Court's monitoring and enforcement of this Order and the March 6, 2008 Order and the restrictions pursuant to which the information listed in Schedule "A" is provided.
7. **THIS COURT ORDERS** that the information to be provided pursuant to paragraphs 2 and 3 of this Order is not required to be provided unless and until the Non-Settling Defendants are provided a copy of the written attornment required by paragraph 6 of this Order.

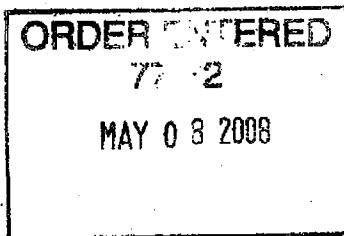
8. **THIS COURT ORDERS** that this Order is without prejudice to any position a Non-Settling Defendant may take in this or any other proceeding on any issue, including the issue of whether this action should be certified as a class proceeding. No person may rely, cite or refer to all or any part of this Order or any reasons given by the Court in support of the Order as authority against any of the Non-Settling Defendants in this or any other proceeding. For greater certainty, this Order and the Court's reasons in support of this Order are not binding on and shall have no effect on this Court's ruling in this or any other proceeding as against the Non-Settling Defendants.

Date:

May 2, 2008



The Honourable Madam Justice Leitch



**SCHEDULE "A"**

**SCHEDULE A**  
**CUSTOMER LISTS FROM THE NON-SETTLING DEFENDANTS**

1. Air Canada and AC Cargo Limited Partnership ("Air Canada")

Air Canada will produce in electronic form a list of all its customers, including addresses, who who shipped to, from or within Canada from January 1, 2001 through the present, as can be generated from an accessible electronic database. It is agreed that "customers" refers in each case to the party which actually made the payment to Air Canada for the shipping services.

2. Societe Air France ("Air France")

Air France will produce an electronic list of "customers under account" and "walk-up customers" who shipped to or from Canada as can be generated from Air France from an accessible electronic format for the period September 2003 to September 2006. Air France will not produce customer information for the period prior to September 2003 as this information is not maintained by Air France in a reasonably accessible format.

3. Koninklijke Luchtvaart Maatschappij N.V. dba KLM, Royal Dutch Airlines ("KLM")

KLM will produce a customer list, including addresses, for customers who shipped to, or from Canada as can be generated from KLM from an accessible electronic format for the period January 1, 2005 through September 11, 2006 and a second customer list, including only names, for those customers who shipped to or from Canada as can be generated from an accessible electronic format, for the period January 1, 2000 to January 1, 2005.

4. Asiana Airlines Inc. ("Asiana")

Asiana will produce, in electronic form, lists of its customers, including addresses as available, who shipped to or from Canada from January 1, 2000 through to September 11, 2006, as can be generated from information contained in current and legacy centralized electronic databases.

5. British Airways PLC ("BA")

BA will produce in electronic form, names and partial address information for customers who shipped to, from or within Canada between January 1, 2000 and September 11, 2006.

6. Cathay Pacific Airways Ltd. ("Cathay")

Cathay will produce a computer-readable list of the names and addresses of its freight forwarder customers or the corresponding IATA codes for same that are readily accessible electronically within Cathay's own records who shipped to or from Canada during the period January 1, 2000 to September 11, 2006. Plaintiffs agree that Cathay

need not undertake the manual examination of any waybills or other similar records in order to provide the requested information.

7. Japan Airlines International Co., Ltd. ("JAL")

For Shipments from Canada to the rest of the world, JAL will provide customer names and addresses for JAL's current freight forwarder customers who do not participate in CASS. For Shipments from Brazil or Mexico to Canada, JAL will provide customer names and addresses for JAL's freight forwarder customers, based on the recollection of relevant JAL employees. For Shipments from Japan to Canada, JAL will provide customer names and addresses of JAL's freight forwarder customers for the period April 1, 2005 to September 11, 2006, in electronic form. For shipments from non-Japan Asia and Oceania to Canada, JAL will provide customer names and addresses of JAL's freight forwarder customers, based on the recollection of relevant JAL employees. Plaintiffs agree that JAL need not undertake the manual examination of any waybills or other similar records in order to provide the requested information.

8. Scandinavian Airlines System ("SAS")

SAS will produce the contact information for its customers who shipped to or from Canada from January 1, 2000 to September 11, 2006 for which SAS maintains electronic records in its centralized database in Denmark. Plaintiffs agree that SAS need not produce any additional contact information not in its centralized database.

9. Korean Air Lines Co., Ltd. ("Korean Air")

Korean Air will produce a list of the names and addresses of its customers who shipped to, from or within Canada during the period January 1, 2000 and September 11, 2006.

10. Cargolux Airline International ("Cargolux")

Cargolux will produce in electronic form, a list of its customers, including addresses, who shipped airfreight cargo to or from Canada via air, for the period January 1, 2003 through September 11, 2006.

11. Lan Airlines S.A and Lan Cargo S.A. ("LAN")

LAN will produce in electronic form, a list of all its customers, including addresses, who shipped to, from or within Canada from January 1, 2000 through September 11, 2006.

12. Atlas Air Worldwide Holdings Inc., and Polar Air Cargo Inc. ("Polar Air")

Polar Air will produce, in electronic form, a list of all its customers, including addresses, who shipped to, from or within Canada for the period January 1, 2005 to September 11, 2006. Polar Air will also search its centralized database system and produce in electronic form, a list of customers, including address, who shipped to, from or within Canada for the period from mid-2004 through December 31, 2004.



13. Singapore Airlines Ltd. ("SIA") and Singapore Airlines Cargo PTE Ltd. ("SIAC")

SIAC will produce in electronic form a list of its customers who shipped to and from Canada, including addresses, compiled from all relevant SIAC stations for the period April 1, 2003 through September 11, 2006, and from individual SIAC stations, to the extent possible, for the period August 1, 2001 through April 1, 2003. Plaintiffs agree that SIAC need not undertake the manual examination of any waybills or other similar records in order to provide the requested information.

## **SCHEDULE "B"**

ONTARIO  
SUPERIOR COURT OF JUSTICE

The Honourable Madam  
Justice Leitch

) Thursday, the 6<sup>th</sup> day  
)  
) of March, 2008



NUTECH BRANDS INC.

Plaintiff

- and -

IR 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., and SWISS INTERNATIONAL AIR LINES LTD.

Defendants

Proceeding under the *Class Proceedings Act, 1992*

ORDER

THIS MOTION made by the Plaintiff for an Order that the Ontario Action be certified as a class proceeding for settlement purposes only as against the Defendants Deutsche Lufthansa AG, Lufthansa Cargo AG, and Swiss International Air Lines Ltd. (collectively "Lufthansa") and for an Order approving the Summary Notice and Notice of Proposed Settlement to class members and approving the method of dissemination of the said notices, was heard this day at the Court House, 80 Dundas Street, London, Ontario.

ON READING the materials filed and on hearing the submissions of Counsel for the Plaintiff, Counsel for Lufthansa and Counsel for the Non-Settling Defendants:

1. **THIS COURT ORDERS AND DECLARES** that for the purposes of this Order, the definitions set out in the Settlement Agreement apply and are incorporated into this Order except for the definition of Non-Settling Defendants which shall be as set out in this paragraph:

(a) "Non-Settling Defendants" means Air Canada, AC Cargo Limited Partnership, Societe Air France, Koninklijke Luchvaart Maatschappij N.V. dba KLM, Royal Dutch Airlines, Asiana Airlines Inc., British Airways PLC, Cathay Pacific Airways Ltd., 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., and Singapore Airlines Cargo PTE Ltd.

2. **THIS COURT ORDERS** that the Ontario Action is certified as a class proceeding, for settlement purposes only, as against Lufthansa.

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

All Persons, other than members of the Québec Settlement Class or the BC Settlement Class, who purchased Airfreight Shipping Services\* during the period January 1, 2000 to September 11, 2006, including those Persons who purchased Airfreight Shipping Services through freight forwarders, from any air cargo carrier, including without limitation, the Defendants, and specifically including Lufthansa. Excluded from the Ontario Settlement Class are the Defendants and their respective parents, employees, subsidiaries, affiliates, officers and directors.

\*Airfreight Shipping Services are defined as 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** this Order, including, without limiting the generality of the foregoing, the certification of this action against Lufthansa and the definitions of Settlement Class, Purchase Period and Common Issue, is without prejudice to any position a Non-Settling Defendant may take in this or any subsequent proceeding on any issue, including the issue of whether this action should be certified ~~in whole or in part~~ as a class proceeding. No person may rely, cite or refer to all or any part of this Order or any reasons given by the Court in support of the Order as ~~substantive~~ authority against any of the Non-Settling Defendants in this or any other proceeding. For greater certainty, this Order, the Court's reasons in support of the Order and the certification of this action for settlement purposes is not binding on and shall have no effect on this Court's ruling in this or any other proceedings as against the Non-Settling Defendants.
5. **THIS COURT ORDERS** that Nutech Brands Inc. is appointed as the representative plaintiff for the Ontario Settlement Class.
6. **THIS COURT ORDERS** that the following issue is common to the Ontario Settlement Class:

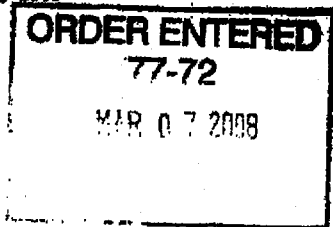
Did Lufthansa agree to fix, raise, maintain or stabilize the price of airfreight cargo shipping services, including surcharges, during the period January 1, 2000 to September 11, 2006? If so, what damages did the Ontario Settlement Class Members suffer?
7. **THIS COURT ORDERS** that members of the Ontario Settlement Class who wish to opt-out of the Ontario Action must do so by sending an opt-out request to The Garden City Group, at the address to be provided, postmarked, on or before the date which is 30 days in advance of the date of the U.S. fairness hearing, which date will be inserted into the Summary Notice and the long form Notice of Proposed Settlement prior to publication.


8. **THIS COURT ORDERS** that all opt-out requests include the following information:
- (a) Name, address, phone number and email address of the person(s) seeking to opt out of the Actions;
  - (b) All trade names or business names and addresses the person(s) seeking to opt out has/have used, as well as any parents, subsidiaries or affiliates that have purchased Air freight Shipping Services at any time during the relevant period and are also requesting to be excluded from the Actions and the Settlement Classes;
  - (c) The name of the Action (*Canadian Air Cargo Shipping Services Class Action*);
  - (d) To the extent such information may be available, the value of all Air Freight Shipping Services the person(s) seeking to opt out has/have purchased between January 1, 2000 and September 11, 2006; and
  - (e) A signed statement that "I/we hereby request that I/we be excluded from the Actions and the Settlement Classes in the *Canadian Air Cargo Shipping Services Class Actions*."
9. **THIS COURT ORDERS** that any person who validly opts out of the Ontario Action shall be excluded from the Ontario Settlement Class and the continuing Ontario Action against the Non-Settling Defendants, including any future settlements or judgments, shall have no rights with respect to the Settlement Agreement entered into with the Lufthansa and shall receive no payments as provided in the Settlement Agreement entered into with Lufthansa.

10. **THIS COURT ORDERS** that any person who does not validly opt out in the manner and time prescribed above, shall be deemed to have elected to participate in the Settlement Agreement entered into with Lufthansa and in the remainder of the Ontario Action.
11. **THIS COURT ORDERS** that the Summary Notice and the long form Notice of Proposed Settlement are approved substantially in the form attached hereto as Schedule "A" and "B".
12. **THIS COURT ORDERS** that notice be given to the class at least thirty days in advance of the settlement approval hearing as follows:
  - (a) The long form Notice of Proposed Settlement, in substantially the form attached hereto as Schedule "B", be sent by first class mail to each potential class member whose address has been obtained from any Defendant, including Lufthansa, and to any potential class member who requests a copy of the notice;
  - (b) The Summary Notice, in substantially the form attached hereto as Schedule "A", be published in accordance with the plan described in the Affidavit of Jeanne Finnegan, attached hereto as Schedule "C"; and
  - (c) The long form Notice of Proposed Settlement be posted at [www.aircargosettlement.com](http://www.aircargosettlement.com).

13. **THIS COURT ORDERS** that The Garden City Group be appointed to disseminate the Summary Notice and the Notice of Proposed Settlement in accordance with the terms of this Order, and to receive opt-out requests from Settlement Class Members.

Date: MAR 06 2008



  
The Honourable Madam Justice Leitch



**SCHEDULE "A"**

Legal Notice

**If you purchased Air Cargo Shipping Services  
within, to or from either the United States or Canada  
from January 1, 2000 to September 11, 2008,  
your rights could be affected by a Settlement**

**What are the Settlements about?**

Plaintiffs claim that Deutsche Lufthansa AG, Lufthansa Cargo AG and Swiss International Air Lines Ltd., along with numerous other air cargo carriers, conspired to fix the prices of air cargo shipping services in violation of U.S. antitrust laws and Canadian competition law. The Settlements provide an \$85 million U.S. Fund to pay valid class member claims, and \$5.338 million USD Canadian Fund that Canadian Class Counsel will request to have held in trust for future benefit of the Canadian classes.

**Who is a Class Member?**

You are a class member if you purchased air cargo shipping services, from ANY cargo carrier, for shipments within, to or from either the United States or Canada. This also includes services purchased through freight forwarders. All you need to know is in the Notice of Proposed Settlement, including information on who is or is not a class member.

**How do I get Payment in the U.S. Settlement?**

You must file a Claim Form. To obtain a Claim Form, and for information on deadlines, call the number below or visit [www.aircargosettlement.com](http://www.aircargosettlement.com).

**What are my rights?**

If you do NOT want to take part in the U.S. Settlement or the Canadian Settlement, you have the right to "opt out." To "opt out" of the U.S. or Canadian Settlements, you

must do so by [Insert Date], 200\_. Class members have the right to object to the U.S. or Canadian Settlements. If you object, you must do so by [Insert Date], 200\_. You may speak to your own attorney at your own expense for help. For more information on how to "opt out" or object, visit [www.aircargosettlement.com](http://www.aircargosettlement.com) or call the number below.

Final Approval Hearings to consider approval of the U.S. and Canadian Settlements and requests by the lawyers for attorneys' fees and costs will be held at the United States District Court for the Eastern District of New York on July 30, 2008; the Ontario Superior Court of Justice on [Insert Date], 200\_; the Quebec Superior Court on [Insert Date], 200\_; and at the Supreme Court of British Columbia on [Insert Date], 200\_. For more information on the locations and times of the Hearings, visit [www.aircargosettlement.com](http://www.aircargosettlement.com), or call the number below.

**This is a Summary, where can I get more information?**

You can get complete Settlement information, including a copy of the full Notice of Proposed Settlement and U.S. Claim Form, and register to receive updates about the administration of the Canadian Settlement, by visiting [www.aircargosettlement.com](http://www.aircargosettlement.com), calling the number below, or writing to Air Cargo Settlement, c/o The Garden City Group, Inc., P.O. Box 9162, Dublin, OH 43017-4162, USA.

800-000-0000

[www.AirCargoSettlement.com](http://www.AirCargoSettlement.com)

**MECHANICAL SPECIFICATIONS**

File Name: LFT Short Form  
Publication: TBD  
Issue Date: TBD  
Order #: TBD  
Size: 5.75" x 5.25"  
Comments:

Body Font: Times, 8pt  
Headline Font: Arial, 12p  
Create Date/Time: 7/3/07  
Last Edit Date: 12/4/07  
Last Edit Time: 11:00 AM PST  
Operator: ND

**SCHEDULE "B"**

NUTECH BRANDS INC. v. AIR CANADA CARGO et al	Ontario Superior Court of Justice Court File No. 50389CP
KAREN McKAY v. ACE AVIATION HOLDING INC. et al	Supreme Court of British Columbia Vancouver Registry No. S-067490
CARTISE SPORTS INC. v. DEUTSCHE LUFTHANSA AG et al	Québec Superior Court 500-06-000344-065

**NOTICE OF PROPOSED SETTLEMENT  
OF CANADIAN CLASS ACTIONS WITH DEFENDANTS  
DEUTSCHE LUFTHANSA AG, LUFTHANSA CARGO AG, AND  
SWISS INTERNATIONAL AIR LINES LTD.**

**THIS NOTICE MAY AFFECT YOUR RIGHTS  
PLEASE READ CAREFULLY**

**TO: All persons and entities that purchased air cargo shipping services from any air cargo carrier for shipments within, to, or from Canada (except shipments between Canada and the United States) during the period from January 1, 2000 to September 11, 2006, including those persons and entities that purchased air cargo shipping services through freight forwarders.**

This notice has been directed to you because your legal rights may be affected by the settlement of certain class action lawsuits pending in Canada against Deutsche Lufthansa AG, Lufthansa Cargo AG, and Swiss International Air Lines Ltd. (throughout this notice, these three companies will be referred to as "Lufthansa"). These lawsuits were filed by certain plaintiffs on behalf of you and other class members who purchased air cargo shipping services from Lufthansa for shipments within, to, or from Canada (except shipments between Canada and the United States). The lawsuits allege that Lufthansa, along with numerous other air cargo carriers, conspired to fix the prices of air cargo shipping services in violation of Canadian competition law. Lufthansa has entered into a Settlement Agreement with the Canadian plaintiffs, which includes, among other things, the payment of USD \$5,338,000 by Lufthansa to the Canadian classes, and the provision by Lufthansa of information that will assist the classes in pursuing their claims against other air cargo carriers involved in the alleged price fixing conspiracy.

A similar class action lawsuit is pending in the United States. A Settlement Agreement has been reached in the United States between the U.S. plaintiffs and Lufthansa. If you purchased Air Cargo Shipping Services for shipments between the United States and Canada you are included as a class member in the U.S. Settlement Agreement and you must refer to the U.S. Notice of Proposed Class Action Settlement to review how your rights are affected. The U.S. Settlement Agreement and the U.S. Notice of Proposed Class Action Settlement are available at [www.aircargosettlement.com](http://www.aircargosettlement.com).

QUESTIONS? CALL U.S. & CANADA (TOLL-FREE) 1(800) 749-3518;  
INTERNATIONAL (TOLL): 1(XXX) XXX-XXXX; OR VISIT [www.aircargosettlement.com](http://www.aircargosettlement.com)  
*A complete list of Air Cargo Settlement toll-free and toll telephone numbers by country is enclosed with this Notice,  
and the list is also available by visiting the website.*

## **I. What is a Class Action Lawsuit?**

Class actions are lawsuits in which the claims and rights of many people are decided in a single court proceeding brought by representative plaintiffs. This avoids the necessity for hundreds or even thousands of people to file similar individual lawsuits, enables the court to resolve these claims in a more efficient and economical way, and seeks to assure that people with similar claims are treated similarly. In a class action, the court has a responsibility to ensure that prosecution and resolution of the class claims by the representative plaintiffs and the lawyers representing the class (here, because Settlements have been reached, "Settlement Class Counsel") are fair. Settlement Class Members are NOT individually responsible for the costs or fees of Settlement Class Counsel, which are subject to court award. In this case, all such costs and fees will be paid from the Settlement Fund.

## **II. Overview of the Canadian Class Action Lawsuits**

Class action lawsuits are currently pending against Lufthansa in three separate Canadian courts: the Supreme Court of British Columbia, the Ontario Superior Court of Justice, and the Québec Superior Court (collectively the "Canadian Class Actions"). Plaintiffs allege that Lufthansa and other Defendants participated in a conspiracy to fix, raise, maintain, or stabilize prices of air cargo shipping services, through a number of mechanisms, including, inter alia, levying inflated surcharges, jointly agreeing to eliminate or prevent discounting on prices charged for air cargo shipping, and agreeing on yields and customer allocations. Plaintiffs allege that, as a result, they and Canadian Settlement Class Members paid substantially more for air cargo shipping services than they would have paid in the absence of this alleged conduct.

The Canadian Class Actions deal in large part with surcharges charged by Defendants. Surcharges are fees, in addition to normal air cargo shipping rates, that air cargo carriers charge to customers, purportedly to compensate the air cargo carriers for certain external costs, including, for example, increased costs for fuel and increased costs related to security measures taken after the September 2001 attacks in the United States. Plaintiffs allege that Defendants participated in a conspiracy to set the prices of these surcharges, as well as the yields collected by Defendants.

Lawyers for Lufthansa and Canadian Settlement Class Counsel each conducted an extensive investigation and economic analysis with respect to the damages allegedly suffered by the Settlement Classes due to the Defendants' alleged conduct. As a result, Plaintiffs obtained significant knowledge regarding the claims and defenses in this case before executing the Canadian Settlement Agreement.

## **III. SUMMARY OF THE PROPOSED CANADIAN SETTLEMENT AGREEMENT**

The following description of the proposed Canadian Settlement Agreement is only a summary. The Canadian Settlement Agreement can be viewed at a website created for this Settlement ([www.aircargosettlement.com](http://www.aircargosettlement.com)).

### **A. The Settlement Agreement Approval Process**

All three Canadian Courts must approve the Canadian Settlement Agreement before it enters into effect. Each Court will hold a public hearing in which arguments will be made as to why the Canadian Settlement Agreement should be approved. Implementation of the Canadian Settlement Agreement is dependent upon approval of the U.S. Settlement Agreement in the

QUESTIONS? CALL U.S. & CANADA (TOLL-FREE) 1(800) 749-3518;  
INTERNATIONAL (TOLL): 1(XXX) XXX-XXXX; OR VISIT [www.aircargosettlement.com](http://www.aircargosettlement.com)  
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U.S. Court. In the event that the U.S. Settlement Agreement is not approved by the U.S. Court, the Canadian Plaintiffs and Lufthansa each may choose to terminate the Canadian Settlement Agreement.

## **B. Overview of the Canadian Settlement Agreement**

### **1. Settlement Class Membership and Representation**

The Canadian Settlement Agreement creates three Settlement Classes. Each Settlement Class falls under the jurisdiction of one Court. Thus, legal and natural persons resident in British Columbia fall within the British Columbia Settlement Class and the jurisdiction of the Supreme Court of British Columbia; legal and natural persons resident in Québec (including corporations with 50 or less employees) comprise the Québec Settlement Class and fall under the jurisdiction of the Québec Superior Court; and legal and natural persons excluding members of the British Columbia Settlement Class or the Québec Settlement Class fall within the Ontario Settlement Class and under the jurisdiction of the Ontario Superior Court of Justice.

Collectively, the British Columbia Settlement Class, the Quebec Settlement Class, and the Ontario Settlement Class include:

All persons who purchased Airfreight Shipping Services to, from, or within Canada during the period from January 1, 2000 to September 11, 2006, including those Persons who purchased Airfreight Shipping Services through freight forwarders, from any air cargo carrier, including without limitation, the Defendants, and specifically including Lufthansa. Excluded from the Settlement Class(es) are the Defendants and their respective parents, employees, subsidiaries, affiliates, officers and directors.

In order to be a member of one or more of the Settlement Classes you must have made at least one purchase of air cargo shipping services during the period from January 1, 2000 through September 11, 2006.

