

CANADA  
PROVINCE OF QUÉBEC  
DISTRICT OF MONTRÉAL  
NO: 500-06-000344-065

(Class Action)  
SUPERIOR COURT

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PRESIDING: THE HONOURABLE MR. JUSTICE  
PAUL-MARCEL BELLAVANCE

CARTISE SPORTS INC.

Plaintiff

vs.

DEUTSCHE LUFTHANSA AG  
-and-  
LUFTHANSA CARGO AG  
-and-  
SWISS INTERNATIONAL AIR LINES LTD.  
-and-  
AC CARGO LIMITED PARTNERSHIP  
-and-  
AIR CANADA  
-and-  
ASIANA AIRLINES INC  
-and-  
ATLAS AIR WORLDWIDE HOLDINGS INC.  
-and-  
BRITISH AIRWAYS PLC  
-and-  
CARGOLUX AIRLINE INTERNATIONAL  
-and-  
CATHAY PACIFIC AIRWAYS LTD.  
-and-  
JAPAN AIRLINES INTERNATIONAL CO., LTD.  
-and-  
KONINKLIJKE LUCHTV AART  
MAATSCHAPPIJ N.V. dba KLM, ROYAL DUTCH  
AIRLINES  
-and-  
KOREAN AIR LINES CO., LTD.  
-and-  
LAN AIRLINES S.A.  
-and-

LAN CARGO, S.A.  
-and-  
POLAR AIR CARGO INC.  
-and-  
SCANDANAVIAN AIRLINES SYSTEM  
-and-  
SINGAPORE AIRLINES CARGO PTE LTD.  
-and-  
SINGAPORE AIRLINES, LTD.  
-and-  
SOCIÉTÉ AIR FRANCE

Defendants

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### JUDGMENT

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- (1) WHEREAS the parties hereto are involved in a Class Action;
- (2) WHEREAS Plaintiff now seeks a Judgment of this Court approving the Settlement Agreement entered into with Defendants, Deutsche Lufthansa A.G., Lufthansa Cargo AG and Swiss International Air Lines Ltd. (the "Settling Defendants");
- (3) WHEREAS having taken cognizance of the materials filed relating to the Motion herein, including the Settlement Agreement attached to this Judgment as "Schedule A" (the "Settlement Agreement") and on hearing the submissions of counsel for the Plaintiff and counsel for the Settling Defendants;
- (4) WHEREAS on being advised that the Plaintiff and the Settling Defendants consent to this Judgment, and the Non-Settling Defendants take no position in respect of this Judgment;

**WHEREFORE, THIS COURT:**

- (5) **GRANTS** Plaintiff's Motion for Approval of a Settlement Transaction;
- (6) **ORDERS AND DECLARES** that for the purposes of this Judgment, the definitions set out in the Settlement Agreement apply to and are incorporated into this Judgment and form an integral part thereof. In addition to the definitions in the Settlement Agreement, the following definition shall also apply to this Judgment:
- "Proportionate Liability" means that proportion of any judgment that, had they not settled, a court or other arbiter would have apportioned to the Settling Defendants and Released Parties, whether pursuant to the *pro rata* proportionate fault, *pro tanto*, or another method.
- (7) **DECLARES** that the Settlement Agreement is fair, reasonable and in the best interests of the Settlement Class and constitutes a transaction within the meaning of Article 2631 of the *Civil Code of Québec*, which is binding on all Parties and the Settlement Class Members;
- (8) **ORDERS** that the Settlement Agreement is hereby approved pursuant to Article 1025 of the *Code of Civil Procedure* and shall be implemented in accordance with its terms. Where any term of this Judgment and the Settlement Agreement conflict, the term contained in this Judgment shall govern;
- (9) **ORDERS AND DECLARES** that the Settlement Agreement is incorporated by reference into and forms part of this Judgment and is binding upon the representative Plaintiff and all Settlement Class Members;
- (10) **ORDERS AND DECLARES** that this Judgment, including the Settlement Agreement, is binding upon each Settlement Class Member who is not an Opt Out;

(11) **ORDERS AND DECLARES** that, upon the Effective Date, the Releasing Parties are deemed to, and do hereby, release and forever discharge the Released Parties of and from any and all Claims arising from or anyway related to the Released Claims;

(12) **ORDERS AND DECLARES** that it is a condition of receipt of funds under the Settlement Agreement that each Settlement Class Member receiving funds, execute a written Release in favour of the Released Parties in respect of all Released Claims;

