UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

IN RE AIR CARGO SHIPPING SERVICES ANTITRUST LITIGATION MDL No. 1775	Master File 06-MD-1775 (BMC) (VVP) THIS DOCUMENT RELATES TO: All Actions

MEMORANDUM OF LAW IN SUPPORT OF PLAINTIFFS' MOTION FOR PRELIMINARY APPROVAL OF SETTLEMENT WITH DEFENDANT AIR INDIA LTD.

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I. INTRODUCTION

Plaintiffs have negotiated a settlement with defendant Air India Ltd. ("Air India") in the amount of $12,500,000.00 (the "Settlement Amount").[1] Because this is an excellent result for the Class, plaintiffs seek preliminary approval of this settlement under Federal Rule of Civil Procedure 23(e). At the preliminary approval stage, the Court only determines if, on its face, the proposed settlement is "at least sufficiently fair, reasonable and adequate to justify notice to those affected and an opportunity to be heard" or, put another way, the Court is to make sure that the settlement is within the range of possible approval. *See In re NASDAQ Mkt.-Makers Antitrust Litig.*, 176 F.R.D. 99, 102 (S.D.N.Y. 1997) ("*NASDAQ I*"). As detailed below, the settlement is well within the range for possible approval and should be preliminarily approved by this Court under Rule 23(e).

II. BACKGROUND

A. The Litigation

This litigation began in early 2006. The First Consolidated Amended Complaint, filed in February 2007, named more than two dozen defendant air carriers. After extensive motion practice directed at the First Consolidated Amended Complaint, on August 21, 2009 (ECF No. 938), the Court denied the defendants' motions to dismiss.

Additional defendants (including Air India) were named in complaints filed on February 12, 2010, and July 26, 2010. *See* Civil Action No. 10-CV-0639, ECF No. 1; Civil Action No. 10-CV-3398, ECF No. 1. Plaintiffs alleged that the defendants, including Air India, conspired to unlawfully fix prices of airfreight shipping services worldwide, including on cargo shipments to, from, and within the United States, by, among other things, concertedly levying agreed-upon,

[1] All terms used in this Memorandum and accompanying documents have the same meaning as defined in the Settlement Agreement.

artificially inflated surcharges in violation of Section 1 of the Sherman Act, 15 U.S.C. § 1. The additional defendants' motions to dismiss were denied by the Court on November 1, 2010. The parties completed extensive discovery, including the production of more than 18 million pages of documents and more than 90 depositions around the globe.

After extensive briefing, numerous expert depositions, and a three-day evidentiary hearing, including 20 hours of expert testimony held before Magistrate Judge Pohorelsky, on October 15, 2014, Magistrate Judge Pohorelsky issued a 114-page Report and Recommendation recommending that plaintiffs' motion for class certification be granted. *See* ECF. No. 2055 (the "Class Cert. R&R"). Magistrate Judge Pohorelsky also recommended that plaintiffs' motion to strike certain opinions of defendants' experts David P. Kaplan and Dr. Michelle Burtis be granted in part. *See id*. at 46-47. On July 10, 2015, the Class Cert R&R was adopted in its entirety by the Court over defendants' objections. *See* ECF No. 2282 (as amended on August 3, 2015 (ECF No. 2326)). Defendants sought to appeal under Rule 23(f), but, on November 3, 2015, the Second Circuit denied the motion. *See* Case 15-2361, Document 36. Per the Court's order of November 6, 2015, plaintiffs then sent a notice to class members informing them of the Court's ruling certifying the Class and setting January 22, 2016 as the date by which potential class members' election to opt out of the litigation class needed to be postmarked. *See* ECF No. 2370, ¶ 6.

Plaintiffs and the then remaining defendants filed summary judgment motions on April 24, 2015. Plaintiffs' motions concerned the affirmative defenses of state action, act of state, foreign sovereign compulsion, international comity, filed rate, and Noerr-Pennington. Defendants Air India, Air China, Air New Zealand and Polar Air Cargo, LLC each filed a motion based on its alleged non-involvement in the alleged world-wide conspiracy. All

remaining defendants, including Air India, jointly filed a motion for partial summary judgment on plaintiffs' security surcharge claims. Defendants Air India, Air China, and Air New Zealand jointly filed a motion for summary judgment for a purported failure to prove antitrust damages caused by the alleged conspiracy and for damages allegedly barred by the statute of limitations.