**PURCHASES OF AIR CARGO SHIPPING SERVICES FOR SHIPMENTS BETWEEN THE UNITED STATES AND CANADA DURING THE SETTLEMENT CLASS PERIOD FALL UNDER THE U.S. SETTLEMENT AGREEMENT AND NOT THE CANADIAN SETTLEMENT AGREEMENT. IF YOU PURCHASED AIR CARGO SHIPPING SERVICES FOR SHIPMENTS BETWEEN THE UNITED STATES AND CANADA YOU ARE A CLASS MEMBER IN THE U.S. CLASS ACTION AND YOU MUST REFER TO THE U.S. NOTICE OF PROPOSED SETTLEMENT TO REVIEW HOW YOUR RIGHTS ARE AFFECTED.**

The following law firms are Counsel for the Canadian Settlement Classes ("Canadian Settlement Class Counsel"): Siskinds<sup>LLP</sup>, Sutts, Strosberg<sup>LLP</sup>, Harrison Pensa<sup>LLP</sup>, Camp Fiorante Matthews, and Liebman & Associés.

### **2. Benefits to the Settlement Classes from the Canadian Settlement Agreement**

**The Canadian Settlement Fund:** Subject to the terms of the Canadian Settlement Agreement, Lufthansa has agreed to pay USD \$5,338,000 into the Settlement Fund for the benefit of the Canadian Settlement Classes.

**Cooperation:** Under the terms of the Canadian Settlement Agreement, Lufthansa authorizes

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Canadian Settlement Class Counsel, and/or their experts to participate in any proceedings, depositions, attorney meetings, or interviews in which U.S. Settlement Class Counsel participate under the terms of the U.S. Settlement Agreement and that Canadian Settlement Class Counsel reasonably believes relate to air cargo shipping services within, to, or from Canada during the relevant time period. The Canadian Settlement Classes are also entitled to any and all cooperation materials that have been or will be provided by Lufthansa to U.S. Settlement Class Counsel. In addition, Lufthansa will provide, at its own expense, current or former directors, officers and employees for interviews, declarations and/or affidavits, depositions, and testimony at trial, under the specific terms set out in the Canadian Settlement Agreement. Lufthansa will make reasonable efforts to have former directors, officers, and employees appear for interviews, depositions, and trial testimony and provide declarations and/or affidavits.

As outlined above, Lufthansa has agreed to provide extensive cooperation and support for the Settlement Class' continuing litigation against the Defendants who are named as parties in the lawsuits.

Lufthansa does not admit through the execution of the Canadian Settlement Agreement any allegation of unlawful conduct. If a Settlement were not reached in these cases, Lufthansa would assert a number of defenses to Plaintiffs' claims.

### **C. The Release**

**IF YOU DO NOT EXCLUDE YOURSELF FROM THE CANADIAN CLASS ACTIONS, WHEN THE SETTLEMENT AGREEMENT BECOMES FINAL, YOU WILL BE RELEASING LUFTHANSA FOR ALL CLAIMS ASSOCIATED WITH THIS CASE AND YOU WILL BE BOUND BY THE RELEASE AND/OR COVENANT NOT TO SUE, WHICH IS CONTAINED IN THE CANADIAN SETTLEMENT AGREEMENT. QUÉBEC SETTLEMENT CLASS MEMBERS WHO HAVE COMMENCED PROCEEDINGS OR COMMENCE PROCEEDINGS AND FAIL TO DISCONTINUE SUCH PROCEEDINGS BY THE DEADLINE FOR EXCLUSION FROM THE QUÉBEC CLASS SHALL BE DEEMED TO HAVE OPTED OUT.**

**The Release contained in the Canadian Settlement Agreement is set forth below:**

Upon the Effective Date, and in consideration of payment of the Settlement Amount, and for other valuable consideration set forth in the Settlement Agreement, including Lufthansa's commitment to provide continuing compliance with the cooperation provisions of this Settlement Agreement set forth in [this Agreement], the Releasing Parties shall be deemed to, and do hereby, release and forever discharge the Released Parties of and from any and all Claims arising from or in any way related to the Released Claims.

"Released Parties" means, jointly and severally, individually and collectively, Lufthansa, and all of its respective present and former, direct and indirect, predecessors, successors, parents, subsidiaries, divisions, departments, affiliates, heirs, executors, administrators, and any and all past, present, and future officers, directors, stockholders, partners, agents, attorneys, servants, employees, and assignees. Notwithstanding the foregoing, "Released Parties" does not include any other Defendant who was formerly or is currently, named in the Actions or who may be named in the Actions in the future.

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INTERNATIONAL (TOLL): 1(XXX) XXX-XXXX; OR VISIT [www.aircargosettlement.com](http://www.aircargosettlement.com)  
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and the list is also available by visiting the website.**

**"Releasing Parties"** means, individually and collectively, the Plaintiffs and the Settlement Class Members, on behalf of themselves and any person or entity claiming by or through them as an heir, administrator, devisee, predecessor, successor, parent, subsidiary, representative of any kind, shareholder, partner, director, owner of any kind, affiliate, assignee, agent, employee, contractor, attorney, or insurer, who do not validly and timely opt out of the Actions in the manner and time prescribed below, and Class Counsel, on behalf of themselves and any person or entity claiming by or through them as an heir, administrator, devisee, predecessor, successor, parent, subsidiary, representative of any kind, shareholder, partner, director, owner of any kind, affiliate, assignee, agent, employee, contractor, attorney, or insurer.

**"Released Claims"** means any Claims arising from, or in any way related to, the pricing of or compensation related to Airfreight Shipping Services (specifically including, without limitation those Claims in any way related to cargo rates, fuel surcharges, security surcharges, customs surcharges, war risk surcharges, navigation surcharges, commissions, incentives, rebates, credits, and yields), whether based on federal or provincial law, statutory or common law, or any other law, code, rule, or regulation of any country or other jurisdiction worldwide, including known or unknown, suspected or unsuspected, asserted or unasserted, foreseen or unforeseen, actual or contingent, and liquidated or unliquidated Claims (specifically including, without limitation those Claims in any way related to cargo rates, fuel surcharges, security surcharges, customs surcharges, war risk surcharges, navigation surcharges, commissions, incentives, rebates, credits, and yields), that have been, could have been, or in the future may be asserted by any of the Releasing Parties in any action or proceeding in any court or forum, in any country or other jurisdiction worldwide regardless of legal theory, and regardless of the type or amount of relief or damages claimed. Nothing herein shall be construed to include within "Released Claims" any Claims solely relating to conduct occurring after the Execution Date of this Settlement Agreement.

Notwithstanding the Release contained in the Canadian Settlement Agreement, for Settlement Class Members resident in any province or territory where the release of one tortfeasor is a release of all other tortfeasors, the Canadian Settlement Agreement provides that those Settlement Class Members do not release Lufthansa but instead covenant and undertake not to sue, make any Claim in any way or to threaten, commence, or continue any Claim in any jurisdiction against Lufthansa, for claims associated with this case.

The Canadian Settlement Agreement does not settle or compromise any claims other than these Released Claims against the Lufthansa Released Parties. All rights of any Settlement Class Member against former, current, or future Defendants or co-conspirators or any other person or entity other than the Released Parties are specifically reserved by Plaintiffs and the Canadian Settlement Class Members.

**D. Canadian Settlement Class Counsel Fees and Costs**

The fees, disbursements, and taxes of Canadian Settlement Class Counsel will be fixed

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by the Courts and will be paid out of the Canadian Settlement Fund. The amounts sought for Canadian Settlement Class Counsel fees will not exceed 25% of the Canadian Settlement Fund, plus disbursements and taxes incurred to the date settlement approval is granted by the Courts. Additionally, Canadian Settlement Class Counsel reserve the right to bring motions to the Courts for payment out of the Canadian Settlement Fund for any future adverse cost awards to a maximum of CDN \$500,000 and future disbursements to a maximum of CDN \$500,000.

#### **IV. HOW TO REGISTER TO RECEIVE FURTHER INFORMATION AND SETTLEMENT BENEFITS**

Canadian Settlement Class Counsel are proposing to hold the Canadian Settlement Fund in trust for the future benefit of Canadian Settlement Class Members. If you received this notice by mail, you need not take any steps to ensure that further information will be mailed to you. If, however, you did not receive this notice by mail, you must register with the Claims Administrator to ensure that further information will be sent to you by mail, including notice regarding any future distribution of the Canadian Settlement Fund.

You may register online at [www.aircargosettlement.com](http://www.aircargosettlement.com), by completing the Online Registration Form, or by downloading and mailing your completed Registration Form to the Air Cargo Settlement, c/o The Garden City Group, Inc. P.O. Box 9162, Dublin OH, 43017-4162, USA. To register you may also call the Air Cargo Settlement: U.S. or Canada (Toll-Free) at 1 (800) 749-3518; or International at 1 (XXX) XXX-XXXX. A complete list of Air Cargo Settlement toll-free and toll telephone numbers by country is enclosed in the mailing of this Notice, and the list is also available online. You may also write to the Air Cargo Settlement Claims Administrator at the address listed here to request a Registration Form.

#### **V. HOW TO EXCLUDE YOURSELF FROM A CLASS**

You will be bound by the terms of the Canadian Settlement Agreement, if approved, unless you "opt out." If you choose to remain in the Canadian Settlement Classes and do not opt out, you will not be able to bring or maintain any other claim or legal proceeding alleging acts in violation of the Competition Act, such as price-fixing, or other claims relating to the alleged conduct in the market for air cargo shipping. No further right to opt out of the Canadian Class Actions will be provided in the future. If you opt out of the Canadian Class Actions, you will not be able to participate in the Canadian Settlement Agreement or in any further settlement or judgment achieved against the other non-settling Defendants.

Ontario and/or British Columbia Settlement Classes: If you wish to exclude yourself from one of these Classes, you must do so by sending a written request for exclusion, by certified mail, return receipt requested, postage prepaid, postmarked on or before \_\_\_\_\_ [same as US], to the following address [to be designated by the Courts at the notice approval hearing]:

\_\_\_\_\_  
\_\_\_\_\_

Québec Settlement Class: If you wish to exclude yourself from the Québec Settlement Class, you must do so by sending a written request for exclusion, by certified mail, return receipt requested, postage prepaid, postmarked on or before \_\_\_\_\_ [same as US], to the following address:

QUESTIONS? CALL U.S. & CANADA (TOLL-FREE) 1(800) 749-3518;  
INTERNATIONAL (TOLL): 1(XXX) XXX-XXXX; OR VISIT [www.aircargosettlement.com](http://www.aircargosettlement.com)  
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Clerk of the Court  
[address of Québec court]

**DELETE SPACE**Required Information: All requests for exclusion from the Canadian Class Actions must clearly state:

- your name, address, and phone number
- all trade names or business names and addresses you or your business has used, as well as any parents, subsidiaries or affiliates that have purchased air cargo shipping services at any time during the relevant period and are also requesting to be excluded from the Settlement Class
- the name of the case (*Canadian Air Cargo Shipping Services Class Actions*)
- the Class(es) from which you wish to be excluded
- the value of all air cargo shipping services you have purchased between January 1, 2000 and September 11, 2006
- a signed statement that "I/we hereby request that I/we be excluded from the proposed Settlement Class in the *Canadian Air Cargo Shipping Services Class Action*."

IN ORDER TO BE EXCLUDED FROM THE CANADIAN CLASS ACTIONS, YOU MUST TIMELY REQUEST EXCLUSION IN THE MANNER SET FORTH ABOVE EVEN IF YOU HAVE FILED OR INTEND TO FILE YOUR OWN LAWSUIT AGAINST ANY OF THE DEFENDANTS BASED ON CLAIMS THAT ARISE OUT OF THE CONDUCT AT ISSUE IN THIS LITIGATION. QUÉBEC SETTLEMENT CLASS MEMBERS WHO HAVE COMMENCED PROCEEDINGS OR COMMENCE PROCEEDINGS AND FAIL TO DISCONTINUE SUCH PROCEEDINGS BY THE DEADLINE FOR EXCLUSION FROM THE QUÉBEC CLASS SHALL BE DEEMED TO HAVE OPTED OUT.

#### VI. THE SETTLEMENT APPROVAL HEARINGS

You are not required to attend a settlement approval hearing.

In Canada, each Court must approve the Canadian Settlement Agreement for the Agreement to enter into effect. A motion to approve the Canadian Settlement Agreement will be heard by the Ontario Superior Court of Justice in the City of London on \_\_\_\_\_ at \_\_\_\_\_, the Superior Court of Québec in the City of Montreal on \_\_\_\_\_ at \_\_\_\_\_, and the Supreme Court of British Columbia in the City of [ ] on \_\_\_\_\_ at \_\_\_\_\_. Settlement Class Members are entitled to appear and make submissions at the hearings with respect to the Canadian Settlement Agreement. If you wish to comment on or make an objection to the settlement, a written submission must be delivered by \_\_\_\_\_ to each of the lawyers identified below:

<p>Objections from Settlement Class Members, other than Québec Settlement Class Members, should be sent to Canadian Settlement Class Co-Counsel:</p> <p>Charles M. Wright Siskinds LLP 680 Waterloo Street London, ON N6A 3V8 1-800-461-6166</p>	<p>Robert E. Kwinter Blake, Cassels &amp; Graydon LLP 199 Bay Street Suite 2800, Commerce Court West Toronto, ON M5L 1A9 (416) 863-2400</p> <p>Canadian Counsel for Lufthansa AG, Lufthansa Cargo AG, and Swiss International Air Lines Ltd.</p>
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QUESTIONS? CALL U.S. & CANADA (TOLL-FREE) 1(800) 749-3518;  
INTERNATIONAL (TOLL): 1(XXX) XXX-XXXX; OR VISIT [www.aircargosettlement.com](http://www.aircargosettlement.com)  
A complete list of Air Cargo Settlement toll-free and toll telephone numbers by country is enclosed with this Notice, and the list is also available by visiting the website.

Objections from Québec Settlement Class  
Members should be sent to Québec Settlement  
Class Counsel:

Irwin Liebman  
Liebman Associés  
1 Westmount Square #1500  
Montreal, Québec H3Z 2P9  
(514) 846-0666

QUESTIONS? CALL U.S. & CANADA (TOLL-FREE) 1(800) 749-3518;  
INTERNATIONAL (TOLL): 1(XXX) XXX-XXXX; OR VISIT [www.aircargosettlement.com](http://www.aircargosettlement.com)  
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and the list is also available by visiting the website.*

All submissions will be forwarded to the appropriate Court, and all filed written submissions will be considered by the appropriate Court. If you do not file a written submission by \_\_\_\_\_ you will not be entitled to participate, through oral submissions or otherwise, in the settlement approval hearings.

The time and date of any of the hearings may be continued or rescheduled without further notice.

## VII. AIR CARGO SETTLEMENT CLAIMS ADMINISTRATOR

More information about the Settlement is available on the official settlement website at [www.aircargosettlement.com](http://www.aircargosettlement.com). The website lists an email address you may use to contact the Air Cargo Settlement Claims Administrator. You may also contact the Air Cargo Settlement Claims Administrator by telephone: U.S. or Canada (Toll-Free) at 1 (800) 749-3518; or International at 1 (XXX) XXX-XXXX. Toll charges apply if you call the U.S. and Canada toll free number from a location outside those countries. A complete list of toll-free and toll telephone numbers by country is enclosed in the mailing of this Notice, and the list is also available online at [www.aircargosettlement.com](http://www.aircargosettlement.com). You may also write to the Air Cargo Settlement Claims Administrator at the following address: Air Cargo Settlement  
c/o The Garden City Group, Inc. PO Box 9162 Dublin, OH 43017-4162 USA

This Notice is available in many additional languages. If you need these materials in a language other than English, please visit the website, call the information phone line, write the Air Cargo Settlement Claims Administrator at the address above or send an email to [administrator@aircargosettlement.com](mailto:administrator@aircargosettlement.com).

## VIII. ADDITIONAL INFORMATION

Any corrections or changes of name or address for Canadian Settlement Class Members should not be directed to the Court. If your name and/or address has changed since you received this Notice, you should notify the Air Cargo Settlement Claims Administrator of the change. You may do so online at [www.aircargosettlement.com](http://www.aircargosettlement.com) or by writing to the Air Cargo Settlement, c/o The Garden City Group, Inc., P.O. Box 9162 Dublin, OH 43017-4162 USA. You may also call the Air Cargo Settlement Claims Administrator at the telephone numbers discussed above in Section VII.

QUESTIONS? CALL U.S. & CANADA (TOLL-FREE) 1(800) 749-3518;  
INTERNATIONAL (TOLL): 1(XXX) XXX-XXXX; OR VISIT [www.aircargosettlement.com](http://www.aircargosettlement.com)  
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Any questions that you have concerning the matters contained in this notice with respect to the Settlement Classes may be directed in writing to Canadian Settlement Class Counsel, as follows:

<p>Settlement Class Members, other than Québec Settlement Class Members, should contact:</p> <p>Charles M. Wright Siskinds LLP 680 Waterloo Street London, ON N6A 3V8 1-800-461-6166</p>	<p>Québec Settlement Class Members should contact:</p> <p>Irwin Liebman Liebman Associés 1 Westmount Square #1500 Montreal, Québec H3Z 2P9 (514) 846-0666</p>
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This notice contains only a summary of the Canadian Settlement Agreement. Canadian Settlement Class Members are encouraged to review the entire Settlement Agreement, a copy of which can be obtained free of charge at [www.aircargosettlement.com](http://www.aircargosettlement.com). A copy can also be mailed to you at a cost of \_\_\_\_, from \_\_\_\_\_.

**Do not contact the Courts.**

**THIS NOTICE HAS BEEN AUTHORIZED BY THE ONTARIO SUPERIOR COURT OF JUSTICE, THE SUPREME COURT OF BRITISH COLUMBIA, AND THE QUEBEC SUPERIOR COURT**

QUESTIONS? CALL U.S. & CANADA (TOLL-FREE) 1(800) 749-3518;  
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**SCHEDULE "C"**

ONTARIO  
SUPERIOR COURT OF JUSTICE

BETWEEN:

NUTECH BRANDS INC.

Plaintiff

- 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,  
KORBAN 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., and SWISS INTERNATIONAL AIR LINES LTD.

Defendants

Proceeding under the *Class Proceedings Act, 1992*

AFFIDAVIT OF JEANNE C. FINEGAN, APR

I, Jeanne C. Finegan, of the City of Tigard, in the state of Oregon, in the United States of America, MAKE OATH AND SAY AS FOLLOWS:

1. I am a Senior Vice President of The Garden City Group, Inc. ("GCG"), with oversight responsibility for GCG Communications, a division of GCG. This affidavit is based upon my personal knowledge as well as information provided to me by my associates and staff, including information reasonably relied upon in the fields of advertising, media and communications.
2. GCG has been retained to develop and implement a legal notice program in the United States, Canada, and other countries worldwide ("Notice Program"). The proposed Notice Program is designed to provide notice of the proposed class action settlement between air cargo Plaintiffs in the above-captioned action and Defendants Deutsche Lufthansa AG,

Lufthansa Cargo AG, and Swiss International Air Lines Ltd. (the "U.S. Settlement"). The Notice Program is also designed to simultaneously provide notice regarding the proposed class action settlement of three similar proceedings in Canadian courts<sup>1</sup> pursuant to the Canadian Air Cargo Shipping Services Class Action Multi-Jurisdictional Settlement Agreement Between Nutech Brands Inc., Cartise Sports Inc. and Karen McKay, and Deutsche Lufthansa AG, Lufthansa Cargo AG and Swiss International Air Lines Ltd., executed December 30, 2006 (the "Canadian Settlement"). This Affidavit describes and details the proposed Notice Program. In addition, this affidavit will address why this worldwide, comprehensive proposed Notice Program is the best notice practicable under the circumstances of this case, and is reasonably calculated to reach the target audience, that is the affected class members, and is consistent with other similar court-approved notice programs.

3. GCG's headquarters are located at 105 Maxess Road in Melville, New York. For more than 20 years, GCG has specialized in the design and implementation of notification campaigns for class action and bankruptcy proceedings. GCG's team has administered more than a thousand settlements, mailed over 150 million notices, processed millions of claims, distributed billions of dollars in compensation, and issued millions of checks in connection with large domestic and international notice campaigns, as well as in connection with highly focused local campaigns for class action proceedings.

4. As Senior Vice President of GCG, in addition to my duties as a Senior Officer of GCG, my responsibilities include, among other things, oversight of day-to-day operations for two GCG Communications offices, in Reston, Virginia and Lake Oswego, Oregon, as well as

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<sup>1</sup> The three Canadian actions are: (1) the proceeding commenced on November 20, 2006 by Karen McKay in the Supreme Court of British Columbia, under Vancouver Registry No. S-067490; (2) the proceeding commenced on July 6, 2006 by Nutech Brands Inc. in the Ontario Superior Court of Justice, under Court File No. 50389 CP, and; (3) the proceeding commenced by Cartise Sports Inc. on May 5, 2006, under Court File No. 500-06-000344-065.



strategic planning, design and implementation of all complex legal notice programs for GCG clients. GCG Communications is located at 11400 Commerce Park Drive, Suite 220, Reston, VA 20191 and 4500 S.W. Kruse Way, Suite 300, Lake Oswego, Oregon 97035.

5. I have more than 20 years of communications and advertising experience. I have been recognized as an expert in legal notice programs, both in federal and state courts in the United States as well as courts in Canada. I have lectured, published and been cited extensively on various aspects of legal noticing, product recall and crisis communications. I have served the Consumer Product Safety Commission ("CPSC") as an expert to determine ways in which the CPSC can increase the effectiveness of its product recall campaigns.

