

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

PRECISION ASSOCIATES, INC.;
ANYTHING GOES LLC d/b/a MAIL
BOXES ETC., and JCK INDUSTRIES,
INC., on behalf of themselves and all others
similarly situated,

Plaintiffs,

vs.

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

Defendants.

Case No.: 08-CV-00042 (JG) (VVP)

**DECLARATION OF DANIEL C. HEDLUND IN SUPPORT OF PLAINTIFFS' MOTION
TO:**

**(1) PRELIMINARILY APPROVE SETTLEMENTS OF THEIR CLAIMS AGAINST
DEFENDANTS DEUTSCHE BAHN AG, SCHENKER AG, SCHENKER, INC., BAX
GLOBAL, INC., DB SCHENKER, VANTEC CORPORATION, VANTEC WORLD
TRANSPORT (USA), INC., EGL, INC., AND EGL EAGLE GLOBAL LOGISTICS, LP;
AND(2) CONDITIONALLY CERTIFY THE SETTLEMENT CLASS**

I, Daniel C. Hedlund, declare as follows:

1. I am a member of the law firm of Gustafson Gluek PLLC, one of the law firms appointed by this Court to serve as Interim Co-Lead Counsel for Plaintiffs in this case.

2. I respectfully submit this Declaration in support of Plaintiffs' Motion to: (1) Preliminarily Approve Settlements of their Claims against Defendants Deutsche Bahn AG, Schenker AG, Schenker, Inc., Bax Global, Inc., DB Schenker, Vantec Corporation, Vantec World Transport (USA), Inc., EGL, Inc. and EGL Eagle Global Logistics, LP; and (2) Conditionally Certify the Settlement Class. I have personal knowledge of the information set forth in this Declaration.

3. Together with co-counsel for the Plaintiffs and Proposed Class, we performed extensive factual and industry investigation and substantial research into the alleged price-fixing conspiracy before commencing this litigation. Plaintiffs commenced this litigation by filing a Class Action Complaint (ECF No. 1) (“Complaint”) on January 3, 2008.

4. On May 4, 2009, Plaintiffs’ counsel informed the Court of published reports that at least one Defendant had obtained amnesty from criminal prosecution from the U.S. Department of Justice (“DOJ”) pursuant to the DOJ’s Corporate Leniency Program. At that time no Defendant had come forward to cooperate with Plaintiffs in this case under the Antitrust Criminal Penalty Enhancement and Reform Act of 2004, P.L. 108-237 (“ACPERA”), and at that time Plaintiffs’ counsel did not know the identity of the Amnesty Applicant. Plaintiffs’ counsel also stated that if they were appointed lead counsel, they intended to advise Defendants of the Amnesty Applicant’s rights and obligations under ACPERA, request that the Amnesty Applicant come forward promptly to cooperate with Plaintiffs, file an amended complaint, and conduct any appropriate settlement negotiations.

5. After this Court appointed my firm and others as Interim Co-Lead Counsel on June 2, 2009 (ECF No. 115), after advising all Defendants that Plaintiffs sought cooperation from the Amnesty Applicant under ACPERA, and after the ACPERA Defendant did not come forward, we proceeded to negotiate with certain Defendants who indicated they would cooperate, including EGL, Inc. and EGL Eagle Global Logistics, LP (“EGL”).

6. Plaintiffs and the EGL Defendants commenced settlement discussions in or around January 2010. Over approximately the next year and a half, Interim Co-Lead Counsel and counsel for EGL engaged in multiple in-person meetings and numerous conference calls to negotiate the terms of settlement.

7. During the course of settlement negotiations, Interim Co-Lead Counsel were informed of the facts concerning liability and damages issues. Interim Co-Lead Counsel researched, analyzed, and evaluated several contested legal and factual issues in order to thoroughly evaluate the relative strengths and weaknesses of each side's litigation position.

8. The parties vigorously negotiated the terms of the settlement, exchanging numerous drafts before reaching a final agreement. The parties continued to work through what at times seemed to be intractable differences. After numerous rounds of arm's length negotiations, the parties executed a Settlement Agreement on May 12, 2011. A true and correct copy of the Settlement Agreement between Plaintiffs and EGL, dated May 12, 2011, is attached as Exhibit B to the Declaration of W. Joseph Bruckner, dated September 20, 2011, submitted simultaneously with this Declaration in support of Plaintiffs' motion as described in Paragraph No. 2 above.

9. The EGL Settlement Agreement was entered after nearly 18 months of hard-fought negotiations. It was entered into in good faith, after extensive and informed, arm's length negotiations between experienced counsel on both sides.

10. There was no collusion or preference between counsel at any time during these negotiations.

11. Pursuant to the EGL Agreement, EGL has already paid U.S. \$2 million and will pay the remaining U.S. \$8 million into an interest-bearing escrow account for the benefit of the Settlement Class. EGL Agreement ¶ C.1.(a). In addition, EGL will pay up to \$10 million in additional funds equivalent to the amounts recovered by EGL in connection with its claims in *Air Cargo*.¹ *Id.* at ¶ C.1.(b).

¹ *In re Air Cargo Shipping Services Antitrust Litigation*, No. 06-MD-1775 (JG)(VVP) (E.D.N.Y.).

12. In addition, EGL agreed to provide substantial cooperation to Plaintiffs, including a detailed description of the principal facts previously provided to the DOJ (by counsel), and by making its employees available for interviews and deposition regarding both the conspiracy and general industry information. *Id.* at ¶ C.3.(a-b,d). EGL also agreed to provide and authenticate documents, including copies of all documents that EGL produced to the DOJ, price announcements, documents to show EGL's revenues of Freight Forwarding Services, copies of documents produced to the European Commission or any other antitrust or competition regulators, and copies of any other documents responsive to reasonable requests made by Co-Lead Counsel. *Id.* at ¶ C.3.(f-g). EGL has further agreed to provide employees for testimony at trial, if necessary. *Id.* at ¶ C.3.(c). EGL's cooperation with Plaintiffs has commenced and is ongoing.

13. I have practiced class action law since 1998 and have prosecuted numerous antitrust and other class actions. During that time I have been involved with many settlement negotiations. In my opinion, the proposed EGL settlement is fair, adequate, and reasonable, provides substantial benefits to Class Members, including valuable assistance in prosecuting Plaintiffs' claims against the remaining non-settling Defendants, and avoids the delay, risks and uncertainty of continued litigation.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on September 20, 2011.

Minneapolis, Minnesota

s/Daniel C. Hedlund
Daniel C. Hedlund