

EXHIBIT 2

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK**

IN RE

AIR CARGO SHIPPING SERVICES
ANTITRUST LITIGATION

MDL No. 1775

06-MD-1775 (JG) (VVP)

THIS DOCUMENT RELATES TO:
All Actions

**MEMORANDUM IN SUPPORT OF PLAINTIFFS' MOTION TO AUTHORIZE
DISTRIBUTION OF THE AIR FRANCE-KLM, SAS, JAL, AMERICAN, ANA,
CARGOLUX, QANTAS, AND THAI SETTLEMENT FUNDS**

Plaintiffs respectfully submit this memorandum in support of their motion to authorize distribution of the Air France-KLM, SAS, JAL, American, ANA, Cargolux, Qantas, and Thai settlement funds to claimants.

I. FACTUAL BACKGROUND

The Court has granted final approval of settlements with the following Defendants: Société Air France, Koninklijke Luchtvaart Maatschappij N.V., and Martinair Holland N.V. (“Air France-KLM”) (ECF No. 1414); Scandinavian Airlines System and SAS Cargo Group A/S (“SAS”) (ECF No. 1416); Japan Airlines International Co., Ltd. (“JAL”) (ECF No. 1417); AMR Corp. and American Airlines, Inc. (“American”) (ECF No. 1413); All Nippon Airways Co., Ltd. (“ANA”) (ECF No. 1537); Cargolux International Airlines, S.A. (“Cargolux”) (ECF No. 1539); Qantas Airways Limited (“Qantas”) (ECF No. 1534); and Thai International Public Company, Limited (“Thai”) (ECF No. 1538). The Garden City Group, (“GCG”), serving as the Court-approved Claims Administrator, has engaged in a complex claims administration process, and the Settlement Funds from the Air France-KLM, SAS, JAL, and American, ANA, Cargolux, Qantas, and Thai settlements, minus the deductions set forth in more detail below, are ready to be distributed to Settlement Class members. *See* Declaration of Jennifer M. Keough Re: Air Cargo 2 Settlement Claims Administration, dated April 16, 2012 (“Keough Declaration”).

This will be the second distribution of settlement funds in this case as the Court previously approved the distribution of settlement funds from the Lufthansa settlement. (ECF No. 1561). The settlement funds from the Air France-KLM, SAS, JAL, and American, ANA, Cargolux, Qantas, and Thai settlements will be distributed to a narrower Settlement Class that includes only direct purchasers.

II. CLAIMS ADMINISTRATION PROCESS

GCG was charged with various administrative tasks, including: disseminating notices; publishing summary notices; receiving and processing claims and requests for exclusion; responding to class member inquiries; establishing and maintaining a settlement website; and performing such other duties as may be directed by the Court or the parties. Keough Decl. at ¶ 2. GCG also conducted the administrative tasks associated with collecting claim forms from claimants, evaluating and auditing those claim forms, and ultimately calculating the appropriate allocated amount for each qualified claimant. *Id.* GCG received a total of 2,638 claim forms. *Id.* at ¶ 3. The claims review and audit process was thorough and time consuming.

A. Claim Form Deadline and Documentation

The deadline for filing timely claims against the Air France-KLM, SAS, JAL, and American, ANA, Cargolux, Qantas, and Thai settlement funds was July 26, 2011. *Id.* The claim form required each claimant to provide information related to the amount of purchases of air cargo outbound from the United States and inbound to the United States, among other information.¹ *Id.* (describing information requested on claim form); *id.* at Ex. 1 (blank claim form). Each claimant also had to verify the accuracy of the information provided on the claim form under penalty of perjury. Keough Decl. at ¶ 3. While claimants were not initially required to submit supporting documentation of their air cargo purchases with their claim forms, the claim form asked each claimant to agree to provide additional supporting information in response to any specific GCG request. *Id.* at ¶ 6.

¹ For claimants who filed claims in currencies other than the U.S. Dollar (“USD”), the claimed amount was converted into USD based on the currency exchange rates applicable on September 11, 2006. *Id.* at ¶ 14.

B. Deficiency Review and Audit Process

GCG received a total of 2,638 claims, prior to reduction based on ineligibility, duplication, or any other reason.² *Id.* at ¶ 3. GCG compiled the information provided in the claim forms in its proprietary database. *Id.* at ¶ 4. GCG then identified claims that were deficient because they failed to provide required information. *Id.* at ¶ 5. The deficiencies included:

- missing signature;
- failure to provide purchase amount or purchase amount illegible;
- failure to provide the Defendant from whom shipping services were purchased;
- failure to provide currency or currency illegible; and
- failure to provide a claims preparer contract.

Id. GCG mailed or otherwise communicated to claimants any identified deficiencies and provided them an opportunity to cure such deficiencies.³ *Id.* Of those claimants with

² During the claims administration process, some claimants requested that their claims be withdrawn and other claims were found to be duplicates. *Id.* at ¶ 8. In total, 170 claims were identified as such and removed from further review. *Id.*

³ GCG forwarded the claim of the China Air Transport Association (“CATA”) to Settlement Class Counsel for further review. CATA is a non-governmental organization that represents every one of the over 2,500 freight forwarding and logistics companies in the People’s Republic of China, which similarly filed a claim and received payment with respect to the Lufthansa settlement. CATA filed a single claim based on the purchases of its members. Because the member companies did not have their own reliable purchase data, CATA relied upon estimates based on United States Department of Commerce and Department of Transportation data to support its claim. Settlement Class Counsel engaged in extensive discussions with CATA regarding these estimates and CATA’s authority under Chinese law to file a claim based on the purchases of its members. On the latter point, CATA provided Settlement Class Counsel with an opinion regarding Chinese law, which is attached hereto as Exhibit A. Based on this Chinese law opinion and CATA’s representations, Settlement Class Counsel recommend that the Court accept CATA’s claim for payment as set forth in the Keough Declaration.