6. I have designed, implemented or consulted on many of the largest and highest profile legal notice communication programs nationally and internationally for a wide range of class actions, regulatory and consumer matters that include product liability, construction defect, antitrust, asbestos, medical/pharmaceutical, human rights, civil rights, telecommunication, media, environment, securities, banking, insurance, and bankruptcies. The cases include, but are not limited to: *In Re Nortel I & II Securities Litigation*, Civil Action No. 01-CV-1855 (RMB), Master File No. 05 MD 1659 (LAP) (S.D.N.Y. 2006); *DeHoyos v. Allstate Insurance Company*, Civil Action No SA-01-CA-1010-FB (W.D. Tex. 2006); *SEC v. Vivendi Universal, S.A., et al.*, Case No. 03-CV-10195-PKC (S.D.N.Y. 2003); *In re: John's Manville (Statutory Direct Action Settlement, Common Law Direct Action and Hawaii Settlement)*, Index No 82-11656 (BRL) (Bankr. S.D.N.Y. 2004); *Deke, et al. v. Cardservice International*, Case No. BC 271679 (Los Angeles County Sup. Ct., Cal. 2004); *Sager v. Inamed Corp. and Mcghan (Medical Breast Implant Litigation)*, Case No. 01043771 (Santa Barbara County Sup. Ct., Cal. 2004); *Wilson v. Massachusetts Mutual Life Insurance Company*, No. D-101-CV 98-02814 (1st Jud. Dist. Ct., Santa Fe County, N.M.); *In re: Florida Microsoft Antitrust Litigation*, Index No. 99-27340 (11th Jud. Dist. Ct. of Miami, Dade County, Fla.); *In re:* 871891.v1

*Montana Microsoft Antitrust Litigation*, No. DCV 2000 219 (1st Jud. Dist. Ct., Lewis & Clark County, Mont.); *In re: MCI Non-Subscriber Ratepayers*, MDL No. 1275 (S.D. Ill.); *Sparks v. AT&T Corporation*, No. 96-LM-983 (3d Jud. Cir., Madison County, Ill.); *Pigford v. Glickman*, No. CA 97-19788 (PLF) (D.D.C.); *In re: SmithKline Beecham Clinical Billing*, No. CV 97-L-1230 (3d Jud. Dist., Madison County, Ill.); *Schmidt v. Adidas Salomon A.G.*, No. OCN-L-1248-01 (N.J. Super. Ct.); *MacGregor v. Schering Plough Corp.*, No. BC248041 (Los Angeles County Sup. Ct., Cal.); *In re: Louisiana-Pacific Inner Seal Siding*, Nos. 879-JE and 1543JE (D. Or.); *Foster v. ABTco Siding Litigation*, No. 95-151-M (Cir. Ct. of Choctaw County, Ala.); *In re: Johns-Manville Phenolic Foam*, No. CV 96-10069 (D. Mass.); *In re: James Hardie Roofing*, No. CV 00-2-17945-65SEA (King County Super. Ct., Wash.); *Claybrook v. Sunbeam Corporation*, No. CV-98-C-1546-W (UWC) (N.D. Ala.); *In re: American Cyanamid*, No. CV-97-0581-BH-M (S.D. Ala.); *Bristow v. Fleetwood Enterprises*, No. Civ 00-0082-S-BLJ (D. Idaho); *Spencer v. Shell Oil Co.*, No. CV 94-074 (Harris County Dist. Ct., Tex.); and *In re: StarLink Corn Products*, No. 01 C 1181 (N.D. Ill.).

7. A number of courts in the United States and Canada have commented favorably on my expertise and the notice programs I designed or implemented. For example:

- *DeHoyos v. Allstate Insurance Company*, Civil Action No SA-01-CA-1010-FB (W.D. Tex. 2006) (“[t]he undisputed evidence shows the notice program in this case was developed and implemented by a nationally recognized expert in class action notice programs” and stating “[t]he notice program “was massive, generating over 640 million opportunities to see this message” and did an excellent job at reaching the target group.”);
- *In Re Nortel I & II Securities Litigation*, Civil Action No. 01-CV-1855 (RMB), Master File No. 05 MD 1659 (LAP) (S.D.N.Y. 2006) (“The form and method of notifying the U.S. Global Class of the pendency of the action as a class action and of the terms and conditions of the proposed Settlement . . . constituted the best notice practicable under the circumstances, and constituted due and sufficient notice to all persons and entities entitled thereto.”) This action was brought in courts in the United States and Canada;
- *Lucas v. KMART Corporation*, Civil Action No 99-CV-01923 (JLK) (D. Colo. 2006) (“[t]he Court finds this extensive notice program to be more than

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adequate and approves it as the "best notice practicable under the circumstances" and consistent with the requirements of F.R.C.P. 23 and due process");

- *Varacallo, et al. v. Massachusetts Mutual Life Insurance Company, et al.*, Civil Action No. 04-2702 (JLL) (D.N.J. 2004) (finding that "all of the notices are written in simple terminology, are readily understandable by Class Members, and comply with the Federal Judicial Center's illustrative class action notices");
- *Wilson v. Massachusetts Mutual Life Insurance Company*, Case No. D-101-CV 98-02814 (First Judicial District Court County of Santa Fe State of New Mexico 2002) (holding "[t]he Notice Plan was the best practicable and reasonably calculated, under the circumstances of the action . . . [and] that the notice meets or exceeds all applicable requirements of law, including Rule 1-023(C)(2) and (3) and 1-023(E), NMRA 2001, and the requirements of federal and/or state constitutional due process and any other applicable law.");
- *Thomas A. Foster and Linda E. Foster v. ABTco Siding*, Case No. 95-151-M (Circuit Court of Choctaw County, Alabama 2000) (holding that the notice program "constitutes the best notice practicable under the circumstances of this Action. This finding is based on the overwhelming evidence of the adequacy of the notice program.");
- *Sparks v. AT&T Corporation*, Case No. 96-LM-983 (Third Judicial Circuit Madison County, Illinois 2001). In granting final approval to the settlement, the Court commented: "The Court further finds that the notice of the proposed settlement was sufficient and furnished Class Members with the information they needed to evaluate whether to participate in or opt out of the proposed settlement. The Court therefore concludes that the notice of the proposed settlement met all requirements required by law, including all Constitutional requirements"; and
- *In re: Louisiana-Pacific Inner-Seal Siding*, Civil Action Nos. 879-JE, and 1453-JE (D. Or. 1995, 1999) ("[t]he notice given to the members of the Class fully and accurately informed the Class members of all material elements of the settlement...[through] a broad and extensive multi-media notice campaign. . .").

8. I have also published extensively on various aspects of legal noticing, including the following publications and articles:

- Co-Author, "Approaches to Notice in State Court Class Actions," For The Defense, Vol. 45, No. 11, November, 2003;
- Author, "The Web Offers Near, Real-Time Cost Efficient Notice," American Bankruptcy Institute Journal, Vol. XXII, No. 5, 2003;
- Author, "Determining Adequate Notice in Rule 23 Actions," For The Defense, Vol. 44, No. 9, September, 2002;

- Co-Author, "*The Electronic Nature of Legal Noticing*," American Bankruptcy Institute Journal, Vol. XXI, No. 3, April, 2002;
- Author, "*Three Important Mantras for CEO's and Risk Managers in 2002*," International Risk Management Institute, [irmi.com/](http://irmi.com/), January, 2002;
- Co-Author, "*Used the Bat Signal Lately*," The National Law Journal, Special Litigation Section, February 19, 2001;
- Author, "*How Much is Enough Notice*," Dispute Resolution Alert, Vol. 1, No. 6, March, 2001;
- Author, "*Monitoring the Internet Buzz*," The Risk Report, Vol. XXIII, No. 5, January, 2001;
- Author, "*High-Profile Product Recalls Need More Than the Bat Signal*," International Risk Management Institute, [irmi.com/](http://irmi.com/), July 2001;
- Author, "*The Great Debate - How Much is Enough Legal Notice?*" American Bar Association -- Class Actions and Derivatives Suits Newsletter, Winter 1999; and
- Author, "*What are the best practicable methods to give notice?*" Georgetown University Law Center Mass Tort Litigation Institute, CLE White Paper: Dispelling the communications myth -- A notice disseminated is a notice communicated, November 1, 2001.

9. Additionally, I have lectured or presented extensively on various aspects of legal noticing. A sample list includes the following:

- Faculty Panelist, Practising Law Institute (PLI) CLE Presentation, 11th Annual Consumer Financial Services Litigation. Presentation: Class Action Settlement Structures -- "Evolving Notice Standards in the Internet Age." *New York/Boston* (simulcast) March, 2006; *Chicago*, April, 2006; and *San Francisco*, May, 2006.
- Expert Panelist, U.S. Consumer Product Safety Commission. I was the only legal notice expert invited to participate as an expert to the Consumer Product Safety Commission to discuss ways in which the CPSC could enhance and measure the recall process. As an expert panelist, I discussed how the CPSC could better motivate consumers to take action on recalls and how companies could scientifically measure and defend their outreach efforts. Bethesda, MD, September, 2003.
- Expert Speaker, American Bar Association. Presentation: "How to Bullet-Proof Notice Programs and What Communication Barriers Present Due

Process Concerns in Legal Notice," ABA Litigation Section Committee on Class Actions & Derivative Suits, Chicago, August 6, 2001.

10. I am accredited ("APR") in Public Relations by the Universal Accreditation Board, a program administered by the Public Relations Society of America.
11. A more comprehensive list of my class action and bankruptcy noticing experience as well as other judicial comments is attached to this affidavit as Exhibit A.

#### OVERVIEW AND OBJECTIVES OF NOTICE PROGRAM

12. Adhering to the highest communication and outreach standards, this proposed Notice Program is based on a scientific methodology that is used throughout the advertising industry and which has been embraced by courts in the United States and Canada. This Notice Program, through a combination of direct mail and publication, is expected to include more than 120 countries worldwide. The proposed Notice Program was specifically designed to properly reach the intended target, the Settlement Classes defined in the U.S. Settlement and the Canadian Settlement. Given that the Settlement Classes are global in scope in the U.S. Settlement and the Canadian Settlement and that the Class members in the actions overlap, as well as the fact that the proposed Notice Program targets the direct and indirect purchasers of air cargo shipping services worldwide, I have concluded that a combined Notice Program will be both practical and effective. The Settlement Class in the U.S. Settlement is defined as:

All persons and entities that purchased airfreight cargo shipping services for shipments within, to or from the United States (hereinafter "Airfreight Shipping Services"), including those persons and entities that purchased Airfreight Shipping Services through freight forwarders, from any air cargo carrier (including, without limitation, those defendants named in the Actions, and specifically including Lufthansa<sup>2</sup>) and/or any named or

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<sup>2</sup> Lufthansa is defined in Paragraph 16 of the Settlement Agreement as Deutsche Lufthansa AG, Lufthansa Cargo AG, and Swiss International Air Lines Ltd., individually and collectively, and their respective subsidiaries, 871891.v1

unnamed co-conspirators (collectively "Defendants") during the period from January 1, 2000 to the Execution Date of this Settlement Agreement.<sup>3</sup> Excluded from the Settlement Class are Defendants, their respective parents, employees, subsidiaries, and affiliates, and all governmental entities.

The Canadian Settlement Class – which encompasses the same time period for purchases of Airfreight Shipping Services as the U.S. Settlement Class – is made up of the British Columbia Settlement Class, the Ontario Settlement Class, and the Québec Settlement Class, which are respectively defined in the Canadian Settlement as follows:

**British Columbia Settlement Class** means 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 Lufthansa.

**Ontario Settlement Class** means all Persons, other than members of the Québec Settlement Class or the British Columbia 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 Lufthansa.

**Québec Settlement Class** means all individuals resident in the province of Québec and all legal persons established for a private interest, partnership or association in the province of Québec which at all times between May 5, 2005 and May 5, 2006, had under its direction or control no more than 50 persons bound to it by contract of employment, who purchased Airfreight Shipping Services during the Purchase Period, including those legal persons who purchased Airfreight Shipping Services through freight forwarders, from any air cargo carrier, including without limitation, the Defendants, and specifically including Lufthansa.

For each of the Canadian Settlement Classes, the term "Airfreight Shipping Services" is defined as "shipments within, to or from Canada, but specifically excluding airfreight cargo shipping services for shipments to or from the United States." Excluded from each of the

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predecessors, successors, and affiliates. Where used in this affidavit, "Lufthansa" refers to Deutsche Lufthansa AG, Lufthansa Cargo AG, and Swiss International Air Lines Ltd.

<sup>3</sup> The Execution Date of the Settlement Agreement is September 11, 2006.

Canadian Settlement Classes are the Defendants and their respective parents, employees, subsidiaries, affiliates, officers and directors.

#### ELEMENTS OF THE NOTICE PROGRAM

13. The elements in this multifaceted and comprehensive proposed Notice Program include: (1) notice by direct mail; (2) notice by publication; (3) notice by Internet advertising; (4) notice by media outreach; (5) third-party outreach to trade organizations; (6) a Settlement website and; (7) toll free information telephone numbers, as well as additional telephone support.

#### MAILED NOTICE

14. In the proposed Notice Program, GCG will mail individual notice to direct customers whose information is available from Deutsche Lufthansa AG, Lufthansa Cargo AG, and Swiss International Air Lines Ltd. (collectively referred to herein as "Lufthansa"). I am advised by Lufthansa that it maintains comprehensive records of sales of air cargo shipping services made during the purchase periods at issue in the U.S. and Canadian Settlements: January 1, 2000 to September 11, 2006. Due to the nature of the air cargo shipping business, I am informed that many of Lufthansa's direct customers are regular and repeat purchasers of these services. Lufthansa also has available records of indirect purchasers of its air cargo shipping services, who will also receive individual mailed notice. These purchase records provide insight into the scope and geographic distribution of the direct and indirect purchaser group more generally, at least for those geographic regions where the services of Lufthansa and other air cargo airlines overlap.

15. Lufthansa has provided GCG with the electronic records from which GCG will conduct the direct mailing to these Settlement Class Members. Lufthansa has advised me that it carefully collected such records to ensure that the most comprehensive data was available for use. I also have been advised by Lufthansa that, with the exception of a very

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small number of its direct customers, who account for a small volume of the overall commerce, who arrange air cargo shipping by walking directly to the counter in the airport terminal, the records maintained by Lufthansa of its direct purchasers are reliable and comprehensive. Accordingly, the overwhelming majority of direct purchasers of Lufthansa's air cargo shipping services will receive actual notice as a result of the direct mail component of the Notice Program, and the small number of direct purchasers for whom Lufthansa does not have contact information will be accommodated in the publication component of the Notice Program as well as its other outreach elements. Additionally, over 60,000 indirect purchasers have been identified from Lufthansa company records and also will receive actual notice through the direct notice mailing, and the broader indirect purchaser group will be reached through the worldwide publication component of the Notice Program as well as other elements of the proposed Notice Program described below.

16. As a result of the foregoing, Notice packets, including the full Notice of Proposed Settlement, will be mailed to more than 19,000 direct customers and more than 60,000 indirect customers, mostly businesses, in more than 120 countries.<sup>4</sup> The mailings will include the Notice of Proposed Settlement in English, with additional information in the recipient's native language informing them how they can access or obtain copies of the materials in their native language. We understand from discussions with Lufthansa that transactions worldwide involving air cargo shipping within, to, or from the United States and Canada — the classes at issue here — are overwhelmingly conducted in English. Accordingly, the primary language of the full Notice will be English, as the primary language of international business of this nature. Nonetheless, native language materials will be readily accessible as well through various avenues discussed below in paragraphs 38 and 39.

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<sup>4</sup> GCG will perform the mailings in compliance with the requirements of The Office of Foreign Assets Control ("OFAC") of the U.S. Department of the Treasury.



### NOTICE BY PUBLICATION

17. In order to create a best practicable notice, which is reasonably calculated under the circumstances to reach the targeted class, the proposed Notice Program will utilize a tiered approach, which has been approved by courts in other international notice programs including: *In re Mexico Money Transfer Litig.*, 164 F. Supp.2d 1002 (N.D. Ill. 2000), *In re Western Union Money Transfer Litig.*, No. 01-335, 2004 WL 3709932 (E.D.N.Y. Oct. 19, 2004) and *In Re Royal Ahold N.V. Sec. & ERISA Litig.*, 437 F. Supp.2d 467 (D. Md. June 16, 2006). The proposed Summary Notice for publication has been written in a plain language style appropriate for the target audience. Plain language is simply a more conversational form of communication, which is used, for example, when reporting the news. The concept, now integrated into Legal Notice practice, is one that has received note from various national and international authorities and organizations including the Federal Judicial Center in the United States, the Plain Language Association International, the CBA Plain Language Committee of the Canadian Bar Association and Plain English Campaign in the United Kingdom, among others. The proposed publication Summary Notice, as well as the Notice of Proposed Settlement of U.S. and Canadian Class Actions, are clear, concise, and understandable. The proposed Summary Notice comports with the plain language standards for legal noticing. A copy of the proposed Summary Notice is attached to this affidavit as Exhibit B.

18. The paid media component of the proposed Notice Program will be segregated into four tiers, with the greatest media emphasis placed on: 1) the United States and Canada, which are the sites of the filed actions, and the countries within, to or from which air cargo was shipped pursuant to the class definitions; 2) countries where the largest population of Lufthansa air cargo shipping customers (direct and indirect) are likely to be found; and 3) countries where the largest population of air cargo shippers are located internationally with

an air cargo shipping nexus to the United States or Canada. Assumptions regarding these factors are based on internal proprietary and confidential data provided by Lufthansa as well as extensive primary research from respected worldwide industry resources including:

- USA Trade Online (USA-T) – The official source of U.S. export & import statistics, a collaborative effort between the U.S. Census Bureau's Foreign Trade Division and STAT-USA®, which provides current and cumulative U.S. export and import data.
- Transport Canada – A governmental department in charge of overseeing transportation strategies, goals and programs established by the Government of Canada. Air import and export data by trading partners is reported on their website.
- Airports Council International ("ACI") – A worldwide association created to represent the mutual interests of airport operators. ACI provided the statistical data utilized in the top 50 Airport list according to tonnage, loaded and unloaded freight, and mail in metric tons.

19. The proposed Notice Program was developed with particular attention to the fact that the definition of Settlement Class Members encompasses not only those direct and indirect purchasers who used the services of Lufthansa for Airfreight Shipping Services within, to or from either the United States or Canada during the defined class period, but also those purchasers who used the services of any air cargo shipper to ship within, to or from either the United States or Canada. An individual air cargo airline such as Lufthansa will not fully mirror the air cargo shipping business as a whole, because the industry is predominantly hub based, among other reasons. We understand from discussions from Lufthansa that air cargo shipping is a fungible, commodity service, and that purchasers of air cargo services will overlap between different airlines, at least to the extent that service is available in comparable geographic areas. In other words, Lufthansa's business reflects the fact that it is based in Germany (and Switzerland, for Swiss International Air Lines Ltd.). A direct or indirect purchaser of air cargo shipping who used a different air cargo airline might not be reached in a notice plan that was based only on Lufthansa's business. The proposed Notice Program accordingly incorporates the broader air cargo shipping business globally. This

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provides only one example of how the proposed Notice Program reaches not only Lufthansa's direct and indirect purchasers, but also those purchasers internationally who have an air cargo shipping nexus with the United States or Canada.

20. In developing the Notice Program, we not only analyzed proprietary data provided by Lufthansa, but also looked extensively at primary research from respected industry sources. Countries were selected and prioritized in the tiered approach based on their rank among top importers to the United States and Canada, as well as their rank in air cargo shipment volume, in addition to their level of Lufthansa business. For instance, while China is less significant as a Lufthansa customer, it is a leading importer to the United States and Canada, as well the location of major air cargo airports, and the proposed Notice Program recognizes and accommodates these various factors.

21. The design of the proposed Notice Program is consistent with the U.S. Supreme Court's guidance in *Daubert v. Merrell Dow Pharmaceuticals*, 509 U.S. 579 (1993), and *Kumho Tire Co. v. Carmichael*, 526 U.S. 137 (1999), and uses industry-accepted methodology that can be tested by peers. In formulating a program for delivering "Appropriate Notice," we have been mindful of the natural justice and fair process concerns expressed by the Canadian courts, as well as the factors listed in the Ontario Class Proceedings Act, S.O. 1992, c. 6, s. 17, the applicable British Columbia statute (R.S.B.C. 1996, c. 50, s. 19), and the relevant provisions in the Québec Code of Civil Procedure. Specifically, we designed the publication program for notice in this action using a scientific method accepted within the advertising industry for modeling target individuals – including class members – by their demography and media consumption habits. This affidavit describes our methodology for modeling the target audience and how we selected the most appropriate media to reach them.

22. The Notice Program uses the most appropriate media definitions to most closely match Class Member demographics and reach both direct and indirect Settlement Class Members. Although the media definitions of each of these two targets can vary slightly from country to country, they are reasonably similar. The two targets are:

- Individuals who are business decision makers who have been involved in ordering or approving freight [cargo] and/or express services; and
- All adults 18 years of age and older.

The first target is intended to reach the business audience who are the predominant purchasers (both direct and indirect) of Airfreight Shipping Services. Research indicates that nearly 80 percent of all air cargo shipments are business to business transactions. In order to reach potential individual Settlement Class Members, however, the proposed Notice Program also includes second target -- a very broad definition based on the entire adult population of a given country. Based on my more than 20 years of collective experience in the fields of legal notice publication, advertising, public relations, and marketing communications, as well as my experience using this type of research data, I believe the research provides a valid basis for determining the multimedia characteristics of Class Members and that the targets selected are representative of the Class Members. The Notice Program also uses available readership studies in order to select the most appropriate publications along with circulation and readership analysis.

#### TIER I

23. Tier I of the paid media component of the proposed Notice Program will encompass 13 countries: Canada, China, France, Germany, India, Italy, Japan, Malaysia, South Korea, Switzerland, Taiwan, the United Kingdom, and the United States. These countries in Tier I received primacy in the proposed Notice Program due to the fact that (1) the United States and Canada are the sites of the filed actions, and the countries within, to or from which air

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cargo was shipped pursuant to the class definitions, (2) they are the countries which represent a majority of Lufthansa's air cargo business, and (3) they represent a majority of air cargo business globally with a nexus to the United States or Canada. The 13 countries that comprise Tier I account for over 69 percent of worldwide air cargo by tonnage, based on ACI data, and nearly 70% of Lufthansa's cargo business, according to proprietary Lufthansa data.

24. In Tier I, the proposed Notice Program uses country-specific nationally syndicated media research to quantify the percentage of both cargo shippers and the adult population reached by this Notice Program. That research is described more fully in the footnote below.<sup>5</sup> To that end, the Notice Program employs appropriate nationally circulated magazines, leading national newspapers and newspaper supplements, business press and trade press, a massive media relations effort and the Internet.

25. In advertising there are many models to measure media performance. The most useful of these for the purpose of legal notice is the Reach and Frequency model. Reach

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<sup>5</sup> Canada - Print Measurement Bureau (PMB) Two-Year Readership Database 2007.

China - CNRS (China National Readership Survey).

France - Ipsos FCA 2006.

Germany- EBRS 2006 European Business Readership Survey (EBRS) 2006; Media Analyse (MA) 2007.

India - Indian Readership Survey 2007 (IRS).

Italy - European Business Readership Survey (EBRS) 2006; European Media and Marketing Survey (EMS); Italian National readership survey.

Japan - Japan Business Readership Survey (JBRS); J-READ 2006.

Malaysia - PAX (Fall 2006).

South Korea - PAX (Fall 2006).

Switzerland - MACH Basic 2007; MA Leader.

Taiwan - PAX (Fall 2006).

United Kingdom - British Business Survey 2005 and National Readership Survey (NRS) 2006.

United States - Mediabank Research Inc. (MRI) Doublebase 2006 and Business-to-Business Surveys.

refers to the estimated percentage of the unduplicated audience exposed to the campaign. Frequency, in turn, refers to how many times, on average, a target audience had the opportunity to see the message. The quantification is provided through industry-accepted research for audience measurement across multimedia. The calculations are used by advertising and communications firms worldwide and have been adopted by courts to measure the percentage of a target class that was likely reached by a legal notice program.

