

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

PRECISION ASSOCIATES, INC., et al., on
behalf of themselves and all others similarly
situated,

Plaintiffs,

vs.

PANALPINA WORLD TRANSPORT
(HOLDING) LTD., et al.,

Defendants.

Case No.: 08-CV-00042 (BMC) (PK)

**DECLARATION OF DANIEL E. GUSTAFSON IN SUPPORT OF MOTION FOR (1)
PRELIMINARY APPROVAL OF SETTLEMENT WITH THE HELLMANN
DEFENDANTS; AND (2) CONDITIONAL CERTIFICATION OF SETTLEMENT
CLASS**

I, Daniel E. Gustafson, declare and state as follows:

1. I am a member of the law firm of Gustafson Gluek PLLC. This Court has appointed me and my firm as Interim Co-Lead Counsel for Plaintiffs and the Plaintiff Class in this litigation.
2. I submit this Declaration in support of Plaintiffs' Motion For (1) Preliminary Approval of Settlement with the Hellmann Defendants;¹ and (2) Conditional Certification of Settlement Class filed simultaneously herewith. I have personal knowledge of the information set forth in this Declaration.

¹ The Hellmann Defendants (also referred to herein as "Hellmann") are Hellmann Worldwide Logistics GmbH & Co. KG; Hellmann Worldwide Logistics Ltd. Hong Kong; Hellmann Worldwide Logistics, Inc.; and their subsidiaries, affiliates and predecessors. Plaintiffs' claims against Hellmann Worldwide Logistics GmbH & Co. KG, Hellmann Worldwide Logistics Ltd. Hong Kong were dismissed with prejudice on October 8, 2015.

3. On behalf of Plaintiffs, other Co-Lead Counsel and I personally conducted settlement negotiations with counsel for Hellmann over the course of several years and on many occasions. These negotiations began in February 2013, included a mediation session in April 2014 with a nationally prominent mediator who had mediated multiple settlements in this case, and culminated in a settlement in principle in December 2015. The parties executed a settlement agreement on February 18, 2015.

4. Co-Lead Counsel filed this case in January 2008, and we have litigated this case extensively since then. By the time we entered into an agreement in principle to settle our claims against Hellmann, we were fully aware of the strengths and weaknesses of each side's positions. We had prevailed in two rounds of extensive motions to dismiss our complaints, fact discovery had closed, and the parties were heading into expert discovery and class certification motions. During discovery Plaintiffs served 16 sets of discovery requests, and obtained 5.1 million documents from defendants. Using advanced analytical search techniques and keyword searches, we identified and reviewed 1,062,552 of the most relevant defendant documents, including translating and reviewing several documents in Japanese, German, and Italian. We interviewed 43 witnesses produced by DHL, the Department of Justice leniency applicant, and settling defendants; and had participated in 18 attorney proffers. We conducted 50 depositions in four countries across three continents. We obtained transactional data from defendants, discussed the data with defense counsel, and worked with economists to analyze the data.² We also demanded from Hellmann and other defendants their revenue data and other information about their operations. We also defended depositions of the proposed class representatives, taken in New

² See Joint Declaration Of Co-Lead Counsel In Support Of Co-Lead Counsel's Petition For A Second Interim Award Of Attorney's Fees And Reimbursement Of Expenses, at 8 – 10 (ECF No. 1281) for further detail.

York and Washington, D.C. As a result, we have had the benefit of substantial information obtained from the defendants through their cooperation and through formal discovery.

5. During the litigation, Co-Lead Counsel researched, analyzed, and evaluated many contested legal and factual issues. Based on that analysis, and the information obtained from discovery and cooperation, Co-Lead Counsel were well informed of the facts and the benefits, risks, and consequences of the proposed settlement with Hellmann. Counsel thoroughly evaluated the relative strengths and weaknesses of our respective litigation positions in relation to this settlement.

6. The resulting settlement negotiations with Hellmann were at arm's length and were hard fought at all times. The parties debated many issues, and negotiated many terms of the settlement, including the amount of payment, the timing of payment, the effect of opt-outs on any settlement, and potential cooperation against other defendants.³ As described, the negotiations required mediation and innumerable conferences among counsel. Throughout this process, Hellmann has been represented by experienced, sophisticated counsel.

7. There was no collusion or preference among counsel for the parties at any time during these negotiations. To the contrary, the negotiations were contentious, hard fought, and fully informed. Plaintiffs sought to obtain the greatest monetary benefit possible from Hellmann. Furthermore, there was no discussion or agreement at any time regarding the amount of attorneys' fees Plaintiffs' counsel would ask the Court to award in this case.

³ During the course of these settlement negotiations, Plaintiffs completed discovery and settled with all other remaining defendants reducing the need for extensive cooperation from Hellmann.

8. In the proposed settlement, Hellmann commits to pay \$550,000 to the settlement fund within 14 days after the Court preliminarily approves the Agreement. Hellmann also agrees to authenticate documents it previously produced in this case.

9. The proposed settlement provides for notice to Settlement Class Members of, among other things, the fact and material terms of the proposed settlement, instructions on how to opt out of the proposed class or object to the settlement, and other information.

10. I have practiced law since 1989, I have specialized in antitrust class action law since 1991, and I have prosecuted numerous antitrust class actions as lead counsel or other leadership positions. I have negotiated many settlements during those years. In my opinion, and in that of my Co-Lead Counsel, the proposed settlement agreement with Hellmann is fair, reasonable, and adequate. The settlement provides substantial benefits to the Class, and avoids the delay and uncertainty of continuing protracted litigation with Hellmann.

11. To the best of Co-Lead Counsels' knowledge, no individual actions have been filed regarding an agreement during the class period to fix prices for Freight Forwarding Services, and throughout this litigation no class member otherwise has expressed an interest in individually controlling separate actions.

12. A true and correct copy of the Settlement Agreement Between Plaintiffs And Defendants Hellmann Worldwide Logistics GMBH & CO. KG, Hellmann Worldwide Logistics Ltd. Hong Kong, and Hellmann Worldwide Logistics, Inc., fully executed on February 18, 2016, is attached hereto as Exhibit A to this Declaration.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed on this 29th day of February, 2016 at Minneapolis, Minnesota.

/s/ Daniel E. Gustafson _____
Daniel E. Gustafson