deficiencies, 835 did not respond or their deficiencies were not resolved, and their claims were therefore deemed invalid. *Id.*

In addition to following up regarding deficient claim forms, GCG selected a group of claims which represented over 85% of the total inbound and outbound values claimed by Class members claims to audit through a review of supporting documentation. Keough Decl. at ¶ 6. Many of the claims selected were from claimants who also filed a claim against the Lufthansa settlement fund and had previously responded to a request for supporting documentation. *Id.* If no documentation had previously been provided by the claimant or if the documentation of file was not sufficient, GCG mailed letters to the claimants requesting supporting documentation. *Id.* After reviewing the selected claimants' responses, GCG engaged in discussions with claimants, where necessary. *Id.* For claimants who did not respond to the request for supporting documentation, GCG followed up with reminder phone calls and e-mails providing them with multiple opportunities to provide supporting documentation. *Id.* Six claimants who failed to respond to these repeated requests had their claims deemed invalid. *Id.*

C. Late-Filed Claims

Sixty-nine (69) claimants filed claims after the deadline. *Id.* at ¶ 7. None of these claims was received so late as to interfere with the claims administration process. *Id.* Therefore, all such claims were included and treated as timely claims for purposes of the settlement distribution, and Settlement Class Counsel recommend that they be accepted by the Court. It is appropriate for the Court to approve distribution to claimants who filed these late claims, particularly where, as here, it is equitable to do so. *See Zients v. LaMorte*, 459 F.2d 628, 629-30 (2d Cir. 1972) (accepting late claims where made before the distribution of funds); *see also In re*

Crazy Eddie Sec. Litig., 906 F. Supp. 840, 843 (E.D.N.Y. 1995) (Citing *Zients*, 459 F.2d at 629-30).

D. The Settlement Fund

In total, Air France-KLM, SAS, JAL, American, ANA, Cargolux, Qantas, and Thai agreed to pay \$193,430,000 in settlement. Of this amount, \$10 million was payable by Cargolux in installments, and some of the other funds were set aside under opt-out reduction provisions of the settlement agreements. On July 15, 2011, the Court awarded \$38,458,330 in attorneys' fees (representing 25% of the settlement amounts excluding certain opt-out reductions and unpaid installments) and \$3,251,477.10 in expenses.

Since then, Cargolux paid an additional \$5 million installment in December 2011. In addition, Settlement Class Counsel expect that another \$3,039,204.58 of the funds currently being held in opt-out escrow accounts will revert to the Settlement Class by the time of distribution.⁴ Because none of these additional funds were the subject of the prior attorneys' fee application, Settlement Class Counsel intend to seek a portion as fees and recommend that 25% of these additional funds be held back until the Court can rule on this request.⁵

⁴ The settlements with Air France-KLM and SAS have opt-out retention periods that end 30 days prior to distribution, at which time certain opt-out funds revert to the Settlement Class. Settlement Class Counsel have instructed GCG to include opt-out retention funds that are expected to revert back to the Class in the distribution calculations, as distribution will occur 30 days after the Court enters a distribution order. If there are any changes to the reversion amounts before the Court rules on this motion, Settlement Class Counsel will promptly advise the Court. Another \$10,848,773.85 remains in escrow pursuant to opt-out reduction provisions; some of this amount may be available for distribution to Class members at a later time.

⁵ Of the \$5 million Cargolux payment, \$933,000 has been transferred to the opt-out escrow account. Because the funds in the opt-out escrow account are not being distributed at this time, there is no need to hold back any portion of that amount for fees.

The settlement funds also owe \$257,406.18 in fees to GCG for unpaid notice and claims administration costs, plus \$34,000 in tax preparation fees. GCG recommends that another \$10,000 be held back from distribution as a reserve to pay taxes due.

Following these adjustments and including interest earned, the total settlement funds available for distribution at this time are \$113,940,447.98 (the "Net Settlement Fund").

III. PROPOSED DISTRIBUTION

The Net Settlement Fund will be allocated in accordance with the Plan of Allocation approved by the Court. (ECF No. 1524). Under the Plan of Allocation, the Net Settlement Fund shall be distributed to Settlement Class members that submit valid claim forms in proportion to their relevant purchases from defendants of Airfreight Shipping Services. Shipments into the United States will be valued at 1.625 times the dollar amount of such purchases; purchases of Airfreight Shipping Services for shipments out of the United States will be valued at the dollar amount of such purchases.

GCG has completed the processing of claims in connection with the Air France-KLM, SAS, JAL, American, ANA, Cargolux, Qantas, and Thai settlements. The Net Settlement Fund is now available for distribution to Settlement Class members who have submitted valid claims. The distribution will be made pursuant to the chart attached as Exhibit 3 to the Keough Declaration, which shows information about each claimant's purchases, identifying claimants by numbers as opposed to names for purposes of confidentiality, and GCG's recommended allocation as determined according to the Plan of Allocation. Additionally, GCG, in consultation with Settlement Class Counsel, recommends that all claimants receive a minimum payment of \$5.00, as was done for the Lufthansa distribution.

IV. CONCLUSION

For the foregoing reasons, Plaintiffs respectfully request that the Court authorize distribution of the Net Settlement Funds to Settlement Class members who have submitted valid claims as set forth above and in the Keough Declaration.

Dated: April 16, 2012

Respectfully submitted,

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