26. Applying the analysis model to the proposed Notice Program yields the following Reach and Frequency in Tier I of the Notice Program.

Country	Target	Reach	Frequency
Canada	Business/Cargo	80%	3.90
	Adults	71%	3.80
China <sup>6</sup>	Business/Cargo	71%	2.44
	Adults	88%	2.27
France	Business/Cargo	70%	3.20
	Adults	89%	3.08
Germany	Business/Cargo	78%	2.80
	Adults	71%	1.80
India	Mumbai Adults	88%	3.08
	Delhi Adults	73%	2.82
Italy	Business/Cargo	88%	3.41
	Adults	88%	1.80
Japan	Business/Cargo	84%	1.60
	Adults	88%	1.10
Malaysia	Adults in Kuala Lumpur	78%	1.80
South Korea	Adults in Seoul	88%	2.90
Switzerland	Business/Cargo	84%	2.30
	Adults	70%	1.80
Taiwan	Adults in Taipei	70%	2.80
United Kingdom	Business/Cargo	71%	3.30
	Adults	88%	2.80
United States	Business/Cargo	81%	2.18
	Adults B/C	74%	1.88

TIER II

<sup>6</sup> In China, India, Malaysia, South Korea and Taiwan, Reach and Frequency are regionalized to follow manufacturing/trade centers and business populations.

27. Tier II of the proposed Notice Program will encompass 20 countries: Austria, Belgium, Brazil, Chile, Colombia, Egypt, Hong Kong<sup>7</sup>, Ireland, Israel, Mexico, Netherlands, Peru, Portugal, Russia, Singapore, South Africa, Spain, Sweden, Thailand and Turkey. In Tier II, the Notice Program uses, on average, three to five leading newspapers per country. In Tier II countries, as well as in Tier III and IV countries, the Notice Program relies upon available readership studies in order to select the most appropriate publications along with circulation and readership analysis.

28. When combined, the 33 countries in Tiers I and II account for approximately 94 percent of Canadian imports according to Transport Canada records, and approximately 85 percent of all U.S. air cargo imports by weight according to USA-T data. Additionally, Tier I and II also account for over 85 percent of all Lufthansa's cargo business according to proprietary Lufthansa data, and approximately 86 percent of worldwide air cargo by tonnage, based on ACI data.

#### TIER III

29. Tier III of the proposed Notice Program will include another 30 countries, which were selected and prioritized based on the identified criteria for the tier system. The 30 countries comprising Tier III of the Notice Program are: Argentina, Australia, Cambodia, Czech Republic, Denmark, Ecuador, Ethiopia, Finland, Greece, Guatemala, Hungary, Indonesia, Kenya, Luxembourg, Mauritius, New Zealand, Nicaragua, Nigeria, Norway, Pakistan, Panama, Philippines, Poland, Romania, Saudi Arabia, Sri Lanka, Uganda, United Arab Emirates, Venezuela, and Vietnam.

#### TIER IV

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<sup>7</sup> Although Hong Kong is not a separate country, for purposes of the tier analysis, it is broken out separately in light of the manner in which trade and other data is reported.

30. Tier IV countries will be reached through international publications, international trade press, a globally distributed press release, and the Internet. There are more than 120 countries reached by global Tier IV of the proposed Notice Program, including the 63 countries reached in Tiers I, II and III. The remaining countries reached by Tier IV each individually account for less than .8 percent of Lufthansa business and/or a very small percentage of all cargo tonnage worldwide.

31. Attached to this affidavit as Exhibit C is a list of the publications in which the Summary Notice will be published in all Tiers.<sup>8</sup>

32. All Tiers of the Notice Program will incorporate trade press, a comprehensive media outreach effort, international newspapers and magazines, and the Internet.

#### INTERNET ADVERTISING

33. In addition to print media, the proposed Notice Program is enhanced by the use of Internet advertising on trade websites such as Quick Caller Online (an online reference for regional air cargo directories for North America) and The International Air Cargo Association as well as broad-reaching sites such as AOL and Weather.com.

#### GLOBAL PUBLICATIONS

34. The proposed Notice Program is further strengthened by the use of global media, which includes publication of notice in well respected and broadly distributed international editions of publications such as *The Wall Street Journal*, *The Financial Times*, *Time*

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<sup>8</sup> It is not unusual in the course of implementing a Notice Program of this scope and complexity for the need to arise to make modifications, including, for example, to substitute suitable replacement publications, or to make adjustments in content, with agreement of the parties, to accommodate legal requirements of governments or publications regarding advertising content. This type of modification will not affect the overall integrity of the Notice Program, and substitutions will be consistent with the objectives of the proposed Notice Program. GCG will submit a final affidavit for the Final Fairness Hearing which will detail the implementation of the approved Notice Program, and which will identify any alterations that were required.



*Magazine, Newsweek Magazine, The New York Times, The International Herald Tribune and USA Today.*

#### TRADE PUBLICATIONS

35. Additionally, the proposed Notice Program includes publication of the Summary Notice in 30 trade publications targeting the air cargo shipping professional, including *Air Cargo World, Air Cargo Week, Air Cargo News, Inbound Logistics, Global Logistics, Cargo News Asia-Pacific* and *Logistics Management*, among others. Where available, the international edition of these publications will be used.

#### GLOBAL MEDIA OUTREACH

36. In addition to print and Internet advertising, the proposed Notice Program is further enhanced by the use of global media relations, which includes an extraordinary and robust public relations effort, issuing a Premiere Global press release through PR Newswire to nearly 10,000 news points in almost 90 countries. It is our intention to monitor resulting articles, and we will integrate the performance of the media outreach in our final report. Without a doubt, the media relations component of the Notice Program will add to the opportunity for potential Class Members to see this Notice.

#### ADDITIONAL OUTREACH EFFORTS

37. **Third-Party Outreach.** Additional outreach efforts will include third-party mailings and/or faxes of the Summary Notice to numerous key trade associations and freight forwarders such as Air Forwarders Association, Airports Council International, and the Canadian International Freight Forwarders Association. GCG proposes to request that these groups post the Summary Notice on their websites, and the opportunity for further contact such as e-newsletter sponsorships and e-mails to members/readers of air cargo publications will be explored.

38. **Website.** A website, [www.aircargosettlement.com](http://www.aircargosettlement.com), will be developed and maintained by GCG as a worldwide information hub, where potential claimants and interested parties can obtain detailed information about the Settlement. The website's homepage will include 38 language options in which visitors may obtain information about the settlement, including native language translations of the long-form notice, and when available, the claim form. Additional language translations for these materials will be made available upon request by Settlement Class Members. The website will include an email address that Settlement Class Members can use to communicate such requests. Relevant court documents and the Settlement Agreements will also be posted on the website. The web address ([www.aircargosettlement.com](http://www.aircargosettlement.com)) will be set forth in the publication and mailed notice.

39. **Toll Free Telephone.** GCG will establish and maintain a telephone interactive voice response ("IVR") system dedicated to this case to accommodate telephone inquiries from Class Members. The system will be accessible toll free from countries where notice is published in an in-country publication wherever toll free service is available. For global publications, an international number will be provided. In addition, all toll free numbers will be available on the website. Callers will be able to select from a number of language options.

#### CONCLUSION

40. Based on our analysis as described above and my experience, in my opinion, this proposed Notice Program is reasonably calculated, using tools and methodologies accepted within the advertising industry, to provide the best notice practicable under the circumstances in this case. The multifaceted Notice Program will be particularly effective, and will reach the Class Members in these Settlements through the combination of a variety of communications vehicles, including direct mail, a robust and wide-reaching print notice campaign, a comprehensive global media relations program, Internet banner advertising, a Settlement website, and information available from a toll free telephone number. In my

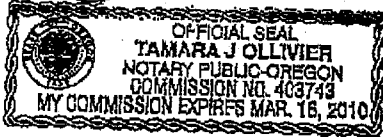
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opinion, this international Notice Program readily meets the standard for providing legal notice to Class Members and will more than adequately satisfy due process considerations.

SWORN OR AFFIRMED before )  
me at the City of La Grange in the State )  
of OR, this 5<sup>th</sup> day of July, 2007. )

Tamara J. Ollivier  
A Notary Public

Jeanne C. Finegan  
Jeanne C. Finegan, APR

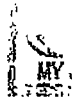
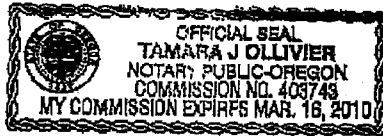


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This is Exhibit "A" mentioned and referred to in the affidavit of Jeanne C. Finegan, sworn before me at the City of *Lake Oswego* in the State of *OR* this *5<sup>th</sup>* day of July, 2007.

*Tamara J. Ollivier*  
\_\_\_\_\_  
A Notary Public



# JEANNE C. FINEGAN, APR

## BIOGRAPHY

Jeanne Finegan is Senior Vice President of The Garden City Group, Inc. ("GCG") and GCG Communications, a division of GCG. She has more than 20 years of communications and advertising experience and is a nationally recognized expert in class action, bankruptcy and mass tort notification campaigns. Finegan is accredited (APR) in Public Relations by the Universal Accreditation Board, a program administered by the Public Relations Society of America.

She has provided testimony before Congress on issues of notice. Additionally, she has provided expert testimony in both state and federal courts regarding notification campaigns and conducted media audits of proposed notice programs for their adequacy under Fed. R. Civ. P. 23(c)(2) and similar state class action statutes. Most recently, she has been recognized by Canadian courts as a legal notice expert.

She has lectured, published and has been cited extensively on various aspects of legal noticing, product recall and crisis communications and has served the Consumer Product Safety Commission (CPSC) as an expert to determine ways in which the Commission can increase the effectiveness of its product recall campaigns.

Finegan has developed and implemented many of the nation's largest and most high profile legal notice communication and advertising programs. In the course of her class action experience, courts have recognized the merits of, and admitted expert testimony based on, her scientific evaluation of the effectiveness of notice plans. She has designed legal notices for a wide range of class actions and consumer matters that include product liability, construction defect, anti-trust, medical/pharmaceutical, human rights, civil rights, telecommunication, media, environment, securities, banking, insurance, mass tort, restructuring and product recall.

Her work includes:

DeHoyos, et al. v. Allstate Insurance Company, Civil Action No SA-01-CA-1010-FB, United States District Court Western District of Texas San Antonio Division (2006).

*In the Final Order Approving the Settlement the Court stated: "...the undisputed evidence shows the notice program in this case was developed and implemented by a nationally recognized expert in class action notice programs."*

Lucas, et al. v. Knart Corporation, Case No. 99-cv-01923-JLK, Class Action, United States District Court for the District of Colorado (2006).

*In the Final Order Approving the Settlement, the Honorable Judge John L. Kane said: The parties submitted a declaration from Jeanne C. Finegan, an expert in the design of notice programs such as the one approved by this Court. The notice program implemented by the parties to this settlement [was extensive and] goes above and beyond that required by law. For the reasons set forth in the Preliminary Approval Order, id. at 695-97, the Court holds that the notice program implemented by the parties was the best notice practicable under the circumstances and satisfied the requirements of due process and F.R.C.P. 23.*

In re: Nortel Network Corp., Securities Litigation Civil Action No. 01-CV-1855 (RMB) Master File No. 05 MD 1659 (LAP) (2006), \*Approved in both the United States and Canada. Ms. Finegan designed and implemented the extensive Canadian Notice program, published in

both French and English, which targeted virtually all investors of Stock in Canada, [www.nortelsecuritieslitigation.com](http://www.nortelsecuritieslitigation.com).

Levine, et al. v. Dr. Philip C. McGraw, et al., Case No. BC 312830 (Los Angeles County Super. Ct., Cal. 2004).

*In the Final Order Approving the Settlement, the Honorable Victoria Chaney found that the [Notice] was best practicable under the circumstances and constituted due and sufficient notice to the members of the Settlement Class... And satisfies the requirements of California law and federal due process of law.*

In re: Epson Cartridge Cases, Judicial Council Coordination Proceeding No. 4347, Superior Court of the State of California for the County of Los Angeles (2006).

UAW v. General Motors Corporation, Case No: 05-73991 Class Action, United States District Court for the Eastern District of Michigan, Southern Division (2006).

Wicon, Inc. v. Cardservice International, Inc., BC 320215 Class Action, Superior Court of the State of California for the County of Los Angeles (2004).

Yaracallo, et al. v. Massachusetts Mutual Life Insurance Company, et al., Civil Action No. 04-2702 (JLL), United States District Court for the District of New Jersey (2004).

*The Court found that "all of the notices are written in simple terminology, are readily understandable by Class Members, and comply with the Federal Judicial Center's illustrative class action notices.*

*... By working with a nationally syndicated media research firm, [Firegan's firm] was able to define a target audience for the MassMutual Class Members, which provided a valid basis for determining the magazine and newspaper preferences of the Class Members. (Preliminary Approval Order at p. 9). . . . The Court agrees with Class Counsel that this was more than adequate. (Id. at § 5.2).*

In re: John's Marville (Statutory Direct Action Settlement, Common Law Direct Action and Hawaii Settlement) Index No 82-11656 (BRL), United States Bankruptcy Court for the Southern District of New York (2004).

The nearly half-billion dollar settlement constituted three separate notification programs, which targeted all persons, who had asbestos claims whether asserted or unasserted, against the Travelers Indemnity Company.

In the Findings of Fact and Conclusions of a Clarifying Order Approving the Settlements, the Honorable Chief Judge Burton R. Lifland said:

*"As demonstrated by Findings of Fact, the Statutory Direct Action Settlement notice program was reasonably calculated under all circumstances to apprise the affected individuals of the proceedings and actions taken involving their interests, Mullane v. Cent. Hanover Bank & Trust Co; 339 U.S. 306, 314 (1950), such program did apprise the overwhelming majority of potentially affected claimants and far exceeded the minimum notice required. The Court concludes that mailing direct notice via U.S. Mail to law firms and directly to potentially affected claimants, as well as undertaking an extensive print media and Internet campaign met and exceeded the requirements of due process. The*

*Court's conclusion in this regard is buttressed by the results over 26,000 phone calls, 20,000 requests for information 8,000 website visits and 4,000 users registered to download documents. The results simply speak for themselves."*

Wilson v. Massachusetts Mutual Life Insurance Company, Case No. D-101-CV 98-02814, First Judicial District Court, County of Santa Fe, New Mexico (2002).

This was a nationwide notification program that included all persons in the United States who owned, or had owned, a life or disability insurance policy with Massachusetts Mutual Life Insurance Company and had paid additional charges when paying their premium on an installment basis. The class was estimated to exceed 1.6 million individuals. ([www.insuranceclassclaims.com](http://www.insuranceclassclaims.com)).

In granting preliminary approval to the settlement agreement, the Honorable Art Encinas commented:

*"The Notice Plan was the best practicable and reasonably calculated, under the circumstances of the action. ...[and] that the notice meets or exceeds all applicable requirements of law, including Rule 1-023(C)(2) and (3) and 1-023(E), NMRA 2001, and the requirements of federal and/or state constitutional due process and any other applicable law."*

Deke, et al. v. Cardservice International, Case No. BC 271679, Superior Court of the State of California, County of Los Angeles (2004).

In the Final Order dated March 1, 2004, The Honorable Charles W. McCoy commented:

*"The Class Notice satisfied the requirements of California Rules of Court 1856 and 1859 and due process and constituted the best notice practicable under the circumstances."*

Sager v. Inamed Corp. and McGhan Medical Breast Implant Litigation, Case No. 01043771, Superior Court of the State of California, County of Santa Barbara (2004).

In the Final Judgment and Order, dated March 30, 2004, the Honorable Thomas P. Anderle stated:

*"Notice provided was the best practicable under the circumstances."*

In re: Florida Microsoft Antitrust Litigation Settlement, Index number 99-27340 CA 11, 11<sup>th</sup> Judicial District Court of Miami - Dade County, Florida (2003).

In the Final Order Approving the Fairness of the Settlement, The Honorable Henry H. Harnage said:

*"The Class Notice ... was the best notice practicable under the circumstances and fully satisfies the requirements of due process, the Florida Rules of Civil Procedure, and any other applicable rules of the Court."*

In re: Montana Microsoft Antitrust Litigation Settlement, No. DCV 2000 219, Montana First Judicial District Court, Lewis & Clark Co. (2003).

In re: South Dakota Microsoft Antitrust Litigation Settlement, Civ. No. 00-235, State of South Dakota, County of Hughes in the Circuit Court Sixth Judicial Circuit.

In re: Kansas Microsoft Antitrust Litigation Settlement, Case No. 99CI7089 Division No. 15 Consolidated Cases, District Court of Johnson County, Kansas Civil Court Department.

In the Final Order and Final Judgment, the Honorable Allen Slater stated:

*"The Class Notice provided was the best notice practicable under the circumstances and fully complied in all respects with the requirements of due process and of the Kansas State. Annot. §60-22.3."*

In re: North Carolina Microsoft Antitrust Litigation Settlement, No. 00-CvS-4073 (Wake) 00-CvS-1246 (Lincoln), State of North Carolina, Wake and Lincoln Counties in the General Court of Justice Superior Court Division North Carolina Business Court.

In the multiple state cases, Plaintiffs generally alleged that Microsoft unlawfully used anticompetitive means to maintain a monopoly in markets for certain software, and that as a result, it overcharged consumers who licensed its MS-DOS, Windows, Word, Excel and Office software. The multiple legal notice programs targeted both individual users and business users of this software. The scientifically designed notice programs took into consideration both media usage habits and demographic characteristics of the targeted class members.

In re: MCI Non-Subscriber RatePayers Litigation, MDL Docket No. 1275, District Court for Southern District of Illinois (2001).

The advertising and media notice program was designed with the understanding that the litigation affects all persons or entities who were customers of record for telephone lines presubscribed to MCI/World Com, and were charged the higher non-subscriber rates and surcharges for direct-dialed long distance calls placed on those lines. ([www.rateclaims.com](http://www.rateclaims.com)). After a hearing to consider objections to the terms of the settlement, The Honorable David R. Herndon stated:

*"As further authorized by the Court, [Finegan's company] ... published the Court-approved summary form of notice in eight general-interest magazines distributed nationally; approximately 900 newspapers throughout the United States and a Puerto Rico newspaper. In addition, [Finegan's company] caused the distribution of the Court-approved press release to over 2,500 news outlets throughout the United States... The manner in which notice was distributed was more than adequate..."*

Sparks v. AT&T Corporation, Case No. 96-LM-983, Third Judicial Circuit, Madison County, Illinois.

The litigation concerned all persons in the United States who leased certain AT&T telephones during the 1980's. Finegan designed and implemented a nationwide media program designed to target all persons who may have leased telephones during this time period, a class that included a large percentage of the entire population of the United States. In granting final approval to the settlement, the Court commented:

*"The Court further finds that the notice of the proposed settlement was sufficient and furnished Class Members with the information they needed to*



*evaluate whether to participate in or opt out of the proposed settlement. The Court therefore concludes that the notice of the proposed settlement met all requirements required by law, including all Constitutional requirements."*

*Figford v. Glikman and U.S. Department of Agriculture*, Case No. CA No. 97-19788 (PLF), District Court for the District of Columbia (1999).

This was the largest civil rights case to settle in the United States in over 40 years. The highly publicized, nationwide paid media program was designed to alert all present and past African-American farmers of the opportunity to recover monetary damages against the U.S. Department of Agriculture for alleged loan discrimination. In his Opinion, the Honorable Paul L. Friedman commented on the notice program by saying:

*"The parties also exerted extraordinary efforts to reach class members through a massive advertising campaign in general and African American targeted publications and television stations."*

Judge Friedman continued;

*"The Court concludes that class members have received more than adequate notice and have had sufficient opportunity to be heard on the fairness of the proposed Consent Decree."*

*In re: SmithKline Beecham Clinical Billing Litigation*, Case No. CV. No. 97-L-1230, Illinois Third Judicial District, Madison County, (2001).

Finegan designed and developed a national media and Internet site notification program in connection with the settlement of a nationwide class action concerning billings for clinical laboratory testing services.

*MacGregor v. Schering-Plough Corp.*, Case No. EC248041, Superior Court of the State of California, County of Los Angeles (2001).

This nationwide notification was designed to reach all persons who had purchased or used an aerosol inhaler manufactured by Schering-Plough. Because no mailing list was available, notice was accomplished entirely through the media program.

*In re: Swiss Banks Holocaust Victim Asset Litigation* Case No. CV-96-4849, United States District Court for the Eastern District of New York (1999).

Finegan managed the design and implementation of the Internet site on this historic case. The site was developed in 21 native languages. It is a highly secure data gathering tool and information hub, central to the global outreach program of Holocaust survivors. ([www.swissbankclaims.com/](http://www.swissbankclaims.com/)).

*In re: Louisiana-Pacific Inner-Seal Siding Litigation*, Civil Action Nos. 879-JE, and 1453-JE, United States District Court, District of Oregon (1995) and (1999).

Under the terms of the Settlement, three separate Notice programs were to be implemented at three-year intervals over a period of six years. In the first Notice campaign, Finegan implemented the print advertising and Internet components of the Notice program.

In approving the legal notice communication plan, the Honorable Robert E. Jones stated:

*"The notice given to the members of the Class fully and accurately informed the Class members of all material elements of the settlement...[through] a broad and extensive multi-media notice campaign."*

In reference to the third-year Notice program for Louisiana-Pacific, Special Master Hon. Judge Richard Urin, commented:

*"In approving the third year notification plan for the Louisiana-Pacific Inner-Sea<sup>TM</sup> Siding litigation, the court referred to the notice as "...well formulated to conform to the definition set by the court as adequate and reasonable notice."*

*Indeed, I believe the record should also reflect the Court's appreciation to Ms. Finegan for all the work she's done, ensuring that noticing was done correctly and professionally, while paying careful attention to overall costs." Her understanding of various notice requirements under Fed. R. Civ. P. 23, helped to insure that the notice given in this case was consistent with the highest standards of compliance with Rule 23(d)(2).*

Thomas A. Foster and Linda E. Foster v. ABTco Siding Litigation, Case No. 95-151-M, Circuit Court of Choctaw County, Alabama (2000).

This litigation focused on past and present owners of structures sided with Abitibi-Price siding. The notice program that Finegan designed and implemented was national in scope.

In the Order and Judgment Finally approving settlement, Judge J. Lee McFhearson said:

*"The Court finds that the Notice Program conducted by the Parties provided individual notice to all known Class Members and all Class Members who could be identified through reasonable efforts and constitutes the best notice practicable under the circumstances of this Action. This finding is based on the overwhelming evidence of the adequacy of the notice program ...The media campaign involved broad national notice through television and print media, regional and local newspapers, and the Internet (see id. ¶¶9-11) The result: over 90 percent of Abitibi and ABTco owners are estimated to have been reached by the direct media and direct mail campaign."*

In re: Exxon Valdez Oil Spill Litigation, Case No. A89-095-CV (HRH) (Consolidated), United States District Court for the District of Alaska (1997, 2002).