On August 31, 2015, the Court denied defendants' motions for summary judgment and granted all of plaintiffs' motions for judgment on defendants' affirmative defenses. *See* ECF No. 2342 (minute entry).

Thus far, the Court has granted final approval to 25 settlements[2] and preliminary approval

[2] (1) Deutsche Lufthansa AG, Lufthansa Cargo AG, and Swiss International Air Lines Ltd. (collectively "Lufthansa"): $85 million, plus the cost of providing notice to the class and cooperation (final approval granted September 25, 2009 (ECF No. 963)) (unlike subsequent settlements, which include payments only to direct purchasers, the Lufthansa settlement included payments both to direct and indirect purchasers); (2) Société Air France ("Air France"), Koninklijke Luchtvaart Maatschappij N.V. ("KLM"), and Martinair Holland N.V. ("Martinair") (collectively "Air France/KLM"): $87 million, plus notice costs up to $500,000 and cooperation (final approval granted March 14, 2011 (ECF No. 1414)); (3) JAL: $12 million, plus cooperation (final approval granted March 14, 2011 (ECF No. 1417)); (4) AMR Corporation and American Airlines, Inc. (collectively, "AA"): $5 million, plus the cost of providing notice to the class and cooperation (final approval granted March 14, 2011 (ECF No. 1413)); (5) Scandinavian Airlines System and SAS Cargo Group A/S (collectively, "SAS"): $13.93 million, plus notice costs up to $500,000 and cooperation (final approval granted effective March 17, 2011 (ECF No. 1416)); (6) All Nippon Airways Co., Ltd. ("ANA"): $10.4 million, plus cooperation (final approval granted July 15, 2011 (ECF No. 1524)); (7) Cargolux Airlines International S.A. ("Cargolux"): $35.1 million, plus notice costs of up to $150,000 and cooperation (final approval granted July 15, 2011 (ECF No. 1524)); (8) Thai Airways International Public Company Limited ("Thai"): $3.5 million plus cooperation (final approval granted July 15, 2011 (ECF No. 1524)); (9) Qantas Airways Limited ("Qantas"): $26.5 million, plus notice costs of up to $250,000 and cooperation (final approval granted August 4, 2011 (ECF No. 1524)); (10) LAN Airlines, S.A., LAN Cargo S.A., and Aerolínhas Brasileiras, S.A. ("LAN/ABSA"): $66 million, plus notice costs up to $150,000 and cooperation (final approval granted August 2, 2012 (ECF No. 1732)); (11) British Airways PLC ("BA"): $89.512 million, plus notice costs up to $500,000 and cooperation (final approval granted August 2, 2012 (ECF No. 1732)); (12) Malaysia Airlines ("Malaysia"): $3.2 million, plus $150,000 toward the cost of notice and settlement administration and cooperation (final approval granted August 2, 2012 (ECF No. 1732)); (13) South African Airways ("SAA"): $3.29 million plus $150,000 toward the cost of notice and settlement administration and cooperation (final approval granted August 2, 2012 (ECF No. 1732)); (14) Saudi Arabian Airlines, Ltd. ("Saudia"): $14 million and cooperation (final approval granted August 2, 2012 (ECF No. 1732)); (15) Emirates: $7.833 million and cooperation (final approval granted August 2, 2012 (ECF No. 1732)); (16) El Al Israel Airlines Ltd. ("El Al"): $15.8 million and cooperation (final approval granted August 2, 2012 (ECF No. 1732)); (17) Air Canada and AC Cargo LP (collectively, "Air Canada"): $7.5 million and cooperation (final approval granted August 2, 2012 (ECF No. 1732)); (18) Salvatore Sanfilippo ("Sanfilippo"), a managerial employee of Defendant Air New Zealand: cooperation

to two additional settlements.[3] A motion for preliminary approval of the settlement with Air New Zealand is pending. ECF No. 2459.

