

Precision Associates, Inc. v. Panalpina World Transport

No. 08-cv-00042 (E.D.N.Y.) (JG) (VVP)

Plan of Allocation

The Net Settlement Fund will be distributed to Class Members on a pro rata basis of the total dollar volume of freight forwarding services purchased and/or the amount of surcharges paid on shipping routes by all Class Members during the Class Period, as described below.

Ten percent (10%) of the net settlement proceeds from all Settling Defendants will be paid to all Class Members with valid claims based on the total dollar volume of Worldwide Freight Forwarding Services, whether by ocean or air, purchased from Defendants or their subsidiaries or affiliates. Worldwide Freight Forwarding Services, as used above, means purchases (a) for shipments within, to, or from the United States or (b) in the United States for shipments anywhere in the world.

The remaining ninety percent (90%) of the net settlement proceeds from all Settling Defendant(s) will be paid to Class Members based on the surcharges paid on the shipping routes of all the Defendant(s), including the Settling Defendants, that conspired on that particular surcharge for which a particular Class Member paid surcharges on freight forwarding services. For example, if a Class Member paid surcharges for a shipment from Japan to the United States, that Class Member would be entitled to a pro rata portion of the net settlement proceeds from the Defendant(s) who allegedly participated in the conspiracies on the Japan to United States route.

Determinations of whether, and the extent to which, a Class Member paid surcharges on any route will be made by the Settlement Administrator based upon a Class Member's proof of claim and other information or administrative convention employed by the Settlement Administrator.

Additional Information In Response To Frequently Asked Questions

A qualified Class Member who paid a particular surcharge to at least one Defendant named in the conspiracy affecting that surcharge will be entitled to a pro

rata portion of the net settlement proceeds from all Settling Defendants who allegedly participated in the same conspiracy. Thus each qualified Class Member will receive an allocation from the following Settling Defendants as described below.

Settling Defendants

Kuehne and Nagel (“KN”) is a Defendant as to six (6) alleged conspiracies: Security Surcharge, New Export System Fee (“NES”), CAF, Peak Season Surcharge (“PSS”), Air AMS and Ocean AMS. 90% of the net settlement proceeds from **KN** will be distributed pro rata to qualified Class members who paid any of such surcharges to any Defendant named in such conspiracies, whether it is a Settling Defendant or not.

Schenker is a Defendant as to six (6) alleged conspiracies: Security Surcharge, New Export System Fee (“NES”), Currency Adjustment Factor (“CAF”), Peak Season Surcharge (“PSS”), Air AMS and Ocean AMS. 90% of the net settlement proceeds from **Schenker** will be distributed pro rata to qualified Class members who paid any of such surcharges to any Defendant named in such conspiracies, whether it is a Settling Defendant or not.

ABX is a Defendant as to five (5) alleged conspiracies: Security Surcharge, Currency Adjustment Factor (“CAF”), Peak Season Surcharge (“PSS”), Air AMS and Ocean AMS. 90% of the net settlement proceeds from **ABX** will be distributed pro rata to qualified Class members who paid any of such surcharges to any Defendant named in such conspiracies, whether it is a Settling Defendant or not.

EGL is a Defendant as to three (3) alleged conspiracies: New Export System Fee (“NES”), Currency Adjustment Factor (“CAF”), and Air AMS. 90% of the net settlement proceeds from **EGL** will be distributed pro rata to qualified Class members who paid any of such surcharges to any Defendant named in such conspiracies, whether it is a Settling Defendant or not.

Expeditors is a Defendant as to three (3) alleged conspiracies: New Export System Fee (“NES”), Currency Adjustment Factor (“CAF”), and Peak Season Surcharge (“PSS”). 90% of the net settlement proceeds from **Expeditors** will be distributed

pro rata to qualified Class members who paid any of such surcharges to any Defendant named in such conspiracies, whether it is a Settling Defendant or not.

Nishi-Nippon is a Defendant as to three (3) alleged conspiracies: Japanese Fuel Surcharge, Japanese AMS, and Japanese Securities and Explosives Surcharge. 90% of the net settlement proceeds from **Nishi-Nippon** will be distributed pro rata to qualified Class members who paid any of such surcharges to any Defendant named in such conspiracies, whether it is a Settling Defendant or not.

Morrison Express is a Defendant as to one (1) alleged conspiracy: Peak Season Surcharge. 90% of the net settlement proceeds from **Morrison Express** will be distributed pro rata to qualified Class members who paid any such surcharge to any Defendant named in such conspiracies, whether it is a Settling Defendant or not.

UAC is a Defendant as to three (3) alleged conspiracies: Japanese Fuel Surcharge, Japanese AMS, and Japanese Security & Explosives Examination Surcharge. 90% of the net settlement proceeds from **UAC** will be distributed pro rata to qualified Class members who paid any of such surcharges to any Defendant named in such conspiracies, whether it is a Settling Defendant or not.