Finegan designed and implemented two media campaigns to notify native Alaskan residents, trade workers, fisherman, and others impacted by the oil spill of the litigation and their rights under the settlement terms.

In re: Georgia-Pacific Toxic Explosion Litigation Case No. 98 CVC05-3535, Court of Common Pleas Franklin County, Ohio (2001).

Finegan designed and implemented a regional notice program that included network affiliate television, radio and newspaper. The notice was designed to alert adults living near a Georgia-Pacific plant that they had been exposed to an air-born toxic plume and their rights under the terms of the class action settlement. In the Order and Judgment finally approving the settlement the Honorable Jennifer L. Bunner said:

*"...Notice of the settlement to the Class was the best notice practicable under the circumstances, including individual notice to all members who can be identified through reasonable effort. The Court finds that such effort exceeded even reasonable effort and that the Notice complies with the requirements of Civ. R. 23(C).*

In re: Johns Manville Phenolic Foam Litigation Case No. CV 96-10069, United States District Court for the District of Massachusetts (1999).

The nationwide multi-media legal notice program was designed to reach all Persons who own any structure, including an industrial building, commercial building, school, condominium, apartment house, home, garage or other type of structure located in the United States or its territories, in which Johns Manville PFRI was installed, in whole or in part, on top of a metal roof deck.

In re: James Hardie Roofing Litigation Case No. CV. No. 00-2-17945-65SEA, Superior Court of Washington, King County (2002).

The nationwide legal notice program included advertising on television, in print and on the Internet. The program was designed to reach all persons who own any structure with JHBP roofing products. In the Final Order and Judgment the Honorable Steven Scott stated:

*"The notice program required by the Preliminary Order has been fully carried out... [and was] extensive. The notice provided fully and accurately informed the Class Members of all material elements of the proposed Settlement and their opportunity to participate in or be excluded from it; was the best notice practicable under the circumstances; was valid, due and sufficient notice to all Class Members; and complied fully with Civ. R. 23, the United States Constitution, due process, and other applicable law."*

In re: First Alert Smoke Alarm Litigation, Case No. CV-98-C-1546-W (UWC), United States District Court for the Northern District of Alabama, Western Division (2000).

Finegan designed and implemented a nationwide legal notice and public information program. The public information program ran over a two-year period to inform those with smoke alarms of the performance characteristics between photoelectric and ionization detection. The media program included network and cable television, magazine and specialty trade publications. In the Findings and Order Preliminarily Certifying the Class, The Honorable C.W. Clemon wrote that the notice plan:

*"...Constitutes due, adequate and sufficient notice to all Class Members; and meets or exceeds all applicable requirements of the Federal Rules of Civil Procedure, the United States Constitution (including the Due Process Clause), the Alabama State Constitution, the Rules of the Court, and any other applicable law."*

In re: American Cyanamid, Civil Action CV-97-0581-BH-M, United States District Court for the Southern District of Alabama (2001).

The media program targeted those Farmers who had purchased crop protection chemicals manufactured by American Cyanamid. In the Final Order and Judgment, the Honorable Charles R. Butler Jr. wrote:

*"The Court finds that the form and method of notice used to notify the Temporary Settlement Class of the Settlement satisfied the requirements of Fed. R. Civ. P. 23 and due process, constituted the best notice practicable under the circumstances, and constituted due and sufficient notice to all potential members of the Temporary Class Settlement."*

Bristow v Fleetwood Enterprises Litigation Case No Civ 00-0082-S-BJL United States District Court for the District of Idaho (2001).

Finegan designed and implemented a legal notice campaign targeting present and former employees of Fleetwood Enterprises, Inc., or its subsidiaries who worked as hourly production workers at Fleetwood's housing, travel trailer, or motor home manufacturing plants. The comprehensive notice campaign included print, radio and television advertising.

In re: New Orleans Tank Car Leakage Fire Litigation, Case No 87-16374, Civil District Court for the Parish of Orleans, State of Louisiana (2000).

This case resulted in one of the largest settlements in U.S. history. This campaign consisted of a media relations and paid advertising program to notify individuals of their rights under the terms of the settlement.

Garrja Spencer v. Shell Oil Company, Case No. CV 94-074, District Court, Harris County Texas (1995).

The nationwide notification program was designed to reach individuals who owned real property or structures in the United States which contained polybutylene plumbing with acetyl insert or metal insert fittings.

Rene Rosales v. Fortune Insurance Company, Case No 99-04588 CA. (41) Circuit Court of the 11<sup>th</sup> Judicial Circuit, Miami-Dade County, Florida (2000).

Finegan provided expert testimony in this matter. She conducted an audit on behalf of intervening attorneys for the proposed notification to individuals insured with personal injury insurance. Based upon the audit, Finegan testified that the proposed notice program was inadequate. The Court agreed and signed an Order Granting Intervenors' Objections to Class Action Settlement. The Honorable Jose M. Rodriques said:

*"The Court finds that Ms. Finegan is qualified as an expert on class notice and effective media campaigns. The Court finds that her testimony is credible and reliable."*

Based in part on Finegan's testimony, the Court ruled in favor of the intervening parties and disapproved the parties' original settlement agreement, vacating the order of preliminary approval.

In re: Hurd Millwork Heat Mirror™ Litigation Case No. CV-772488, Superior Court of the State of California, County of Santa Clara (2000).

This nationwide multi-media notice program was designed to reach class members with failed heat mirror seals on windows and doors, and alert them as to the actions that they needed to take to receive enhanced warranties or window and door replacement.

Laborers District Council of Alabama Health and Welfare Fund v Clinical Laboratory Services, Inc., Case No. CV-97-C-629-W, United States District Court for the Northern District of Alabama (2000).

Finegan designed and developed a national media and Internet site notification program in connection with the settlement of a nationwide class action concerning alleged billing discrepancies for clinical laboratory testing services.

In re: StarLink Corn Products Liability Litigation, Case No. 01-C-1181, United States District Court for the Northern District of Illinois, Eastern Division (2002).

Finegan designed and implemented a nationwide notification program designed to alert potential class members of the terms of the settlement.

In re: Albertson's Back Pay Litigation, Case No. 97-0159-S-BLW, United States District Court for the District of Idaho (1997).

Finegan designed and developed a secure Internet site, where claimants could seek case information confidentially.

In re: Georgia Pacific Hardboard Siding Recovering Program, Case No. CV-95-3330-RG, Circuit Court for the County of Mobile, State of Alabama (1997).

Finegan designed and implemented a multi-media legal notice program, which was designed to reach class members with failed G-P siding and alert them of the pending matter. Notice was provided through advertisements which aired on national cable networks, magazines of nationwide distribution, local newspaper, press releases and trade magazines.

In re Diet Drugs (Phentermine, Fenfluramine, Dexfenfluramine) Prods. Liab. Litig., MDL No. 1203, Civil Action No. 99-20593, (E.D. Pa. Aug. 28, 2000).

Finegan has worked as a consultant to the National Diet Drug Settlement Committee on notification issues.

In re: ABS II Pipes Litigation, Case No. 3126, Contra Costa Superior Court, State of California (1998 and 2001).

The Court approved regional notification program designed to alert those individuals who owned structures with the pipe that they were eligible to recover the cost of replacing the pipe. ([www.abspipes.com/](http://www.abspipes.com/)).

In re: Avenue A Inc. Internet Privacy Litigation, Case No: C00-1964C, United States District Court for the Western District of Washington.

In re: Lorazepam and Clorazepate Antitrust Litigation, MDL No. 1290 (TFH), United States District Court for the District of Columbia.

In re: Provident Financial Corporation ERISA Litigation, Case No C-01-5027, United States District Court for the Northern District of California.

In re: H & R Block, et al Tax Refund Litigation, Case No. 97195023/CC4111, Maryland Circuit Court for Baltimore City.

*In re: American Premier Underwriters, Inc. U.S. Railroad Vest Corp.*, Cause No: 06C01-9912, Circuit Court, Boone County, Indiana.

*In re: Sprint Corporation Optical Fiber Litigation*, Case No: 9907 CV 284, District Court, Leavenworth County, Kansas.

*In re: Shelter Mutual Insurance Company Litigation*, Case No. CJ-2002-263, District Court, Canadian County, Oklahoma.

*In re: Conseqo, Inc. Securities Litigation*, Case No: IP-00-0585-C Y/S CA, Southern District of Indiana, Indianapolis Division.

*In re: National Treasury Employees Union, et al.* Case No: 02-128C, United States Court of Federal Claims.

*In re: City of Miami Parking Litigation*, Case Nos: 99-21456 CA-10, 99-23765 - CA-10, Circuit Court, 11<sup>th</sup> Judicial Circuit, Miami-Dade County, Florida.

*In re: Prime Co. Incorporated D/B/A/ Prime Co. Personal Communications*, Civil Action No. L 1:01CV658, United States District Court for the Eastern District of Texas, Beaumont Division.

*Alsea Vaneer v. State of Oregon A.A.*, Case No. 88C-11289-88C-11300.

#### *A Sample of Finegan's Bankruptcy Experience*

Finegan has designed and implemented literally hundreds of domestic and international bankruptcy notice programs. A sample case list includes the following:

*In re: United Airlines*, Case No. 02-B-48191, (Bankr. N.D Illinois, Eastern Division).

Finegan worked with United and its restructuring attorneys to design and implement global legal notice programs. The notice was published in 11 countries and translated into 6 languages. Finegan worked closely with legal counsel and UAL's advertising team to select the appropriate media and to negotiate the most favorable advertising rates. ([www.pd-ual.com/](http://www.pd-ual.com/)).

*In re: Enron*, Case No. 01-16034 (Bankr. S.D.N.Y.)

Finegan worked with Enron and its restructuring attorneys to publish various legal notices.

*In re: Dow Corning*, Case No. 95-20512 (Bankr. E.D. Mich.)

Finegan originally designed the information website. This Internet site is a major information hub that has various forms in 15 languages.

*In re: Harnischfeger Industries*, Case No. 99-2171 (RJW) Jointly Administered, (Bankr., District of Delaware).

Finegan designed and implemented 6 domestic and international notice programs for this case. The notice was translated into 14 different languages and published in 16 countries.

In re: Keena Corporation, Case No. 93B 46090 (SME), (Bankr. E.D. of Missouri, Eastern Division).

Finegan designed and implemented multiple domestic bankruptcy notice programs including notice on the plan of reorganization directed to all creditors and all Class 4 asbestos-related claimants and counsel.

In re: Lamonts, Case No. 00-00045 (Bankr. W.D. of Washington).

Finegan designed and implemented multiple bankruptcy notice programs.

In re: Monet Group Holdings, Case Nos. 00-1936 (MFW) (Bankr. D. of Delaware).

Finegan designed and implemented a bar date notice.

In re: Laclede Steel Company, Case No 98-53121-399 (Bankr. E.D. of MO, Eastern Division).

Finegan designed and implemented multiple bankruptcy notice programs.

In re: Columbia Gas Transmission Corporation, Case No. 91-804 (Bankr. S.D.N.Y.)

Finegan developed multiple nationwide legal notice notification programs for this case.

In re: U.S.H. Corporation of New York, et al. (Bankr. S.D.N.Y)

Finegan designed and implemented a bar date advertising notification campaign.

In re: Best Products Co., Inc., Case No. 96-35267-T, (Bankr. E.D. of Virginia)

Finegan implemented a national legal notice program that included multiple advertising campaigns for notice of sale, bar date, disclosure and plan confirmation.

In re: Lodgian, Inc., et al., Case No. 16345 (BRL) Factory Card Outlet -- 99-685 (JCA), 99-686 (JCA), (Bankr. S.D.N.Y).

In re: International Total Services, Inc., et al., Case No: 01-21812, 01-21818, 01-21820, 01-21882, 01-21824, 01-21826, 01-21827 (CD) Under Case No: 01-21812 (Bankr. E.D.N.Y)

In re: Decora Industries, Inc and Decora, Incorporated, Case No: 00-4459 and 00-4460 (JIF) (Bankr. D.of Delaware)

In re: Genesis Health Ventures, Inc., et al, Case No. 002692 (PJW) (Bankr. D. of Delaware)

In re: Telephone Warehouse, Inc., et al, Case No. 00-2105 through 00-2110 (MFW) (Bankr. D.of Delaware).

In re: United Companies Financial Corporation, et al, Case No. 99-450 (MFW) through 99-461 (MFW) (Bankr. D.of Delaware).

In re: Caldor, Inc. New York, The Caldor Corporation, Caldor, Inc. CT, et al., Case No: 95-B44080 (JLG) (Bankr. S.D.N.Y).

In re: Physicians Health Corporation, et al., Case No: 00-4482 (MFW) (Bankr. D.of Delaware).

In re: GC Companies, et al., Case Nos:00-3897 through 00-3927 (MFW) (Bankr. D.of Delaware).

In re: Heltig-Meyers Company, et al., Case Nos: 00-34533 through 00-34538 (Bankr. R.D.of Virginia, Richmond Division).

#### *Product Recall and Crisis Communication*

Reser's Fine Foods - Reser's is a nationally distributed brand and manufacturer of food products through giants such as Albertsons, Costco, Food Lion, WinnDixie, Ingles, Safeway and Walmart. Finegan designed an enterprise-wide crisis communication plan that included communications objectives, crisis team roles and responsibilities, crisis response procedures, regulatory protocols, definitions of incidents that require various levels of notice, target audiences, and threat assessment protocols. Finegan worked with the company through two nationwide, high profile recalls, conducting extensive media relations efforts.

#### *Background*

Prior to joining The Garden City Group, Inc., Finegan co-founded Huntington Advertising, a nationally recognized leader in legal notice communications. After Fleet Bank purchased her firm in 1997, she grew the company into one of the nation's leading legal notice communication agencies.

Prior to that, Finegan spearheaded Huntington Communications, (an Internet development company) and The Huntington Group, Inc., (a public relations firm). As a partner and consultant, she has worked on a wide variety of client marketing, research, advertising, public relations and Internet programs. During her tenure at the Huntington Group, client projects included advertising (media planning and buying), shareholder meetings, direct mail, public relations (planning, financial communications) and community outreach programs. Her past client list includes large public and privately held companies: Code-A-Phone Corp., Thrifty-Payless Drug Stores, Hyster-Yale, The Portland Winter Hawks Hockey Team, U.S. National Bank, U.S. Trust Company, Morley Capital Management, and Durametal Corporation.

Prior to Huntington Advertising, Finegan worked as a consultant and public relations specialist for a West Coast-based Management and Public Relations Consulting firm.



Additionally, Finegan has experience in news and public affairs. Her professional background includes being a reporter, anchor and public affairs director for KWJZ/KJB radio in Portland, Oregon, as well as reporter covering state government for KBZY radio in Salem, Oregon. Finegan worked as an assistant television program/promotion manager for KPDX directing \$50 million in programming. Additionally she was the program/promotion manager at and KECH-22 television.

Finegan's multi-level communication background gives her a thorough, hands-on understanding of media, the communication process, and how it relates to creating effective and efficient legal notice campaigns.

#### *Articles*

Quoted Article, "Warranty Conference: Globalization of Warranty and Legal Aspects of Extended Warranty," - Warranty Week, - [warrantyweek.com/archive/ww20070228.html/](http://warrantyweek.com/archive/ww20070228.html/) February 28, 2007

Co-Author, "Approaches to Notice in State Court Class Actions," - For The Defense, Vol. 45, No. 11 -- November, 2003.

Citation - "Recall Effectiveness Research: A Review and Summary of the Literature on Consumer Motivation and Behavior" U.S. Consumer Product Safety Commission, CPSC-F-02-1391, p.10, Heiden Associates - July 2003.

Author, "The Web Offers Near Real-Time Cost Efficient Notice" - American Bankruptcy Institute - ABI Journal, Vol. XXII, No. 5. -- 2003.

Author, "Determining Adequate Notice in Rule 23 Actions," - For The Defense, Vol. 44, No. 9 -- September, 2002.

Author, "Legal Notice, What You Need To Know and Why," - Monograph, July 2002.

Co-Author, "The Electronic Nature of Legal Noticing," - The American Bankruptcy Institute Journal -Vol. XXI, No. 3, April 2002.

Author, "Three Important Mantras for CEO's and Risk Managers in 2002" - International Risk Management Institute - [irmi.com/](http://irmi.com/) January 2002.

Co-Author, "Used the Bat Signal Lately" - The National Law Journal, Special Litigation Section - February 19, 2001.

Author, "How Much is Enough Notice" - Dispute Resolution Alert, Vol. 1, No. 6. March 2001.

Author, "Monitoring the Internet Buzz" - The Risk Report, Vol. XXIII, No. 5, Jan. 2001.

Author, "High-Profile Product Recalls Need More Than the Bat Signal" - International Risk Management Institute - [irmi.com/](http://irmi.com/) July 2001.

Co-Author, "Do you know what 100 million people are buzzing about today?" Risk and Insurance Management - March 2001.

Quoted Article: "Keep Up with Class Action" Kentucky Courier Journal - March 13, 2000.

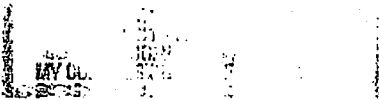
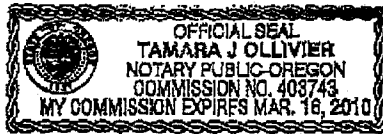
Author, "The Great Debate - How Much is Enough Legal Notice?" American Bar Association - Class Actions and Derivatives Suits Newsletter, Winter edition 1999.

*Speaker/Expert Panelist/Presenter*

- Warranty Chain Management *Faculty Panelist - Presentation Product Recall Simulation. Tampa, Florida - March 2007.*
- Practicing Law Institute *Faculty Panelist - CLE Presentation -11<sup>th</sup> Annual Consumer Financial Services Litigation. Presentation: Class Action Settlement Structures - Evolving Notice Standards in the Internet Age. New York/Boston (simulcast), NY March 2006; Chicago, IL April 2006 and San Francisco, CA May 2006.*
- U.S. Consumer Product Safety Commission *Ms. Finegan participated as an Expert to the Consumer Product Safety Commission to discuss ways in which the CPSC could enhance and measure the recall process. As an expert panelist, Ms Finegan discussed how the CPSC could better motivate consumers to take action on recalls and how companies could scientifically measure and defend their outreach efforts. Bethesda MD, September 2003.*
- Weil, Gotshal & Manges *CLE presentation "A Scientific Approach to Legal Notice Communication" New York, June 2003.*
- Sidley & Austin *CLE presentation "A Scientific Approach to Legal Notice Communication" Los Angeles, May 2003.*
- Kirkland & Ellis *Speaker to restructuring group addressing "The Best Practicable Methods to Give Notice in a Tort Bankruptcy." Chicago, April 2002.*
- Georgetown University Law Center Mass Tort Litigation Institute *CLE White Paper: What are the best practicable methods to give notice? Dispelling the communications myth - A notice disseminated is a notice communicated. Faculty - Mass Tort Litigation Institute -Washington D.C., November 1, 2001.*
- American Bar Association *How to Bullet-Proof Notice Programs and what communication barriers present due process concerns in legal notice. Presentation to the ABA Litigation Section Committee on Class Actions & Derivative Suits - Chicago, IL, August 6, 2001.*
- McCutchin, Doyle, Brown & Emerson *Speaker to litigation group in San Francisco and simulcast to four other McCutchin locations, addressing the definition of effective notice and barriers to communication that affect due process in legal notice. San Francisco, CA - June 2001.*
- Marylhurst University *Guest lecturer on public relations research methods, Portland, OR - February 2001.*

This is Exhibit "B" mentioned  
and referred to in the affidavit of  
Jeanne C. Finegan, sworn  
before me at the City of *Lake Oswego*  
in the State of *OR* this *5<sup>th</sup>* day  
of July, 2007.

*Tamara J. Ollivier*  
A Notary Public



Legal Notice

**If you purchased Air Cargo Shipping Services within,  
to or from either the United States or Canada from  
January 1, 2000 to September 11, 2006, your rights  
could be affected by a Settlement**

**What are the Settlements about?**

Plaintiffs claim that Deutsche Lufthansa AG, Lufthansa Cargo AG and Swiss International Air Lines Ltd., along with numerous other air cargo carriers, conspired to fix the prices of air cargo shipping services in violation of U.S. antitrust laws and Canadian competition law. The Settlements provide an \$85 million U.S. Fund to pay valid class member claims, and \$5,388 million USD Canadian Fund that Canadian Class Counsel will request to have held in trust for future benefit of the Canadian classes.

**Who is a Class Member?**

You are a class member if you purchased air cargo shipping services, from ANY cargo carrier, for shipments within, to or from either the United States or Canada. This also includes services purchased through freight forwarders. All you need to know is in the Notice of Proposed Settlement, including information on who is or is not a class member.

**How do I get Payment in the U.S. Settlement?**

You must register to receive a claim form. Claim forms will be mailed out later. Call the number below or visit [www.aircargosettlement.com](http://www.aircargosettlement.com) to register and for information on deadlines.

**What are my rights?**

If you do NOT want to take part in the U.S. Settlement or the Canadian class actions, you have the right to "opt out."

To "opt out" of the U.S. or Canadian Settlements, you must do so by \_\_\_\_, 200\_\_. Class members have the right to object to the U.S. or Canadian Settlements. If you object you must do so by \_\_\_\_, 200\_\_. You may speak to your own attorney at your own expense for help. For more information on how to "opt out" or object, visit [www.aircargosettlement.com](http://www.aircargosettlement.com) or call the number below.

Final Approval Hearings to consider approval of the U.S. and Canadian Settlements and requests by the lawyers for attorneys' fees and costs will be held at the United States District Court for the Eastern District of New York on [Date], 200\_\_; the Ontario Superior Court of Justice on [Date], 200\_\_; the Québec Superior Court on [Date], 200\_\_; and at the Supreme Court of British Columbia on [Date], 200\_\_. For more information on the locations and times of the Hearings, visit [www.aircargosettlement.com](http://www.aircargosettlement.com), or call the number below.

**This is a Summary, where can I get more information?**

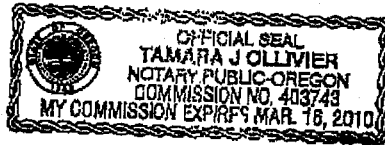
You can get complete Settlement information, including a copy of the full Notice and claim form by registering at [www.aircargosettlement.com](http://www.aircargosettlement.com), calling the number below, or writing to Air Cargo Settlement, c/o The Garden City Group, Inc., P.O. Box 9162, Dublin OH, 43017-4162, USA.

000-000-0000

[www.aircargosettlement.com](http://www.aircargosettlement.com)

This is Exhibit "C" mentioned  
and referred to in the affidavit of  
Jeanne C. Finegan, sworn  
before me at the City of Lake Oswego  
in the State of OR this 5<sup>th</sup> day  
of July, 2007.

Tamara J. Ollivier  
A Notary Public



The Garden City Group, Inc.