B. Settlement Negotiations

The plaintiffs engaged in settlement negotiations with Air India intermittently throughout the last five years with little progress. *See* Declaration of Brent W. Landau in Support of Plaintiffs' Motion for Preliminary Approval of Settlement with Defendant Air India Ltd., dated May 19, 2016 ("Landau Decl.") ¶ 2. The parties then agreed to hold an all-day mediation before Eric D. Green, a well-known mediator. *Id.* ¶ 3. The mediation was scheduled shortly before plaintiffs' depositions of Air India's trial experts were to take place, and was attended by plaintiffs' Co-Lead Counsel, counsel for Air India, and four senior Air India executives, two of whom traveled from India. *Id.* ¶ 4.

During the mediation, the parties exchanged multiple offers and counteroffers, eventually agreeing to the key terms of the settlement. *Id.* ¶ 5. The mediation culminated in execution of a Memorandum of Understanding, subject to the approval of Air India's board of directors. *Id.* Following approval by the board, and additional negotiations regarding the terms of the settlement agreement, counsel for plaintiffs and counsel for Air India signed the Settlement Agreement with an execution date of May 17, 2016. *Id.* ¶ 6.

(final approval granted August 2, 2012 (ECF No. 1732)); (19) Korean Air Lines Co., Ltd.: $115 million and cooperation (ECF No. 2362); (20) Singapore Airlines Limited and Singapore Airlines Cargo PTE, Ltd. ("Singapore"): $92.5 million and cooperation (ECF No. 2362); (21) Cathay Pacific Airways Limited: $65 million and cooperation (ECF No. 2362); (22) China Airlines, Ltd.: $90 million and cooperation (ECF No. 2362); (23) Asiana Airlines, Inc.: $55 million and cooperation (ECF No. 2447); (24) Nippon Cargo Airlines Co., Ltd.: $36.35 million, plus $200,000 in notice costs and cooperation (ECF No. 2446); and (25) EVA Airways Corporation: $99 million, plus $200,000 in notice costs and cooperation (ECF No. 2445).

[3] (1) Polar Air Cargo LLC, Polar Air Cargo Worldwide, Inc., and Atlas Air Worldwide Holdings, Inc. ("Polar"): $100 million (ECF No. 2402); and (2) Air China Limited and Air China Cargo Company Limited ("Air China"): $50 million (ECF No. 2418).

Both sides vigorously negotiated their respective positions on all material terms of the Settlement Agreement, and the negotiations were non-collusive. *Id*. ¶ 7. Having prosecuted this case against over 30 alleged co-conspirators for more than 10 years, by the time of these settlement negotiations, Class Counsel were well informed of the facts and issues concerning liability and damages and the relative strengths and weaknesses of each side's litigation position. *Id*. ¶ 8.

The Settlement Agreement, attached to the Landau Declaration as Exhibit A, includes the following material terms:

1. The Class

Pursuant to the Court's Order dated July 10, 2015, as amended on August 3, 2015 (ECF No. 2326), the Class is:

> All persons or entities (but excluding Defendants, their parents, predecessors, successors, subsidiaries, affiliates, as well as government entities) who purchased airfreight shipping services for shipments to or from the United States directly from any of the Defendants or from any of their parents, predecessors, successors, subsidiaries, or affiliates, at any time during the period from January 1, 2000 up to and including September 30, 2006.

Settlement Agreement, ¶ 21.[4] Therefore, it is not necessary for the Court to make a determination of a settlement class for purposes of approving the Settlement Agreement.

2. The Settlement Fund

Pursuant to the terms of the Settlement Agreement, Air India will pay US $12.5 million as follows: $6.25 million on or before June 1, 2016, and another US $6.25 million on or before August 1, 2016. *Id*. ¶ 32. From the Settlement Amount, the sum of $250,000 may be used for

[4] As defined in the Settlement Agreement, the term "Defendant" means any party named as a defendant in the First Consolidated Amended Complaint in this Action or named thereafter as a defendant in the Action up to and including the Preliminary Approval Date. *See* Settlement Agreement, ¶ 9.

reasonable costs of disseminating notice of the Settlement Agreement, including the cost of administration. *Id.* ¶ 33. All income earned on the Settlement Fund shall become and remain part of the Settlement Fund. *Id.* ¶ 36.