UTi is a Defendant as to three (3) alleged conspiracies: Peak Season Surcharge (“PSS”), Air AMS, and Ocean AMS. 90% of the net settlement proceeds from **UTi** will be distributed pro rata to qualified Class members who paid any of such surcharges to any Defendant named in such conspiracies, whether it is a Settling Defendant or not.

Vantec is a Defendant as to four (4) alleged conspiracies: Japanese Fuel Surcharge, Japanese AMS, Currency Adjustment Factor (“CAF”) and Japanese Securities and Explosives Surcharge. 90% of the net settlement proceeds from **Vantec** will be distributed pro rata to qualified Class members who paid any of such surcharges to any Defendant named in such conspiracies, whether it is a Settling Defendant or not.

Panalpina is a Defendant as to six (6) alleged conspiracies: Security Surcharge, New Export System Fee (“NES”), Currency Adjustment Factor (“CAF”), Peak Season Surcharge (“PSS”), Air AMS, and Ocean AMS. 90% of the net settlement proceeds from **Panalpina** will be distributed pro rata to qualified Class members

who paid any of such surcharges to any Defendant named in such conspiracies, whether it is a Settling Defendant or not.

UPS is a Defendant named in four (4) alleged conspiracies: New Export System Fee (“NES”), Currency Adjustment Factor (“CAF”), Peak Season Surcharge (“PSS”), and Air AMS. 90% of the net settlement proceeds from **UPS** will be distributed pro rata to qualified Class members who paid any of such surcharges to any Defendant named in such conspiracies, whether it is a Settling Defendant or not.

DSV is a Defendant named in three (3) alleged conspiracies: New Export System Fee (“NES”), Air AMS, and Ocean AMS. 90% of the net settlement proceeds from **DSV** will be distributed pro rata to qualified Class members who paid any of such surcharges to any Defendant named in such conspiracies, whether it is a Settling Defendant or not.

SDV is a Defendant named in three (3) alleged conspiracies: Currency Adjustment Factor (“CAF”), Peak Season Surcharge (“PSS”), and Air AMS. 90% of the net settlement proceeds from **SDV** will be distributed pro rata to qualified Class members who paid any of such surcharges to any Defendant named in such conspiracies, whether it is a Settling Defendant or not.

Dachser is a Defendant named in three (3) alleged conspiracies: Security Surcharge, Currency Adjustment Factor (“CAF”) and Air AMS. 90% of the net settlement proceeds from **Dachser** will be distributed pro rata to qualified Class members who paid any of such surcharges to any Defendant named in such conspiracies, whether it is a Settling Defendant or not.

Geo-Logistics (now **Agility**) is a Defendant named in six (6) alleged conspiracies: Security Surcharge, New Export System Fee (“NES”), Currency Adjustment Factor (“CAF”), Peak Season Surcharge (“PSS”), Air AMS, and Ocean AMS. 90% of the net settlement proceeds from **Geo-Logistics** will be distributed pro rata to qualified Class members who paid any of such surcharges to any Defendant named in such conspiracies, whether it is a Settling Defendant or not.

Toll Global Forwarding/Baltrans Logistics is a Defendant named in one (1) alleged conspiracy: Peak Season Surcharge (“PSS”). 90% of the net settlement

proceeds from **Toll Global Forwarding/Baltrans Logistics** will be distributed pro rata to qualified Class members who paid any of such surcharges to any Defendant named in such conspiracies, whether it is a Settling Defendant or not.

Geodis is a Defendant named in four (4) alleged conspiracies: Security Surcharge, Currency Adjustment Factor (“CAF”), Air AMS and Ocean AMS. 90% of the net settlement proceeds from **Geodis** will be distributed pro rata to qualified Class members who paid any of such surcharges to any Defendant named in such conspiracies, whether it is a Settling Defendant or not.

Jet Speed is a Defendant named in one (1) alleged conspiracy: Peak Season Surcharge (“PSS”). 90% of the net settlement proceeds from **Jet Speed** will be distributed pro rata to qualified Class members who paid any of such surcharges to any Defendant named in such conspiracies, whether it is a Settling Defendant or not.

Nippon Express is a Defendant named in five (5) alleged conspiracies: Fuel Surcharge, Japanese Air AMS, Currency Adjustment Factor (“CAF”), Peak Season Surcharge (“PSS”) and Japanese Security & Explosives Examination Surcharge. 90% of the net settlement proceeds from **Nippon Express** will be distributed pro rata to qualified Class members who paid any of such surcharges to any Defendant named in such conspiracies, whether it is a Settling Defendant or not.

Yusen is a Defendant named in four (4) alleged conspiracies: Fuel Surcharge, Japanese Air AMS, Currency Adjustment Factor (“CAF”), and Japanese Security & Explosives Examination Surcharge. 90% of the net settlement proceeds from **Yusen** will be distributed pro rata to qualified Class members who paid any of such surcharges to any Defendant named in such conspiracies, whether it is a Settling Defendant or not.

Kintetsu is a Defendant named in five (5) alleged conspiracies: Fuel Surcharge, Japanese Air AMS, Currency Adjustment Factor (“CAF”), Peak Season Surcharge (“PSS”) and Japanese Security & Explosives Examination Surcharge. 90% of the net settlement proceeds from **Kintetsu** will be distributed pro rata to qualified Class members who paid any of such surcharges to any Defendant named in such conspiracies, whether it is a Settling Defendant or not.