Lithuania

Country	Publications	Insertions	Circulation	Language	Unit Size
Canada	Canadian Business	1	62,000	English	1/2 Page
Canada	Maclean's	2	411,000	English	1/2 Page
Canada	L'Actualite	2	191,000	French Canadian	1/2 Page
Canada	Report on Business Magazine (Globe & Mail)	1	288,000	English	1/2 Page
Canada	Financial Post Business Magazine	1	221,000	English	1/2 Page
Canada	Time Canada	2	289,000	English	1/2 Page
Canada	Sports Illustrated	2	63,000	English	Full Page
Canada	Reader's Digest (English Edition)	1	985,000	English	Full Page
Canada	Reader's Digest (French Edition)	1	260,000	French Canadian	Full Page
Canada	Canadian Living	2	638,000	English	1/2 Page
Canada	Coup de Pouce	1	230,000	French Canadian	1/2 Page
Canada	Canadian Geographic	1	230,000	English	1/2 Page
Canada	Chatelaine (English Edition)	1	697,000	English	1/2 Page
Canada	Chatelaine (French Edition)	1	209,000	French Canadian	1/2 Page
Canada	People Canada	3	183,000	English	Full Page
Canada	Canadian House and Home	1	260,000	English	1/2 Page
Canada	Today's Parent	1	210,000	English	1/2 Page
Canada	The National Post (M-F)	1	248,000	English	1/8 Page
Canada	The National Post (Sat)	1	268,000	English	1/8 Page
Canada	The Globe and Mail (M-F)	1	322,000	English	1/8 Page
Canada	The Globe and Mail (Sat)	1	402,000	English	1/8 Page
Canada	Toronto Sun (M-F)	1	184,000	English	1/4 Page Tab
Canada	Le Journal de Montreal (Mon - Fri)	1	288,000	French Canadian	1/4 Page Tab
Canada	Montreal Gazette	1	139,159	English	1/8 Page
Canada	La Presse	1	202,689	French Canadian	1/8 Page
International	Financial Times**	1	2,609	English	1/8 Page
International	International Herald Tribune**	1	300	English	1/8 Page
<b>Total</b>		<b>34</b>	<b>7,273,725</b>		

\*Circulation figures provided by PWB 2008 Topline Report.

\*\*These publications distribute the listed circulation in Canada.

Target: Business/Cargo

National Canadian Reach: 80%

Average Frequency: 3.9

Source: PWB 2007 Two-Year Readership Database

Secondary Target: Adults

National Canadian Reach: 71%

Average Frequency: 3.5

Source: PWB 2007 Two-Year Readership Database

THE GARDEN CITY GROUP, INC.

Lufthansa

Country	City/Province	Publication	Insertions	% Circulation*	Language	Unit Size**
China	Beijing	Beijing Evening News	2	1,200,000	Simplified Chinese	1/8 Page
China	Beijing	Beijing Youth Daily	2	500,000	Simplified Chinese	1/8 Page
China	Beijing	Beijing Times	2	TBD	Simplified Chinese	1/8 Page
China	Shanghai	Shanghai Evening News	2	1,100,000	Simplified Chinese	1/8 Page
China	Shanghai	Shanghai Morning News	2	80,000	Simplified Chinese	1/8 Page
China	Guangzhou/Guangdong	Guangzhou Daily	2	1,550,000	Simplified Chinese	1/8 Page
China	Shenzhen/Guangdong	Shenzhen Special Zone News	4	450,000	Simplified Chinese	1/8 Page
China	Shenzhen/Guangdong	Shenzhen Commercial News	2	TBD	Simplified Chinese	1/8 Page
China	Shenzhen/Guangdong	Shenzhen Evening News	2	TBD	Simplified Chinese	1/8 Page
China	Shenzhen/Guangdong	Jing Bao	2	TBD	Simplified Chinese	1/8 Page
China	Shijiazhuang/Hebei	Yanzhao Metropolis Daily	3	1,000,000	Simplified Chinese	1/8 Page
China	Tianjin	Tian Jin Daily	1	380,000	Simplified Chinese	1/8 Page
China	Tianjin	Global Times	1	1,800,000	Simplified Chinese	1/8 Page
China	Nanjing/Jiangsu	Yantze Evening News	2	2,000,000	Simplified Chinese	1/8 Page
China	Nanjing/Jiangsu	Modern Express	1	TBD	Simplified Chinese	1/8 Page
China	Shenyang/Liaoning	Liaoshen Evening News	3	828,000	Simplified Chinese	1/8 Page
China	Shenyang/Liaoning	Shenyang Evening News	1	300,000	Simplified Chinese	1/8 Page
China	Fujian/Fuzhou	Shang News	3	550,000	Simplified Chinese	1/8 Page
China	Hangzhou/Zhejiang	Qianjiang Evening News	2	950,000	Simplified Chinese	1/8 Page
China	Hangzhou/Zhejiang	City Express News	2	TBD	Simplified Chinese	1/8 Page
China	Qingdao/Shandong	Qilu Evening News	5	1,450,000	Simplified Chinese	1/8 Page
China	Qingdao/Shandong	Qingdao Daily	5	TBD	Simplified Chinese	1/8 Page
China	Qingdao/Shandong	Qingdao Evening News	5	TBD	Simplified Chinese	1/8 Page
China	Qingdao/Shandong	Qingdao Morning News	5	TBD	Simplified Chinese	1/8 Page
China	International	Time Asia	1	3,882	English	1/2 page
China	International	Newsweek Asia	1	3,358	English	1/2 page
China	International	International Herald Tribune	1	3,891	English	1/8 Page
China	International	Wall Street Journal - Asia	1	5,133	English	1/4 page
China	International	Financial Times	1	1,183	English	1/8 Page
China	International	USA Today - Global	1	1,447	English	1/8 Page
Totale insertions			67			

\*Circulation figures provided by media representatives.  
 \*\*Some Unit Sizes unconfirmed and subject to change.

Primary Target: Business/Cargo  
 Average Reach for above provinces: 71%  
 Average Frequency for above provinces: 2.44  
 Source: CNRS (China National Readership Survey)

Target: Adults  
 Average Reach for above provinces: 56%  
 Average Frequency for above provinces: 2.27  
 Source: CNRS

THE GARDEN CITY GROUP, INC.

Lufthansa

Country	Publication	Insertions	Circulation	Language	Unit Size
France	Paris Match	2	684,056	European French	Full Page
France	Le Monde	2	352,845	European French	1/4 Page
France	Le Parisien + Aujourd'hui	2	342,484	European French	1/8 Page
France	le Figaro	2	321,490	European French	1/4 Page
France	Nouvel Observateur	2	543,696	European French	Full Page
France	L'Equipe	2	365,349	European French	1/8 Page
France	L'Express (FRA)	2	434,715	European French	Full Page
France	Le Point	2	386,780	European French	Full Page
France	Courier International	2	185,941	European French	Full Page
France	Telerama	2	644,217	European French	Full Page
France	Le Monde 2	2	280,289	European French	Full Page
France/International	Time Magazine	1	71,381	English	1/2 Page
France/International	Newsweek	1	44,374	English	1/2 Page
France/International	International Herald Tribune	1	29,721	English	1/8 Page
France/International	The Wall Street Journal - Europe	1	10,008	English	1/8 Page
France/International	Financial Times	1	19,911	English	1/8 Page
France/International	USA Today - Global	1	6,927	English	1/8 Page
<b>Total</b>		<b>28</b>	<b>4,733,084</b>		

\*Circulation figures provided by media representatives.

\*\*Some Unit Sizes unconfirmed and subject to change.

\*\*\*These publications distribute the listed circulation in France.

Primary Target: Business/Cargo

Reach: 70%

Average Frequency: 3.2

Source: Ipsos FCA 2006

Secondary Target: Adults

Reach: 65%

Average Frequency: 3.08

Source: Ipsos FCA 2006



THE GARDEN CITY GROUP, INC.

Lufthansa

Country	Publication	Insertions	Circulation	Language	Unit Size**
Germany	ADAC Motorwelt	1	13,502,993	German	1/2 Page
Germany	Sport Bild	1	542,188	German	1/2 Page
Germany	WELT am SONNTAG	1	780	German	1/8 Page
Germany	Bild am Sonntag	1	1,754,765	German	1/8 Page
Germany	Bunte	1	725,036	German	1/2 Page
Germany	Der Spiegel	1	1,026,199	German	Full Page
Germany	Frankfurter Allgemeine Zeitung (FAZ)	1	315,815	German	1/4 Page
Germany	Focus	1	784,583	German	Full Page
Germany	Stem	1	1,007,345	German	Full Page
Germany	Süddeutsche Zeitung (SZ)	1	424,739	German	1/4 Page
Germany	SUPERillu	1	523,608	German	1/2 Page
Germany	TV Spielfilm Plus	1	1,579,089	German	1/2 Page
Germany/International	Time Magazine - EMEA	1	95,697	English	1/2 Page
Germany/International	Newsweek - EMEA	1	39,640	English	1/2 Page
Germany/International	International Herald Tribune	1	23,315	English	1/8 Page
Germany/International	The Wall Street Journal - Europe	1	14,995	English	1/8 Page
Germany/International	Financial Times	1	28,483	English	1/8 Page
Germany/International	USA Today - Global	1	18,418	English	1/8 Page
Total		18	22,355,316		

\*Circulation figures provided by media representatives.

\*\*Some Unit Sizes unconfirmed and subject to change.

\*\*\*These publications distribute the listed circulation in Germany.

Primary Target: Business/Cargo

Reach: 78%

Average Frequency: 2.6

Source: EBRS 2006

Secondary Target: Adults

Reach: 71%

Average Frequency: 1.9

Source: MA 2007

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- Elm

THE GARDEN CITY GROUP, INC.

Lafayette

Country	Edition	Publication	Issues/Week	Circulation	Language	Classification
India	National	Times of India	1	2,370,972	English	1/8 Page
India	National	Economic Times	1	618,198	English	1/8 Page
India	National	Navbharat Times	1	489,838	Hindi	3/8 Page
India	Delhi Regional Edition	Times of India	1	1,201,126	English	1/8 Page
India	Delhi Regional Edition	Economic Times	1	342,178	English	1/8 Page
India	Delhi Regional Edition	Navbharat Times	1	489,834	Hindi	1/8 Page
India	Delhi Regional Edition	Filmfare Mag	2	29,800	Hindi	Full Page
India	Delhi Regional Edition	Femina Mag	2	28,850	English	Full Page
India	Delhi Regional Edition	Hindustan Times	2	1,186,684	English	1/8 Page
India	Delhi Regional Edition	Hindustan Hindi	2	181,837	Hindi	1/8 Page
India	Delhi Regional Edition	Punjab Kesari	1	824,847	Punjabi	1/8 Page
India	Delhi Regional Edition	Dainik Jagran	2	483,806	Hindi	1/8 Page
India	Mumbai Regional Edition	Times of India	2	588,794	English	1/8 Page
India	Mumbai Regional Edition	Economic Times	1	181,746	English	1/8 Page
India	Mumbai Regional Edition	Navbharat Times	2	185,977	Hindi	1/8 Page
India	Mumbai Regional Edition	Maharashtra Times	3	270,048	Maharashtra	1/8 Page
India	Mumbai Regional Edition	Filmfare Mag	2	38,000	Hindi	Full Page
India	Mumbai Regional Edition	Femina Mag	2	32,000	English	Full Page
India	Mumbai Regional Edition	Mumbai Mirror	1	170,000	English	1/8 Page
India	Mumbai Regional Edition	Hindustan Times	3	130,771	English	1/8 Page
India	Mumbai Regional Edition	Daily News & Analysis	1	140,000	English	3/8 Page
India	Mumbai Regional Edition	Gujarat Samachar	3	205,684	Gujarati	1/8 Page
India	Mumbai Regional Edition	Lokmat	1	215,005	Marathi	1/8 Page
India	Mumbai Regional Edition	Loksatta	2	188,347	Marathi	1/8 Page
India	Mumbai Regional Edition	Midday	2	162,608	English	1/8 Page
India	Mumbai Regional Edition	Navakal	3	165,672	Marathi	1/8 Page
India	Mumbai Regional Edition	Saamana	2	100,854	Marathi	1/8 Page
India/International	EMEA	Time Magazine	1	28,025	English	1/2 Page
India/International	EMEA	Newsweek	1	15,008	English	1/2 Page
India/International	Global	International Herald Tribune	1	1,800	English	1/8 Page
India/International	Asia Edition	The Wall Street Journal	1	644	English	1/8 Page
India/International	Global	Financial Times	1	1,359	English	1/8 Page
India/International	Global	USA Today	1	141	English	1/8 Page
Total			58	11,944,748		

\*Circulation provided by media representatives  
 \*\*Print out sizes and cost will depend on Content of Notice

Reach in Mumbai 85%  
 Average Frequency: 3.08  
 Source: IRG 2007

Target: Adults  
 Reach in Delhi 73%  
 Average Frequency: 2.82

SPR  
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 TIMES I  
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THE GARDEN CITY GROUP, INC.

Lufthansa

Country	Publication	Insertions	Circulation*	Language	Unit Size**
Italy	Focus	1	622,000	Italian	1/2 Page
Italy	Panorama	1	623,000	Italian	1/2 Page
Italy	Donna Moderna	1	514,000	Italian	1/2 Page
Italy	Chi	1	627,000	Italian	1/2 Page
Italy	Il Giornale	1	219,000	Italian	1/4 Page
Italy	Corriere della Sera	1	680,000	Italian	1/4 Page
Italy	La Repubblica	1	629,000	Italian	1/4 Page
Italy	Gazzetta dello Sport	1	373,000	Italian	1/4 Page
Italy	Il Messaggero	1	460,000	Italian	1/4 Page
Italy	La Stampa	1	315,000	Italian	1/4 Page
Italy	Milano Finanza	1	118,873	Italian	1/4 Page
Italy	Il Gazzettino	1	94,209	Italian	1/4 Page
Italy	Il Secolo XIX	1	112,000	Italian	1/4 Page
Italy	Il Sole 24 Ore	1	345,000	Italian	1/4 Page
Italy	Oggi	1	659,278	Italian	1/2 Page
Italy	Gente	1	454,847	Italian	1/2 Page
Italy	Venerdì	1	606,000	Italian	1/2 Page
Italy	L'Espresso	1	365,360	Italian	1/2 Page
Italy/International	Time Magazine - EMEA	1	26,533	English	1/2 Page
Italy/International	Newsweek - EMEA	1	7,782	English	1/2 Page
Italy/International	International Herald Tribune	1	15,049	English	1/8 Page
Italy/International	The Wall Street Journal - Europe	1	10,512	English	1/8 Page
Italy/International	Financial Times	1	9,545	English	1/8 Page
Italy/International	USA Today - Global	1	2,367	English	1/8 Page
<b>Total</b>		<b>24</b>	<b>7,708,936</b>		

\*Circulation figures provided by media representatives.  
 \*\*Some Unit Sizes unconfirmed and subject to change.

Primary Target: Business/Cargo  
 Reach: 96%  
 Average Frequency: 3.41  
 Source: European Business Readership Survey (EBRS) 2006

Secondary Target: Adults  
 Minimum Reach : 55%  
 Average Frequency: 1.8  
 Source: Audipress

THE GARDEN CITY GROUP, INC.

Lufthansa

Country	Publication	Insertions	Circulation	Language	Unit Size
Japan	Nikkei - Morning Edition	1	3,046,876	Japanese	1/8 Page
Japan	Nikkei Business Daily	1	167,445	Japanese	1/8 Page
Japan	Nikkei Marketing Journal	1	248,900	Japanese	1/8 Page
Japan	Nikkei Financial Daily	1	48,300	Japanese	1/8 Page
Japan	Yomiuri Shimbun	1	10,093,216	Japanese	1/8 Page
Japan	Asahi Shimbun	1	8,226,032	Japanese	1/8 Page
Japan	Mainichi	1	3,957,410	Japanese	1/8 Page
Japan	Chunichi Shimbun - Morning Edition	1	2,745,014	Japanese	1/8 Page
Japan	Hokkaido Shimbun - Morning Edition	1	TBD	Japanese	1/8 Page
Japan	Sankei Shimbun - Morning Edition	1	2,086,391	Japanese	1/8 Page
Japan	Nishi Nippon Shimbun - Morning Edition	1	TBD	Japanese	1/8 Page
Japan	Chugoku Shimbun - Morning Edition	1	TBD	Japanese	1/8 Page
Japan/International	Time Asia	1	61,412	English	1/2 page
Japan/International	Newsweek Asia	1	18,011	English	1/2 page
Japan/International	International Herald Tribune	1	25,659	English	1/8 Page
Japan/International	Wall Street Journal - Asia	1	7,884	English	1/4 page
Japan/International	Financial Times	1	8,003	English	1/8 Page
Japan/International	USA Today - Global	1	1,624	English	1/8 Page

Target: Business/Cargo  
 Reach: 94%  
 Frequency: 1.6  
 Source: JERS

Target: Adults  
 Reach: 85.8%  
 Frequency: 1.1  
 Source: J-READ 2006

Shimizu  
 Chugoku  
 Times

THE GARDEN CITY GROUP, INC.

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Country	Publication	Insertions	Circulation*	Language	Unit Size**
Malaysia	The Star	1	189,465	English	1/8 Page
Malaysia	The New Straits Times	1	810,008	English	1/8 Page
Malaysia	Berita Harian	1	2,000	Malay	1/8 Page
Malaysia	Sin Chew Jit Poh	1	885,888	Malay	1/8 Page
Malaysia/International	Time Asia	1	17,302	English	1/2 Page
Malaysia/International	Newsweek Asia	1	20,491	English	1/2 Page
Malaysia/International	International Herald Tribune	1	2,778	English	1/8 Page
Malaysia/International	Wall Street Journal - Global	1	6,067	English	1/8 Page
Malaysia/International	Financial Times	1	1,758	English	1/8 Page
Malaysia/International	USA Today - Global	1	185	English	1/8 Page

\*Circulation figures provided by media representatives.

\*\*Some Unit Sizes unconfirmed and subject to change.

Target: Adults in Kuala Lumpur

Reach: 76%

Average Frequency: 1.6

Source: PAX Fall 2006

THE GARDEN CITY GROUP, INC.

Lufthansa

Country	Publication	Insertions	Circulation	Language	Unit Size
South Korea	Chosun Ilbo	2	2,888,700	Korean	1/8 Page
South Korea	Maeil Business	1	750,000	Korean	1/8 Page
South Korea	DongA Ilbo	2	2,450,000	Korean	1/8 Page
South Korea	JoongAng Ilbo	2	1,850,000	Korean	1/8 Page
South Korea	Korea Economic Daily	1	1,000,000	Korean	1/8 Page
South Korea	Maekyung Economy	1	128,000	Korean	1/8 Page
South Korea	Choojeon Chosun	1	130,000	Korean	1/8 Page
South Korea/International	International Herald Tribune	1	20,033	English	1/8 Page
South Korea/International	Wall Street Journal - Global	1	7,806	English	1/8 Page
South Korea/International	USA Today - Global	1	870	English	1/8 Page

\*Circulation figures provided by media representatives.

\*\*Some Unit Sizes unconfirmed and subject to change.

Target: Adults in Seoul  
 Reach: 69%  
 Average Frequency: 2.9  
 Source: PAX Fall 2006

Chosun Ilbo  
 JoongAng Ilbo  
 DongA Ilbo  
 Korea Economic Daily  
 Maekyung Economy  
 Choojeon Chosun  
 International Herald Tribune  
 Wall Street Journal - Global  
 USA Today - Global

THE GARDEN CITY GROUP, INC.

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Country	Publication	Insertions	Circulation*	%	Language	Unit Size*
Switzerland	Le Matin Dimanche	1	218,024		European French	1/4 Page
Switzerland	24 Heures (ed. Toisale)	1	98,815		European French	1/4 Page
Switzerland	L'Hebdo	1	44,870		European French	1/2 Page
Switzerland	The Top Ticino (combo) - Corriere del Ticino - La Regione Ticino - Giornale del Poceolo	1	88,804		Italian	Jc Page
Switzerland	Blick	1			German	1/4 Page
Switzerland	Facts	1	73,140		German	1/2 Page
Switzerland	Metropolis (combo) - Tages-Anzeiger (Zurich) - Basler Zeitung (Basel) - Basler Zeitung (Basel)	1	557,182		German	Jr. Page
Switzerland	Neue Zürcher Zeitung	1	146,729		German	1/4 Page
Switzerland	Neue Luzerner Zeitung	1	TBD		German	1/4 Page
Switzerland	Sonntags NEZ	1	TBD		German	Jr. Page
Switzerland	SonntagsBlick	1	280,280		German	1/4 Page
Switzerland	SonntagsZeitung	1	201,858		German	1/4 Page
Switzerland/International	Time Magazine - EMEA	1	11,308		English	1/2 Page
Switzerland/International	Newsweek - EMEA	1	4,104		English	1/2 Page
Switzerland/International	International Herald Tribune	1	8,888		English	1/2 Page
Switzerland/International	The Wall Street Journal - Europe	1	4,887		English	1/2 Page
Switzerland/International	Financial Times	1	2,193		English	1/2 Page
Switzerland/International	USA Today - Global	1	1,459		English	1/2 Page
Total		15	1,742,523			

\*Circulation figures provided by media representatives  
\*\*Some Unit Sizes unconfirmed and subject to change.

Primary Target: Business/Corporate  
Reach: 84%  
Average Frequency: 2.8  
Source: BIA Leader

Secondary Target: Adults  
Reach: 70%  
Average Frequency: 1.8  
Source: MACH Basle 2007-1

THE GARDEN CITY GROUP, INC.

Lufthansa

Country	Publication	Insertions	Circulation*	Language	Unit Size**
Taiwan	China Times	3	Traditional Chinese	1,950,000	1/8 Page
Taiwan	United Daily News	1	Traditional Chinese	TBD	1/8 Page
Taiwan	United Evening News	2	Traditional Chinese	TBD	1/8 Page
Taiwan	Commercial Times	1	Traditional Chinese	350,000	1/8 Page
Taiwan	Economic Daily News	1	Traditional Chinese	368,000	1/8 Page
Taiwan	Liberty Times	1	English	TBD	1/8 Page
Taiwan	China Post	1	English	260,000	1/8 Page
Taiwan/International	Time Asia	1	English	12,843	1/2 Page
Taiwan/International	Newsweek Asia	1	English	8,964	1/2 Page
Taiwan/International	International Herald Tribune	1	English	2,951	1/8 Page
Taiwan/International	Wall Street Journal - Global	1	English	4,271	1/8 Page
Taiwan/International	Financial Times	1	English	336	1/8 Page
Taiwan/International	USA Today - Global	1	English	413	1/8 Page

\*Circulation figures provided by media representatives.

\*\*Some Unit Sizes unconfirmed and subject to change.

Target: Adults in Taipei

Reach: 70%

Average Frequency: 2.8

Source: PAX Fall 2006



THE GARDEN CITY GROUP, INC.