(13) **ORDERS** that the Releasing Parties shall not now, or hereafter institute, continue, maintain or assert, either directly or indirectly, whether in Canada or elsewhere, on their 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 or any matter related thereto, except for the continuation of the Actions against the Non-Settling Defendants, and, in the event that a future contested authorization hearing in the Actions is not resolved in favour of the Plaintiff, continuation of the Claims as alleged in the Actions against the Non-Settling Defendants in the form of individual claims, group proceedings, or test cases;

(14) **DECLARES** that, pursuant to the Settlement Agreement, Plaintiff and the Settlement Class Members expressly waive and renounce to the benefit of solidarity against the Non-Settling Defendants with respect to the facts and acts of the Settling Defendants;

(15) **DECLARES** that Plaintiff and the Class Members shall henceforth only be able to claim and recover damages, including punitive damages, attributable to the sales and practices of the Non-Settling Defendants;

(16) **DECLARES** that any action in warranty or other joinder of parties to obtain any contribution or indemnity from the Settling Defendants relating to the Released Claims shall be inadmissible, null and void in the context of this class action;

(17) **ORDERS** that if, in the absence of paragraph 14 hereof, the Non-Settling Defendants would have the right to make claims for contribution and indemnity, or other claims over, whether in equity or in law, by statute or otherwise, from or against the Released Parties:

- (a) the Plaintiff and the Settlement Class Members shall not claim or be entitled to recover from the Non-Settling Defendants that portion of any damages, costs or interest awarded in respect of any claim(s) on which judgment is entered that corresponds to the Proportionate Liability of the Released Parties proven at trial or otherwise;
- (b) for greater certainty, the Plaintiff and the Settlement Class Members shall limit their claims against the Non-Settling Defendants to, and shall be entitled to recover from the Non-Settling Defendants, only those claims for damages, costs and interest attributable to the Non-Settling Defendants' several liability to the Plaintiff and the Settlement Class Members, if any;
- (c) this Court shall have full authority to determine the Proportionate Liability at the trial or other disposition of 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) **ORDERS** that if, in the absence of paragraph 14 hereof, the Non-Settling Defendants would not have the right to make claims for contribution and indemnity or other claims over, whether in equity or in law, by statute or otherwise, from or against the Released Parties, then nothing in this Order is intended to or shall limit, restrict or

affect any arguments which the Non-Settling Defendants may make regarding the reduction of any judgment against them in the Action.

(19) **ORDERS** that if this proceeding against the Non-Settling Defendants has been authorized and all appeals or times to appeal related thereto have been exhausted, the Non-Settling Defendants shall be entitled in respect of each of the Settling Defendants as if they remained parties to this proceeding:

- (i) to oral discovery of a representative of each of the Settling Defendants, the transcripts of which may be filed in the Court record;
- (ii) to serve a notice to admit documents and/or interrogatories upon articulated facts on each Settling Defendant; and
- (iii) to seek an Order on motion to the Court, on at least ten (10) days notice to counsel for the Settling Defendants, for the production of a representative of each of the Settling Defendants to testify at trial, with such witness to be subject to cross-examination by counsel for the Non-Settling Defendants.

The Settling Defendants retain all rights to oppose such motion under sub-paragraph (iii), hereof. Notwithstanding any provision in this Order, on any motion brought pursuant to this paragraph 19, the Court may make such Orders as to costs and other terms as it considers appropriate.

(20) **ORDERS** that a Non-Settling Defendant may effect service of the Motion(s) referred to in the above-paragraph on a Settling Defendant by service on counsel of record for the Settling Defendants in this action;

(21) **ORDERS** that for purposes of enforcement of this Judgment, this Court will retain an on-going supervisory role and the Settling Defendants will attorn to the jurisdiction of this Court for these purposes;

(22) **ORDERS** that except as provided herein, this Judgment does not affect any Claims that any Settlement Class Member has or may have against the Non-Settling Defendants or unnamed co-conspirators in the Actions;

(23) **ORDERS** that the Settling Defendants shall have no responsibility or liability relating to the administration, investment, or distribution of the Settlement Fund;

(24) **ORDERS** that the Settlement Amount, plus any accrued interest, be held in trust by the Escrow Agent for the benefit of the Settlement Class, pending further order of this Court, which shall be sought by the Plaintiff on a motion, brought on notice to the Defendants;

(25) **ORDERS** that this Action be and is hereby dismissed against the Settling Defendants without costs;

(26) **ORDERS** that this Judgment shall be declared null and void in the event that the Settlement Agreement is terminated in accordance with its terms.

**THE WHOLE** without costs.

*MARCH 9<sup>th</sup> 2009*  
Date: March 9<sup>th</sup>, 2009

*Paul-Marcel Bellavance*  
Paul-Marcel Bellavance, H.J.C.S.  
JB 2697

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Deputy Clerk