3. The Release

In exchange for Air India's consideration, the Released Parties (as defined in the Settlement Agreement) shall be completely released, acquitted, and forever discharged from any and all claims, demands, actions, potential actions, suits and causes of action, losses, obligations, damages, matters and issues of any kind or nature whatsoever, and liabilities of any nature on account of or arising out of or resulting from or in any way related to any conduct regardless of where it occurred at any time prior to the effective date concerning the direct purchase from Air India or any other defendant of airfreight shipping services to or from the United States or concerning the pricing, selling, discounting or marketing of airfreight shipping services for shipments to or from the United States, including without limitation, claims based in whole or in part on the facts, occurrences, transactions, or other matters alleged in the Action or otherwise the subject of the Action (and specifically including, without limitation, claims in any way related to cargo rates, fuel surcharges, security surcharges, insurance surcharges, United States customs surcharges, war risk surcharges, commissions, incentives, rebates, credits, yields, or any other element of the price of or the compensation related to Airfreight Shipping Services), which arise under any antitrust, unfair competition, unfair practices, price discrimination, unitary pricing, trade practice, consumer protection, unjust enrichment, civil conspiracy law, or any other law.[5] *Id.* ¶ 29. However, there is no release of any claims (a) made with respect to any indirect purchase of airfreight shipping services; or (b) for negligence, breach of contract,

[5] The full language of the release provisions is found at ¶¶ 29-31 of the Settlement Agreement.

bailment, failure to deliver, lost goods, damaged or delayed goods or similar claims between any of the released parties and any of the releasing parties relating to airfreight shipping services. *Id*.

III. ARGUMENT

A. The Settlement of Complex Litigation Is Favored

Plaintiffs and Air India have reached an agreement that maximizes plaintiffs' recovery. Plaintiffs have avoided the potential risks inherent in complex antitrust class action litigation and secured a substantial cash payment from Air India. Reaching such a positive result prior to engaging in a lengthy trial where the outcome is uncertain enhances the attractiveness of this settlement. *See In re Global Crossing Sec. & ERISA Litig.*, 225 F.R.D. 436, 455 (S.D.N.Y. 2004) ("[F]ederal courts favor settlement, especially in complex and large-scale disputes, so as to encourage compromise and conserve judicial and private resources."). Further, the Court should be mindful of the "general policy favoring settlement." *In re Air Cargo Shipping Servs. Antitrust Litig*., No. 06-md-1775, 2009 WL 3077396, at *6 (E.D.N.Y. Sept. 25, 2009) (approving the Lufthansa settlement); *see also In re Air Cargo Shipping Servs. Antitrust Litig*., No. 06-md-01775, 2011 WL 2909162, at *3 (E.D.N.Y. July 15, 2011); Report & Recommendation (ECF No. 625) (the "Lufthansa Prel. App. R&R"), at 14; *Bourlas v. Davis Law Assocs.,* 237 F.R.D. 345, 354-55 (E.D.N.Y. 2006) (noting that class actions are amenable to settlement "because of the difficulties of proof, the uncertainties of the outcome, and the typical length of the litigation"); *Bano v. Union Carbide Corp.*, 273 F.3d 120, 129-30 (2d Cir. 2001).

B. The Proposed Settlement Exceeds the Standards for Preliminary Approval

When parties to a class action seek to settle, they must proceed before the court in two steps: first, they must seek preliminary approval of the proposed settlement and then, should such preliminary approval be granted, they must provide notice to the class and appear at a fairness hearing, after which the court may grant final approval to the settlement. *See Manual for*

Complex Litigation (Fourth) § 21.63 (2004); *NASDAQ I*, 176 F.R.D. at 102. Because the first step of this process is only "preliminary," the standards for preliminary approval are less exacting than those applied to final approval. "[A] court must determine whether the terms of the proposed settlement warrant preliminary approval. In other words, the court must make 'a preliminary evaluation' as to whether the settlement is fair, reasonable and adequate." *In re Currency Conversion Fee Antitrust Litig.*, No. 01 MDL 1409, 2006 WL 3247396, at *5 (S.D.N.Y. Nov. 8, 2006) (citation omitted); *see also Wal-Mart Stores, Inc. v. Visa U.S.A. Inc.*, 396 F.3d 96, 116 (2d Cir. 2005). Preliminary approval of a proposed settlement is granted so long as the settlement was arrived at through a fair process and the terms of the settlement are within the "range of *possible* approval." *NASDAQ I*, 176 F.R.D. at 102 (emphasis added).