Lufthansa

Country	Publication	Sections	Circulation*	Language	Unit Size**
United Kingdom	Daily Mail	2	2,408,001	English	1/8 Page
United Kingdom	The Daily Telegraph	2	984,341	English	1/8 Page
United Kingdom	Financial Times (UK and ROI edition)	1	136,886	English	1/8 Page
United Kingdom	The Times	2	639,847	English	1/8 Page
United Kingdom	The Sunday Times	2	1,397,164	English	1/8 Page
United Kingdom	The Economist	2	170,038	English	Full Page
United Kingdom	The Guardian	2	366,233	English	1/8 Page
United Kingdom	The Sun	2	3,397,472	English	1/8 Page
United Kingdom	Mail on Sunday	2	2,253,460	English	1/8 Page
United Kingdom	News of the World	2	3,306,111	English	1/8 Page
United Kingdom	Radio Times	2	1,070,042	English	Full Page
United Kingdom	What's on TV	2	1,689,621	English	Full Page
United Kingdom/International	Time Magazine - EMEA	1	139,105	English	1/2 Page
United Kingdom/International	Newsweek - EMEA	1	39,339	English	1/2 Page
United Kingdom/International	International Herald Tribune	1	11,042	English	1/8 Page
United Kingdom/International	The Wall Street Journal - Europe	1	16,292	English	1/8 Page
United Kingdom/International	USA Today - Global	1	6,303	English	1/8 Page
<b>Total</b>		<b>28</b>	<b>17,982,971</b>		

\*Circulation figures provided by media representatives.

\*\*Some Unit Sizes unconfirmed and subject to change.

Primary Target: Business/Cargo  
 Reach: 71%  
 Average Frequency: 3.3  
 Source: British Business Survey 2005

Secondary Target: Adults  
 Reach: 66%  
 Average Frequency: 2.8  
 Survey: NRS 2007

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**THE GARDEN CITY GROUP, INC.**

**Lufthansa**

Country	Publication	Insertions	1x Circulation*	Unit Size
United States	Parade	1	32,400,000	2/5 Page
United States	USA Weekend	1	23,442,692	2/5 Page
United States	American Profile	1	9,000,000	1/4 Page
United States	People	2	3,823,604	1/2 Page
United States	Newsweek	1	3,142,281	1/2 Page
United States	Readers Digest	1	10,094,286	Full Page
United States	Jet	1	936,751	Full Page
United States	Vista	1	666,948	1/2 Page
United States	USA Today	1	2,194,787	1/8 Page
United States	Wall Street Journal	1	2,043,235	1/8 Page
United States	New York Times	1	1,086,798	1/8 Page
United States/International	International Herald Tribune	1	4,125	1/8 Page
United States/International	Financial Times	1	136,040	1/8 Page
<b>Magazine Total</b>		<b>14</b>	<b>88,971,547</b>	

\* Source: SRDS March 2007 on line.

**Primary Target: Business/Cargo**  
 National U.S. Reach: 81%  
 Average Frequency: 2.13  
 Source: MRI Doublebase 2006/Business-to-Business

**Secondary Target: Adults**  
 National U.S. Reach: 74%  
 Average Frequency: 1.99  
 Source: MRI Doublebase 2006

*WSJ, NYT and USA Today are included in both reach percentages, but are part of global plan pricing  
 Black Enterprise, Jet, Ebony and Essence are only measured in the Adults 18+ reach.  
 People en Espanol, Vista and RD Selecciones are not measured in either reach program.*

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THE GARDEN CITY GROUP, INC.

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Tier 2

Tier	Country	Publication	Language	Value
Tier 2	Austria	Kurier	German	167,488
Tier 2	Austria	Die Presse	German	84,106
Tier 2	Austria	Der Standard	German	89,874
Tier 2	Austria	Wirtschaftsblat	German	99,480
Tier 2	Austria/International	Time EMEA	English	5,958
Tier 2	Austria/International	Newsweek EMEA	English	4,188
Tier 2	Austria/International	International Herald Tribune	English	5,488
Tier 2	Austria/International	Wall Street Journal/Global	English	2,888
Tier 2	Austria/International	Financial Times	English	4,405
Tier 2	Austria/International	USA Today - Global	English	958
Tier 2	Belgium	Het Nieuwsblad	Dutch	210,887
Tier 2	Belgium	L'Echo	European French	17,882
Tier 2	Belgium	Le Soir	European French	99,154
Tier 2	Belgium	De Standaard	Dutch	82,811
Tier 2	Belgium	De Tijd	Dutch	50,000
Tier 2	Belgium	Geset Van Antwerpen	Dutch	114,119
Tier 2	Belgium/International	Time EMEA	English	13,233
Tier 2	Belgium/International	Newsweek EMEA	English	3,884
Tier 2	Belgium/International	International Herald Tribune	English	3,774
Tier 2	Belgium/International	Wall Street Journal/Global	English	4,832
Tier 2	Belgium/International	Financial Times	English	6,880
Tier 2	Belgium/International	USA Today - Global	English	728
Tier 2	Brazil	O Estado de S. Paulo	Latin American Portuguese	219,828
Tier 2	Brazil	Jornal do Brasil	Latin American Portuguese	115,000
Tier 2	Brazil	O Globo	Latin American Portuguese	252,000
Tier 2	Brazil/International	Newsweek/Latin America	English	27,778
Tier 2	Brazil/International	Financial Times	English	114
Tier 2	Chile	El Mercurio	Latin American Spanish	119,949
Tier 2	Chile	Capital	Latin American Spanish	15,820
Tier 2	Chile	Que Pasa	Latin American Spanish	82,343
Tier 2	Chile	Gestion	Latin American Spanish	26,500
Tier 2	Chile	Exilia	Latin American Spanish	35,000
Tier 2	Chile	Las Ultimas Noticias	Latin American Spanish	198,481
Tier 2	Chile/International	Newsweek/Latin America	English	284
Tier 2	Colombia	El Tiempo	Latin American Spanish	238,511
Tier 2	Colombia	Portafolio	Latin American Spanish	49,000
Tier 2	Colombia	Diario	Latin American Spanish	94,500
Tier 2	Colombia	Semana	Latin American Spanish	191,700
Tier 2	Colombia	Nesocio Inteligente	Latin American Spanish	58,000
Tier 2	Colombia/International	Newsweek/Latin America	English	1,458
Tier 2	Colombia/International	Financial Times	English	12
Tier 2	Egypt	Al Ahram	Arabic	1,261,200
Tier 2	Egypt	Akbar Daily	Arabic	1,331,300
Tier 2	Egypt	Al Basha	Arabic	25,000
Tier 2	Egypt/International	Time EMEA	English	1,058
Tier 2	Egypt/International	International Herald Tribune	English	827
Tier 2	Egypt/International	Wall Street Journal/Global	English	88
Tier 2	Egypt/International	Financial Times	English	301
Tier 2	Egypt/International	USA Today - Global	English	85
Tier 2	Hong Kong/China	Hong Kong Oriental News	Traditional Chinese	400,000
Tier 2	Hong Kong/China	South China Morning Post	English	113,881
Tier 2	Hong Kong/China	Sing Tao Daily	Traditional Chinese	109,000
Tier 2	Hong Kong/China	Apple Daily	Traditional Chinese	340,000
Tier 2	Hong Kong/China	Yeehou Zhoukan (newsworthy)	Traditional Chinese	72,880
Tier 2	Hong Kong/China	Ming Pao Daily	Traditional Chinese	128,000
Tier 2	Hong Kong/China/International	Time Asia	English	45,738
Tier 2	Hong Kong/China/International	Newsweek Asia	English	25,792
Tier 2	Hong Kong/China/International	International Herald Tribune	English	10,678
Tier 2	Hong Kong/China/International	Wall Street Journal/Global	English	13,228
Tier 2	Hong Kong/China/International	Financial Times	English	6,332
Tier 2	Hong Kong/China/International	USA Today - Global	English	5,888
Tier 2	Ireland	Irish Times	English	116,102
Tier 2	Ireland	Irish Times Saturday	English	118,000
Tier 2	Ireland	Irish Times Magazine	English	118,000
Tier 2	Ireland	Irish Independent	English	169,588
Tier 2	Ireland	Irish Examiner	English	80,229
Tier 2	Ireland/International	Time EMEA	English	14,957
Tier 2	Ireland/International	Wall Street Journal/Global	English	888
Tier 2	Ireland/International	Financial Times	English	4,188
Tier 2	Ireland/International	USA Today - Global	English	778
Tier 2	Israel	Yeshet Aronah	Hebrew	880,000
Tier 2	Israel	Me'Ariv	Hebrew	285,000

THE GARDEN CITY GROUP, INC.

Lithuania

Tier 2

Tier 2	Israel	Ha'aretz/International Herald Tribune	Hebrew/English	332,000
Tier 2	Israel	The Jerusalem Post	English	78,000
Tier 2	Israel/International	Newsweek EMEA	English	6,780
Tier 2	Israel/International	International Herald Tribune	English	7,501
Tier 2	Israel/International	Wall Street Journal/Global	English	191
Tier 2	Israel/International	Financial Times	English	175
Tier 2	Israel/International	USA Today - Global	English	88
Tier 2	Mexico	Reforma**	Latin American Spanish	146,704
Tier 2	Mexico	El Universal	Latin American Spanish	152,475
Tier 2	Mexico	Die Siete	Latin American Spanish	812,000
Tier 2	Mexico	Esto	Latin American Spanish	528,000
Tier 2	Mexico/International	Financial Times	English	237
Tier 2	Netherlands	The Netherlands Group	Dutch	1,000,000
Tier 2	Netherlands	De Telegraaf	Dutch	867,204
Tier 2	Netherlands	Algemeen Dagblad	Dutch	622,650
Tier 2	Netherlands	De Volkskrant	Dutch	249,637
Tier 2	Netherlands	NRC Handelsblad	Dutch	208,068
Tier 2	Netherlands	Het Financieel Dagblad	Dutch	59,208
Tier 2	Netherlands/International	Time EMEA	English	12,551
Tier 2	Netherlands/International	Newsweek EMEA	English	3,492
Tier 2	Netherlands/International	International Herald Tribune	English	7,810
Tier 2	Netherlands/International	Wall Street Journal/Global	English	6,370
Tier 2	Netherlands/International	Financial Times	English	8,552
Tier 2	Netherlands/International	USA Today - Global	English	4,200
Tier 2	Peru	El Comercio**	Latin American Spanish	80,000
Tier 2	Peru	Gestión	Latin American Spanish	22,000
Tier 2	Peru	Peru 21	Latin American Spanish	76,000
Tier 2	Peru/International	Newsweek/Latin America	English	443
Tier 2	Peru/International	Financial Times	English	8
Tier 2	Portugal	Diário de Notícias	European Portuguese	68,000
Tier 2	Portugal	Jornal de Notícias	European Portuguese	67,192
Tier 2	Portugal	Público	European Portuguese	52,210
Tier 2	Portugal	Expresso	European Portuguese	138,327
Tier 2	Portugal	Correio Da Manhã	European Portuguese	181,508
Tier 2	Portugal	Diário Económico	European Portuguese	12,287
Tier 2	Portugal/International	Time EMEA	English	7,625
Tier 2	Portugal/International	Newsweek EMEA	English	1,850
Tier 2	Portugal/International	International Herald Tribune	English	688
Tier 2	Portugal/International	Wall Street Journal/Global	English	252
Tier 2	Portugal/International	Financial Times	English	2,976
Tier 2	Portugal/International	USA Today - Global	English	704
Tier 2	Russia	Argumenty i Fakty (Russian Edition)	Russian	6,680,000
Tier 2	Russia	Delovoye Pritozhshure	Russian	28,000
Tier 2	Russia	Kommersant Daily (national ed.)	Russian	117,340
Tier 2	Russia	Vedomosti	Russian	68,700
Tier 2	Russia/International	Newsweek EMEA	English	1,088
Tier 2	Russia/International	Wall Street Journal/Global	English	150
Tier 2	Russia/International	Financial Times	English	1,219
Tier 2	Russia/International	USA Today - Global	English	734
Tier 2	Singapore	The Straits Times	English	401,000
Tier 2	Singapore	The Business Times	English	28,583
Tier 2	Singapore	Lianhe Zaobao	Traditional Chinese	211,000
Tier 2	Singapore/International	Time Asia	English	98,528
Tier 2	Singapore/International	Newsweek Asia	English	22,019
Tier 2	Singapore/International	International Herald Tribune	English	9,844
Tier 2	Singapore/International	Wall Street Journal/Global	English	11,988
Tier 2	Singapore/International	Financial Times	English	7,228
Tier 2	Singapore/International	USA Today - Global	English	1,348
Tier 2	South Africa	Budget Times	English	56,285
Tier 2	South Africa	The Star	English	180,000
Tier 2	South Africa	Rapport	Afrikaans	388,702
Tier 2	South Africa	De Persbode	English	75,194
Tier 2	South Africa	Daily News	English	84,870
Tier 2	South Africa	Die Volksblad	Afrikaans	81,828
Tier 2	South Africa	Daily Dispatch	English	81,918
Tier 2	South Africa/International	Time EMEA	English	55,748
Tier 2	South Africa/International	Newsweek EMEA	English	4,935
Tier 2	South Africa/International	Wall Street Journal/Global	English	16
Tier 2	South Africa/International	Financial Times	English	4,094
Tier 2	South Africa/International	USA Today - Global	English	7
Tier 2	Spain	El País	European Spanish	365,018
Tier 2	Spain	El Mundo	European Spanish	300,830
Tier 2	Spain	NRC	European Spanish	242,712
Tier 2	Spain	La Vanguardia	European Spanish	194,308

THE GARDEN CITY GROUP, INC.

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Tier 2

Tier 2	Spain	Cinco Dias	European Spanish	180,000
Tier 2	Spain/International	Time EMEA	English	13,250
Tier 2	Spain/International	Newsweek EMEA	English	8,285
Tier 2	Spain/International	International Herald Tribune	English	6,510
Tier 2	Spain/International	Wall Street Journal/Global	English	5,492
Tier 2	Spain/International	Financial Times	English	5,163
Tier 2	Spain/International	USA Today - Global	English	837
Tier 2	Sweden	Aftonbladet	Swedish	416,500
Tier 2	Sweden	Dagens Nyheter (Stockholm)	Swedish	381,800
Tier 2	Sweden	Expressen	Swedish	328,500
Tier 2	Sweden	Golloborgs Posten	Swedish	242,700
Tier 2	Sweden	Svenska Dagbladet	Swedish	194,800
Tier 2	Sweden/International	Time EMEA	English	17,443
Tier 2	Sweden/International	Newsweek EMEA	English	4,057
Tier 2	Sweden/International	International Herald Tribune	English	2,877
Tier 2	Sweden/International	Wall Street Journal/Global	English	541
Tier 2	Sweden/International	Financial Times	English	4,825
Tier 2	Sweden/International	USA Today - Global	English	228
Tier 2	Thailand	Thai Rath	Thai	1,000,000
Tier 2	Thailand	Khao Sod	Thai	800,000
Tier 2	Thailand	Bangkok Post	English	TBD
Tier 2	Thailand/International	Time Asia	English	71,897
Tier 2	Thailand/International	Newsweek Asia	English	11,859
Tier 2	Thailand/International	International Herald Tribune	English	8,072
Tier 2	Thailand/International	Wall Street Journal/Global	English	7,115
Tier 2	Thailand/International	Financial Times	English	408
Tier 2	Thailand/International	USA Today - Global	English	879
Tier 2	Turkey	Hürriyet	Turkish	580,000
Tier 2	Turkey	Sabah	Turkish	100,000
Tier 2	Turkey	Dunya	Turkish	45,000
Tier 2	Turkey/International	Time EMEA	English	2,842
Tier 2	Turkey/International	Newsweek EMEA	English	3,498
Tier 2	Turkey/International	International Herald Tribune	English	601
Tier 2	Turkey/International	Wall Street Journal/Global	English	529
Tier 2	Turkey/International	Financial Times	English	826
Tier 2	Turkey/International	USA Today - Global	English	127

Tier 3

Tier 3	Argentina	La Nacion*	Latin American Spanish	168,897
Tier 3	Argentina/International	Newsweek/Latin America	English	254
Tier 3	Argentina/International	Financial Times	English	83
Tier 3	Australia	Sunday Telegraph	English	654,072
Tier 3	Australia	The Sunday Herald-Sun (Melbourne)	English	518,000
Tier 3	Australia	Sunday Mail (Brisbane)	English	TBD
Tier 3	Australia/International	Time/South Pacific	English	79,262
Tier 3	Australia/International	International Herald Tribune	English	95
Tier 3	Australia/International	Wall Street Journal/Global	English	207
Tier 3	Australia/International	Financial Times	English	2,988
Tier 3	Australia/International	USA Today - Global	English	148
Tier 3	Cambodia	Phnom Penh Post	English	5,000
Tier 3	Czech Republic	Pravda	Czech	448,828
Tier 3	Czech Republic/International	Time EMEA	English	1,018
Tier 3	Czech Republic/International	Newsweek EMEA	English	1,451
Tier 3	Czech Republic/International	International Herald Tribune	English	2,322
Tier 3	Czech Republic/International	Wall Street Journal/Global	English	218
Tier 3	Czech Republic/International	Financial Times/Europe	English	2,289
Tier 3	Czech Republic/International	USA Today - Global	English	540
Tier 3	Denmark	Berlingske Tidende	Danish	166,178
Tier 3	Denmark/International	Time EMEA	English	6,434
Tier 3	Denmark/International	Newsweek EMEA	English	3,145
Tier 3	Denmark/International	International Herald Tribune	English	4,394
Tier 3	Denmark/International	Wall Street Journal/Global	English	800
Tier 3	Denmark/International	Financial Times	English	3,371
Tier 3	Denmark/International	USA Today - Global	English	879
Tier 3	Ecuador	El Comercio*	Latin American Spanish	93,800
Tier 3	Ecuador/International	Newsweek/Latin America	English	289
Tier 3	Ecuador/International	Financial Times	English	2
Tier 3	Ethiopia	The Ethiopian Herald	English	7,000
Tier 3	Ethiopia/International	Newsweek	English	302
Tier 3	Finland	Siltuhti-Sanomalehti	Finnish	532,367
Tier 3	Finland/International	Time EMEA	English	7,828
Tier 3	Finland/International	Newsweek EMEA	English	2,780

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THE GARDEN CITY GROUP, INC.

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Tier 3	Finland/International	International Herald Tribune	English	1,169
Tier 3	Finland/International	Wall Street Journal/Global	English	140
Tier 3	Finland/International	Financial Times	English	2,773
Tier 3	Finland/International	USA Today - Global	English	84
Tier 3	Greece	To Vima	Greek	227,072
Tier 3	Greece/International	Time EMEA	English	9,300
Tier 3	Greece/International	Newsweek EMEA	English	2,826
Tier 3	Greece/International	International Herald Tribune	English	4,180
Tier 3	Greece/International	Wall Street Journal/Global	English	316
Tier 3	Greece/International	Financial Times	English	1,001
Tier 3	Greece/International	USA Today - Global	English	456
Tier 3	Guatemala	Signo Veintiuno**	Latin American Spanish	27,000
Tier 3	Guatemala/International	Newsweek Latin America	English	217
Tier 3	Hungary	Metro	Hungarian	302,000
Tier 3	Hungary/International	Time EMEA	English	1,289
Tier 3	Hungary/International	Newsweek EMEA	English	2,801
Tier 3	Hungary/International	International Herald Tribune	English	894
Tier 3	Hungary/International	Wall Street Journal/Global	English	280
Tier 3	Hungary/International	Financial Times	English	1,078
Tier 3	Hungary/International	USA Today - Global	English	247
Tier 3	Indonesia/Alakata	Korinas	Bahasa Indonesia	500,000
Tier 3	Indonesia/Alakata/International	Time Asia	English	5,032
Tier 3	Indonesia/Alakata/International	Newsweek Asia	English	5,088
Tier 3	Indonesia/Alakata/International	International Herald Tribune	English	3,817
Tier 3	Indonesia/Alakata/International	Wall Street Journal/Global	English	5,173
Tier 3	Indonesia/Alakata/International	Financial Times	English	121
Tier 3	Kenya	Daily Nation	English	220,000
Tier 3	Kenya/International	Time EMEA	English	2,041
Tier 3	Kenya/International	Newsweek EMEA	English	1,808
Tier 3	Kenya/International	Financial Times	English	54
Tier 3	Kenya/International	USA Today - Global	English	6
Tier 3	Luxembourg	Luxemburger Wort	German	85,118
Tier 3	Luxembourg/International	Newsweek EMEA	English	502
Tier 3	Luxembourg/International	International Herald Tribune	English	721
Tier 3	Luxembourg/International	Wall Street Journal/Global	English	387
Tier 3	Luxembourg/International	Financial Times	English	1,444
Tier 3	Luxembourg/International	USA Today - Global	English	85
Tier 3	Mauritius	Le Mauricien	French	30,000
Tier 3	Mauritius/International	Time EMEA	English	822
Tier 3	Mauritius/International	Newsweek EMEA	English	1,909
Tier 3	Mauritius/International	Financial Times	English	88
Tier 3	New Zealand	Dominion Post	English	98,328
Tier 3	New Zealand	New Zealand Herald	English	185,981
Tier 3	New Zealand/International	Financial Times	English	71
Tier 3	New Zealand/International	Time EMEA	English	28,569
Tier 3	New Zealand/International	Wall Street Journal/Global	English	10
Tier 3	Nicaragua	La Prensa**	Latin American Spanish	36,888
Tier 3	Nicaragua/International	Newsweek Latin America	English	128
Tier 3	Nicaragua/International	Financial Times	English	1
Tier 3	Nigeria	The Guardian	English	120,000
Tier 3	Nigeria/International	Time EMEA	English	2,788
Tier 3	Nigeria/International	Newsweek EMEA	English	1,228
Tier 3	Nigeria/International	Wall Street Journal/Global	English	9
Tier 3	Nigeria/International	Financial Times	English	40
Tier 3	Norway	Aftenposten	Norwegian	248,503
Tier 3	Norway/International	Time EMEA	English	12,198
Tier 3	Norway/International	Newsweek EMEA	English	3,329
Tier 3	Norway/International	International Herald Tribune	English	1,128
Tier 3	Norway/International	Wall Street Journal/Global	English	848
Tier 3	Norway/International	Financial Times	English	1,477
Tier 3	Norway/International	USA Today - Global	English	48
Tier 3	Pakistan	Dawn	English	194,000
Tier 3	Pakistan	News - I-Want	Urdu	575,000
Tier 3	Pakistan/International	Time Asia	English	10,714
Tier 3	Pakistan/International	Newsweek Asia	English	7,885
Tier 3	Pakistan/International	International Herald Tribune	English	117
Tier 3	Pakistan/International	Wall Street Journal/Global	English	47
Tier 3	Pakistan/International	Financial Times	English	37
Tier 3	Panama	La Prensa**	Latin American Spanish	36,900
Tier 3	Panama	Financial Times	English	3
Tier 3	Panama/International	Newsweek Latin America	English	288
Tier 3	Philippines	Manila Bulletin	English	250,000
Tier 3	Philippines/International	Time Asia	English	34,197