Hankyu Hanshin is a Defendant named in three (3) alleged conspiracies: Fuel Surcharge, Japanese Air AMS and Japanese Security & Explosives Examination Surcharge. 90% of the net settlement proceeds from **Hankyu Hanshin** will be distributed pro rata to qualified Class members who paid any of such surcharges to any Defendant named in such conspiracies, whether it is a Settling Defendant or not.

Nissin Corporation is a Defendant named in three (3) alleged conspiracies: Fuel Surcharge, Japanese Air AMS and Japanese Security & Explosives Examination Surcharge. 90% of the net settlement proceeds from **Nissin Corporation** will be distributed pro rata to qualified Class members who paid any of such surcharges to any Defendant named in such conspiracies, whether it is a Settling Defendant or not.

“K” Line is a Defendant named in three (3) alleged conspiracies: Fuel Surcharge, Japanese Air AMS and Japanese Security & Explosives Examination Surcharge. 90% of the net settlement proceeds from **“K” Line** will be distributed pro rata to qualified Class members who paid any of such surcharges to any Defendant named in such conspiracies, whether it is a Settling Defendant or not.

Yamato is a Defendant named in three (3) alleged conspiracies: Fuel Surcharge, Japanese Air AMS and Japanese Security & Explosives Examination Surcharge. 90% of the net settlement proceeds from **Yamato** will be distributed pro rata to qualified Class members who paid any of such surcharges to any Defendant named in such conspiracies, whether it is a Settling Defendant or not.

MOL is a Defendant named in three (3) alleged conspiracies: Fuel Surcharge, Japanese Air AMS and Japanese Security & Explosives Examination Surcharge. 90% of the net settlement proceeds from **MOL** will be distributed pro rata to qualified Class members who paid any of such surcharges to any Defendant named in such conspiracies, whether it is a Settling Defendant or not.

DHL has settled certain of the claims alleged against it. DHL has settled the following (3) conspiracies: Japanese Fuel Surcharge, Japanese Air AMS, and Japanese Security & Explosives Examination Surcharge. 90% of the net settlement proceeds from **DHL**'s settlement of these claims will be distributed pro rata to

qualified Class members who paid any of such surcharges to any Defendant named in such conspiracies, whether it is a Settling Defendant or not.

Non-Settling Defendants

DHL is a Defendant named in each and every conspiracy in the complaint. **DHL** agreed to settle the severed claims. The following (6) non-settled alleged conspiracies remain: Security Surcharge, New Export System Fee (“NES”), Currency Adjustment Factor (“CAF”), Peak Season Surcharge (“PSS”), Air AMS, and Ocean AMS.

Hellmann is a Defendant named in four (4) alleged conspiracies: New Export System Fee (“NES”), Peak Season Surcharge (“PSS”), Air AMS and Ocean AMS.

In implementing the plan of allocation, it is anticipated that the Settlement Administrator will look to the following information in the proof of claim and/or the information submitted by each Class member in determining the affected amount of surcharges paid by each Class member. For example:

With respect to the amount of the surcharges for Japanese AMS and the Japanese Security & Explosives Examination Surcharge, the Settlement Administrator will look to the number of shipments from Japan to the US as reflected by the information supplied by each Class member in response to item "1.a" of the Proof of Claim.

With respect to the amount of the surcharges for Air AMS, and Ocean AMS, the Settlement Administrator will look to the number of each mode (air and ocean) of shipments into the United States as reflected by the information supplied by each Class member in response to item "1.b" and "1.c" of the Proof of Claim.

With respect to the amount of the surcharges for NES, the Settlement Administrator will look to the number of shipments from the UK into the United States as reflected by the information supplied by each Class member in response to the initial matrix of the Proof of Claim.

With respect to the amount of the surcharges for the Security surcharge the Settlement Administrator will look to the weight of air shipments into the United

States as reflected by the information supplied by each Class member in response to item "2.a" of the Proof of Claim.

With respect to the amount of the surcharges for the Japanese Fuel Surcharge, the Settlement Administrator will look to the weight of the air shipments from Japan into the United States as reflected by the information supplied by each Class member in response to item "2.b" of the Proof of Claim.

With respect to the amount of the surcharges for PSS, the Settlement Administrator will look to the total monetary value paid for shipments from Hong Kong into the United States supplied by the Class member in response to Item "3.b" in the Proof of Claim and will apply a discount to that number in proportion to the estimated amount of the total revenue that the PSS constituted which is presently estimated to be a discount of approximately 85%.

With respect to the amount of the surcharges for CAF, the Settlement Administrator will look to the total monetary value paid for shipments from China into the United States for each Class member as reflected by the information supplied by each Class member in response to item "3.a" of the Proof of Claim.

The Settlement Administrator will consult with Class Counsel. The Plan of Allocation and resulting allocations from the net Settlement Funds are subject to the Court's approval.