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Tier 2

Tier 2	Philippines/International	Newsweek Asia	English	22,178
Tier 2	Philippines/International	International Herald Tribune	English	8,493
Tier 2	Philippines/International	Wall Street Journal/Global	English	9,881
Tier 2	Philippines/International	Financial Times	English	314
Tier 2	Philippines/International	USA Today - Global	English	808
Tier 2	Poland	Gazeta Wyborcza	Polish	470,000
Tier 2	Poland/International	Time EMEA	English	2,746
Tier 2	Poland/International	Newsweek EMEA	English	4,498
Tier 2	Poland/International	International Herald Tribune	English	375
Tier 2	Poland/International	Wall Street Journal/Global	English	1,678
Tier 2	Poland/International	Financial Times	English	1,667
Tier 2	Poland/International	USA Today - Global	English	108
Tier 2	Romania	Evenimentul Zilei	Romanian	71,621
Tier 2	Romania/International	Time EMEA	English	408
Tier 2	Romania/International	Newsweek EMEA	English	485
Tier 2	Romania/International	International Herald Tribune	English	105
Tier 2	Romania/International	Wall Street Journal/Global	English	81
Tier 2	Romania/International	Financial Times	English	660
Tier 2	Romania/International	USA Today - Global	English	12
Tier 2	Saudi Arabia	Asbahi Al Awwat	Arabic	243,482
Tier 2	Saudi Arabia/International	Time EMEA	English	1,251
Tier 2	Saudi Arabia/International	Newsweek EMEA	English	1,224
Tier 2	Saudi Arabia/International	International Herald Tribune	English	149
Tier 2	Saudi Arabia/International	Wall Street Journal/Global	English	68
Tier 2	Saudi Arabia/International	Financial Times	English	85
Tier 2	Saudi Arabia/International	USA Today - Global	English	39
Tier 2	Sri Lanka	Sunday Lankadeepa	Sinhala	325,600
Tier 2	Sri Lanka/International	Time Asia	English	4,120
Tier 2	Sri Lanka/International	Newsweek Asia	English	1,274
Tier 2	Sri Lanka/International	International Herald Tribune	English	106
Tier 2	Sri Lanka/International	Wall Street Journal/Global	English	55
Tier 2	Uganda	Naw Vision	English	45,000
Tier 2	Uganda/International	Newsweek EMEA	English	80
Tier 2	United Arab Emirates	Khalef Times	English	150
Tier 2	United Arab Emirates	Al Bayan	Arabic	100,000
Tier 2	United Arab Emirates/International	Time EMEA	English	2,059
Tier 2	United Arab Emirates/International	Newsweek EMEA	English	821
Tier 2	United Arab Emirates/International	Wall Street Journal/Global	English	248
Tier 2	United Arab Emirates/International	Financial Times	English	1,497
Tier 2	United Arab Emirates/International	USA Today - Global	English	109
Tier 2	Venezuela	El Nacional	Latin American Spanish	65,000
Tier 2	Venezuela/International	Newsweek Latin America	English	1,734
Tier 2	Vietnam	Hanoi Nhan Dan	Vietnamese	80,000
Tier 2	Vietnam/International	Time Asia	English	743
Tier 2	Vietnam/International	Newsweek Asia	English	2,812
Tier 2	Vietnam/International	Wall Street Journal/Global	English	279
Tier 2	Vietnam/International	Financial Times	English	65

<sup>1</sup>Source: SPOB and other newspapers

<sup>2</sup>The No. 100 list is published by the Wall Street Journal America.

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Country	Publication	Issues	Circulation*	Language	Unit Size
International	Time (EMEA Edition-Incl. Latin America)	1	525,000	English	1/2 Page
International	Time (Asia Edition)	1	280,000	English	1/2 Page
International	Time (South Pacific)	1	114,337	English	1/2 Page
International	Newsweek (EMEA, Asia and Latin America editions)	1	572,402	English	1/2 Page
U.S./International	Wall Street Journal (Global) Tu, Th & Fr	1	1,881,942	English	1/8 Page (US) 1/4 Page (Int'l)
U.S./International	Wall Street Journal Americas**	1	1,230,171	Spanish/Latin American Portuguese	1/4 Page
U.S./International	NY Times/Int'l Herald Tribune combo	1	1,328,980	English	1/8 Page
U.S./International	Financial Times (World Edition)	1	447,108	English	1/8 Page
U.S./International	USA Today (Global: US, Europe, Asia) (Mon-Thurs)	1	2,254,787	English	1/8 Page
Germany/International	Lufthansa Magazin	1	320,000	European German/English	1/2 Page
Germany/International	Lufthansa Exclusive	1	280,000	European German	1/2 Page
<b>Total</b>		<b>11</b>	<b>9,234,727</b>		

\* Source: SRDS March 2007 on line.

\*\*Notice will run in the following countries: Argentina, Brazil, Chile, Colombia, Ecuador, Guatemala, Mexico, Nicaragua, Panama, Peru, Venezuela

NOTE: U.S. edition of Newsweek is included on the US chart.



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**Trade/Business Internet Websites**

Website	URL	Language	Estimated Impressions	Unit Size
Quick Caller Online	<a href="http://www.quickcalleronline.com">www.quickcalleronline.com</a>	English	TBD	728 x 90 Banner
The International Air Cargo Association	<a href="http://www.tiaca.com">www.tiaca.com</a>	English	TBD	468 x 60 Banner

**U.S. Websites**

Website	URL	Language	Estimated Impressions	Unit Size
AOL	<a href="http://www.aol.com">www.aol.com</a>	English	6,666,667	728 x 90 Banner
Weather	<a href="http://www.weather.com">www.weather.com</a>	English	1,250,000	300 x 250 Banner
<b>Total</b>			<b>7,916,667</b>	

\* Impressions cannot be assumed, dependant on how many times a Keyword is entered during the campaign.



**ONTARIO  
SUPERIOR COURT OF JUSTICE**

Proceeding commenced at London

Proceeding under the *Class Proceedings Act, 1992*

**ORDER  
Customer Lists**

**Siskinds LLP**  
Barristers & Solicitors  
680 Waterloo Street  
London, ON N6A 3V8

Charles M. Wright LSUC #: 36599Q  
Tel: (519) 672-2121  
Fax: (519) 672-6065

Solicitors for the Plaintiff

**NOTICE OF SETTLEMENT APPROVAL HEARING  
IN THE CANADIAN AIR CARGO PRICE-FIXING CLASS ACTIONS**

**Please read this notice carefully. It may affect your legal rights.**

**A. WHO IS AFFECTED BY THIS NOTICE?**

This notice affects anyone 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 during the period from January 1, 2000 to September 11, 2006, and have not already excluded themselves from the class actions (the "Settlement Class" or "Settlement Class Members").

Airfreight Shipping Services means airfreight cargo shipping services for shipments within, to, or from Canada, but excludes airfreight shipping services for shipments:

- a) with an origin point in Canada and a destination point in the United States; or
- b) with an origin point in the United States and a destination point in Canada,

but includes airfreight cargo shipping services in which the freight:

- c) travelled by truck from Canada to the United States, and then by air from the United States to a third country; or
- d) travelled by air from a third country to the United States, and then by truck from the United States to Canada.

**B. WHAT IS A CLASS ACTION?**

A class action is a lawsuit filed by one person on behalf of a large group of people.

**C. WHAT ARE THESE CLASS ACTIONS ABOUT?**

Class action lawsuits were commenced in Ontario, British Columbia and Quebec alleging that the Defendants participated in an unlawful conspiracy to fix prices of Airfreight Shipping Services from January 1, 2000 to September 11, 2006.

The Ontario action was certified as a national class proceeding in 2015. As a result, Class Counsel agreed to actively pursue the litigation in Ontario. Pending the outcome of the Ontario action, the Quebec action has been stayed and the parties have agreed not to litigate in British Columbia.

Previous settlements were reached with twelve groups of defendants and the related settlement funds have been distributed to Settlement Class Members. For information about those settlements, visit [www.aircargosettlement2.com](http://www.aircargosettlement2.com).

#### **D. WHAT NEW SETTLEMENTS HAVE BEEN REACHED IN THE CLASS ACTIONS?**

Settlements were reached with British Airways PLC (“British Airways”) and Air Canada. The settlements are subject to court approval. If approved, the settlements will resolve the litigation in its entirety.

Under the terms of their settlement agreements, British Airways agreed to pay CAD\$9,000,000 and Air Canada agreed to pay CAD\$7,000,000 in exchange for a full release of the claims against them relating to the alleged price-fixing of Airfreight Shipping Services. The settlement funds will be paid in three installments over the period from 15 October 2020 to 15 October 2021. British Airways also agreed to provide cooperation to the plaintiffs.

The settlements represent a resolution of the disputed claims. British Airways and Air Canada do not admit and expressly deny any wrongdoing or liability.

Copies of the settlement agreements are available at [www.aircargosettlement2.com](http://www.aircargosettlement2.com).

#### **E. WHAT SHOULD I KNOW ABOUT THE APPROVAL HEARINGS?**

Both settlements must be approved by the Ontario court. The Air Canada settlement must also be approved by the British Columbia and Quebec courts. At the approval hearings, the courts will determine whether the settlements are fair, reasonable, and in the best interests of Settlement Class Members.

Class Counsel’s legal fees and disbursements must also be approved by the courts. Class Counsel will collectively be requesting that legal fees of up to 25% of the British Airways and Air Canada settlement funds, plus disbursements and applicable taxes, be approved and paid out of the settlement funds.

The Ontario and British Columbia approval motions will take place jointly by video conference on May 21, 2021 at 11:00 a.m. PST / 2:00 p.m. EST. The Quebec approval hearing is scheduled for June 8, 2021 at 2:00 p.m. EST.

#### **F. PROPOSED DISTRIBUTION OF THE SETTLEMENT FUNDS**

Previous settlements were reached with 12 groups of defendants. In 2019, those settlement funds were distributed to eligible Settlement Class Members, less fees, disbursements and a litigation reserve fund.

At the approval motions, the courts will also be asked to approve a second protocol for distributing the current Net Settlement Funds to Settlement Class Members. The Net Settlement Funds include (i) the British Airways and Air Canada settlement amounts, less approved legal fees and expenses; (ii) residual settlement funds from the first distribution; and (iii) the remainder of the litigation reserve fund.

The Net Settlement Funds will be distributed in the same manner as in the first distribution. The following is a summary of the proposed distribution. A copy of the proposed distribution protocol is available at [www.aircargosettlement2.com](http://www.aircargosettlement2.com).

### **Persons Eligible to Claim**

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

### Distribution of Settlement Funds

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 a Settlement Class Member's Eligible Airfreight Shipping Services Purchases as against the value of all claimants' Eligible Airfreight Shipping Services Purchases.

To calculate Eligible Airfreight Shipping Services Purchases, Settlement Class Members will be categorized based on their position in the distribution chain and the following percentages will be applied their Airfreight Shipping Services Purchases. Settlement Class Members may fall into more than one category.

Purchaser Type	Description	Percentage
Direct Purchaser Shippers	Settlement Class Members who purchased Airfreight Shipping Services direct from an air cargo carrier, for shipments by that Settlement Class Member.	100%
Shippers	Settlement Class Members who purchased Airfreight Shipping Services from a Freight Forwarder.	75%
Freight Forwarders	Settlement Class Members who purchased Airfreight Shipping Services direct from an air cargo carrier, for resale to Shippers.	25%
Freight Forwarders who provided customer information in the first distribution		35%

### Sample Calculation

If a Settlement Class Member purchased \$10,000 of Airfreight Shipping Services directly from an air cargo carrier and \$20,000 of Airfreight Shipping Services from a Freight Forwarder, its Eligible Airfreight Shipping Services Purchases for the purposes of determining its *pro rata* share of the Net Settlement Funds would be calculated as follows:

- d)  $\$10,000 \times 1.00$  (representing the categorization of the purchaser as a Direct Purchaser Shipper) = \$10,000;
- e)  $\$20,000 \times .75$  (representing the categorization of the purchaser as a Shipper) = \$15,000;
- f)  $\$10,000 + \$15,000 = \$25,000$ .

Assuming all valid claims totalled \$100 million, this Settlement Class Member would be entitled to 0.025% of the Net Settlement Funds.

### **Persons Who Claimed in the First Distribution**

Persons who were issued payment in the first distribution (“Original Claimants”) will be able to rely on information provided in their previous claim form, but will be required to confirm their contact information and provide a statement of release.

Original Claimants who were issued a minimum payment of \$20 in the first distribution, notwithstanding that their *pro rata* entitlement was less than \$20, will have to account for the excess payment in this distribution. For example, if the Original Claimant’s *pro rata* entitlement under the First Distribution was \$15, but the Original Claimant was paid \$20, and the Original Claimant’s *pro rata* entitlement under the Second Distribution is \$30, the Original Claimant will only be paid an additional \$25.

### **Minimum Payments**

Subject to further order of the Ontario Court, all valid Claims will be assigned a minimum value of \$20. However, if the *pro rata* distribution would result in a payment of less than \$10 to an Original Claimant, no additional payment will be issued to that claimant.

### **Filing a Claim**

Another notice will be provided regarding the process for applying to receive settlement funds. In the interim, you should keep copies of all relevant records.

### **Residual Funds**

To the extent that the full Net Settlement Funds are not paid out due to uncashed cheques, residual interest or otherwise, subject to further Order of the court, such monies shall be paid to Pro Bono Canada if the amount is equal or less than \$10,000, less any amounts payable to the Quebec Fonds d’aide aux actions collectives. For distribution of any amount above \$10,000, further direction of the court shall be sought.

## **G. WHAT ARE MY OPTIONS?**

You do not have to do anything to stay in the class action. The time to opt-out (exclude yourself) from the class action has already expired. Settlement Class Members who have not opted-out will be bound by the settlement agreements and any court orders in the class actions.

If you want to object to the proposed settlements, fee request or distribution protocol at the approval hearings, you must send a letter to Class Counsel at the addressed listed below, postmarked no later than May 11, 2021

You may (but do not need to) attend the settlement approval hearing. If you want to attend the hearing, please contact Class Counsel for additional details.



## H. WHO ARE LAWYERS WORKING ON THESE CLASS ACTIONS AND HOW ARE THEY PAID?

The following law firms represent Settlement Class Members and are available to answer questions about the proposed settlement:

Settlement Class Members outside British Columbia and Quebec:

- 1-800-461-6166
- [aircargo@siskinds.com](mailto:aircargo@siskinds.com)
- Siskinds LLP, 680 Waterloo Street, London, ON, N6A 3V8, Canada, Attn: Charles Wright.

British Columbia Settlement Class Members:

- (604) 689-7555
- [djones@cfmlawyers.ca](mailto:djones@cfmlawyers.ca)
- Camp Fiorante Matthews Mogerman LLP, #400 - 856 Homer Street, Vancouver, BC, V6B 2W5, Attn: David Jones.

Quebec Settlement Class Members:

- (514) 846-0666
- [moe@liebmanlegal.com](mailto:moe@liebmanlegal.com)
- Liebman Legal Inc., 1 Westmount Square #350, Montreal, QC, H3Z 2P9, Attn: Moe F. Liebman.

**You do not have to pay the lawyers working on these class actions any money.** The lawyers will be paid from the money collected in the class actions. The courts will be asked to decide how much the lawyers will be paid.

## I. WHAT IF I HAVE MORE QUESTIONS?

For more information, and relevant documents (including copies of the settlement agreements and proposed distribution protocol) please visit [www.aircargosettlement2.com](http://www.aircargosettlement2.com).

# Did you purchase Airfreight Shipping Services between January 2000 and September 2006?

If so, you could be affected by proposed class action settlements.



## What is this litigation about?

Class actions were commenced in Canada alleging an unlawful conspiracy to fix prices for Airfreight Shipping Services. Airfreight Shipping Services are air cargo shipments to/from Canada (except to/from the United States) between January 2000 and September 2006 (see the long-form notice at [www.aircargosettlement2.com](http://www.aircargosettlement2.com) for the full definition).

## What settlements have been reached?

Settlements were reached with British Airways PLC ("British Airways") and Air Canada. Both settlements are subject to court approval. If approved, the settlements will resolve the litigation in its entirety.

Under the terms of their settlement agreements, British Airways agreed to pay CAD\$9,000,000 and Air Canada agreed to pay CAD\$7,000,000. The settlement funds will be paid in three installments over the period from 15 October 2020 to 15 October 2021.

The settlements represent a resolution of disputed claims and are not an admission of liability or wrongdoing and British Airways or Air Canada expressly deny any liability or wrongdoing.

## What should I know about the approval hearings?

Both settlements must be approved by the Ontario court. The Air Canada settlement must also be approved by the British Columbia and Quebec courts. At the approval hearings, the courts will determine whether the settlements are fair, reasonable, and in the best interests of Settlement Class Members.

Class Counsel's legal fees and disbursements must also be approved by the courts. Class Counsel will request that legal fees of up to 25% of the British Airways and Air Canada settlement funds, plus disbursements and applicable taxes, be approved and paid out of the settlement funds.

The Ontario and British Columbia approval motions will take place jointly by video conference on May 21, 2021 at 11:00 a.m. PST / 2:00 p.m. EST. The Quebec approval hearing is scheduled for June 8, 2021 at 2:00 p.m. EST.

## How will the settlement funds be distributed?

Previous settlements were reached with 12 groups of defendants. In 2019, those settlement funds were distributed to eligible Settlement Class Members, less fees, disbursements and a litigation reserve fund.

At the approval motion, the courts will also be asked to approve a second protocol for distributing the Net Settlement Funds to Settlement Class Members. The Net Settlement Funds include (i) the British Airways and Air Canada settlement amounts, less approved legal fees and expenses; (ii) residual settlement funds from the first distribution; and (iii) the remainder of the litigation reserve fund. A copy of the proposed distribution protocol is available at [www.aircargosettlement2.com](http://www.aircargosettlement2.com).

The Net Settlement Funds will be distributed in the same manner as in the first distribution (see the long-form notice at [www.aircargosettlement2.com](http://www.aircargosettlement2.com) for more information).

Persons who filed a claim in the first distribution ("Original Claimants") will be able to rely on information provided in their previous claim form, but will be required to confirm their contact information and provide a statement of release. Persons who did not file a claim in the first distribution will need to file a claim to be eligible for payment.

Original Claimants who were issued a minimum payment of \$20 in the first distribution, notwithstanding that their pro rata entitlement was less than \$20 will have to account for the excess payment in this distribution. For example, if the Original Claimant's pro rata entitlement under the First Distribution was \$15, but the Original Claimant was paid \$20, and the Original Claimant's pro rata entitlement under the Second Distribution is \$30, the Original Claimant will only be paid an additional \$25.

All valid Claims will be assigned a minimum value of \$20. However, if the pro rata distribution would result in a payment of less than \$10 to an Original Claimant, no additional payment will be issued to that claimant.

Another notice will be provided regarding the process for applying to receive settlement funds. In the interim, you should keep copies of all relevant records.

## What are my options?

You may express your views to the courts on the proposed settlements, distribution protocol, or Class Counsel's fee request. If you wish to do so, you must act by May 11, 2021.

You may (but do not need to) attend the approval hearing. Please contact Class Counsel for additional details.

## What if I have questions?

Visit us at [www.aircargosettlement2.com](http://www.aircargosettlement2.com), email [aircargo@siskinds.com](mailto:aircargo@siskinds.com) or call 1-800-461-6166

# Did you purchase airfreight shipping services within, to, or from Canada (except to/from the United States) between January 2000 and September 2006?



If so, you might be affected by class action settlements with British Airways PLC ("British Airways") and Air Canada. Pursuant to the settlements, British Airways agreed to pay CAD\$9,000,000 and Air Canada agreed to pay CAD\$7,000,000.

The settlement amounts will be paid in three installments over the period from 15 October 2020 to 15 October 2021. The settlements are compromises of disputed claims and are not admissions of liability or wrongdoing and British Airways or Air Canada expressly deny any liability or wrongdoing.

Both settlements require court approval in Ontario. The Air Canada settlement also requires approval in British Columbia and Quebec. The Ontario and British Columbia hearings are scheduled to proceed jointly on May 21, 2021 at 11:00 a.m. PST / 2:00 p.m. EST. The Quebec approval hearing is scheduled for June 8, 2021 at 2:00 p.m. EST.

At the approval hearings, the courts will also be asked to approve a protocol for distributing the settlement funds.

For more information about the settlements, your options in relation to the settlements, and deadlines for acting:

w: [www.aircargosettlement2.com](http://www.aircargosettlement2.com)

e: [aircargo@siskinds.com](mailto:aircargo@siskinds.com)

p: 1-800-461-6166

**You are represented by Siskinds LLP, Liebman Legal,  
and Camp Fiorante Matthews Mogerman LLP**

## Schedule “F”

### AIR CARGO CLASS ACTION PLAN OF DISSEMINATION

The Notices of Hearing shall be distributed in the following manner:

Publication Notice:

1. Published once in the following newspapers, in either English or French as is appropriate for each newspaper, subject to each having reasonable publication deadlines and costs:
  - (a) The Globe and Mail (National Edition);
  - (b) The Vancouver Sun;
  - (c) Le Journal de Montreal; and
  - (d) Le Soleil.

Abbreviated Notice:

2. Sent by direct mail or email to any persons included on the mailing list maintained by Epiq Class Action and Claims Solutions, Inc. (formerly known as Garden City Group LLP) for the purposes of the Canadian Air Cargo Proceedings; and
3. Sent to the following trade organizations, in English or French, as applicable, with a request that the trade organization forward the Notice to its members:
  - (a) Freight Management Association of Canada/Association Canadienne de Gestion du Fret (in French and English);
  - (b) European Shippers’ Council;
  - (c) Asian Shippers’ Council;
  - (d) Korean Shippers’ Council;
  - (e) Philippine Shippers’ Bureau;
  - (f) Hong Kong Shippers’ Council;
  - (g) Global Shippers’ Forum;
  - (h) Indonesia Shippers’ Council;
  - (i) Malaysia National Shippers’ Council;

- (j) Singapore National Shippers' Council;
- (k) Thai National Shippers' Council;
- (l) South African Shippers' Council; and
- (m) National Shippers Strategic Transportation Council (NASSTRAC).

Online Notice:

- (a) A banner advertisement shall be published for a one-month period on the Air Cargo Week website ([www.aircargoweek.com](http://www.aircargoweek.com)), subject to reasonable placement deadlines and costs; and
- (b) An advertisement shall be published in the Payload Asia eNewsletter.

Long-Form Notice:

- 4. Posted in English and French by Class Counsel on Class Counsel's respective websites;
- 5. Posted in English and French on the website established for the purposes of the litigation: [www.aircargosettlement2.com](http://www.aircargosettlement2.com); and
- 6. Provided by Class Counsel or the Claims Administrator to any person who requests it, in English or French, as applicable.

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

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**ORDER MADE AFTER APPLICATION**

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via Mike Bike