In conducting this inquiry, a court considers both the negotiating process leading up to the settlement and the settlement's substantive terms. *Global Crossing*, 225 F.R.D. at 455. A court determines whether the settlement is "at least sufficiently fair, reasonable and adequate to justify notice to those affected and an opportunity to be heard." *NASDAQ I,* 176 F.R.D. at 102 (citations omitted). Preliminary approval should be granted "if the settlement is the result of serious, informed and non-collusive negotiations and the proposed settlement has no obvious deficiencies, such as giving preferential treatment to class representatives, or granting excessive attorneys' fees." *In re Med. X-Ray Film Antitrust Litig.*, No. CV 93-5904, 1997 WL 33320580, at *6 (E.D.N.Y. Dec. 26, 1997) (citing *NASDAQ I*, 176 F.R.D. 99, and *Manual for Complex Litigation (Third)* § 30.14 (1995)). In considering preliminary approval, the sole issue is whether the proposed settlement falls within the range of possible approval. *NASDAQ I,* 176 F.R.D. at 102.

The negotiations here were conducted by experienced counsel on both sides at arm's length, and included an all-day mediation. *See* Landau Decl. ¶¶ 4, 6. At this late stage in the litigation process, Plaintiffs' counsel were well-informed of the material facts and risks associated with litigating the case through trial, and the negotiations were non-collusive. *Id*. ¶¶ 7-8. Further, the substantial cash payment represents more than 10% of Air India's relevant sales during the class period, making it among the higher settlements received when measured on that basis. Based upon these facts, preliminary approval is warranted, and, as will be demonstrated in detail at the final fairness hearing, this settlement is a "fair, reasonable, and adequate" settlement of the class claims. *See City of Detroit v. Grinnell Corp*., 495 F.2d 448, 463 (2d Cir. 1974).[6]

1. The Proposed Settlement Is the Result of Arm's-Length Negotiations Conducted by Highly Experienced Counsel.

The process that led to this proposed settlement was facilitated by a highly experienced mediator and was fairly conducted by highly-qualified counsel who sought to obtain the best possible result for their clients and the Class. When counsel engages in an arm's-length negotiation that results in a settlement, courts find that the settlement is entitled to a presumption of fairness. *See In re Air Cargo Shipping Servs. Antitrust Litig*., 2009 WL 3077396, at *7 (finding Lufthansa settlement "procedurally fair because it was the product of arm's length

[6] There are nine relevant factors that courts consider in evaluation a settlement's substantive terms at the time of final approval: (1) the complexity, expense and likely duration of the litigation; (2) the reaction of the class to the settlement; (3) the stage of the proceedings and the amount of discovery completed; (4) the risks of establishing liability; (5) the risks of establishing damages; (6) the risks of maintaining the class action through the trial; (7) the ability of the defendants to withstand a greater judgment; (8) the range of reasonableness of the settlement fund in light of the best possible recovery; and (9) the range of reasonableness of the settlement fund to a possible recovery in light of all the attendant risks of litigation. *Grinnell,* 495 F.2d at 463. As this Court has recognized, there is little to be gained by applying the *Grinnell* factors at the preliminary approval stage. *See Bourlas*, 237 F.R.D. at 356 n.7 ("it is apparent that several of the *Grinnell* factors themselves were designed for application at a later stage in the class settlement approval process"). As a result, they are discussed here only when they provide a useful guide to assess the settlement's fairness at this stage.

negotiations between experienced and able counsel"); *see also In re Air Cargo Shipping Servs. Antitrust Litig.*, 2011 WL 2909162, at *4; *In re NASDAQ Mkt.-Makers Antitrust Litig.,* 187 F.R.D. 465, 474 (S.D.N.Y. 1998) ("*NASDAQ II"*) ("[s]o long as the integrity of the arm's length negotiation process is preserved … a strong initial presumption of fairness attaches to the proposed settlement"); *In re Sterling Foster & Co. Sec. Litig.*, 238 F. Supp. 2d 480, 484 (E.D.N.Y. 2002); *In re Twinlab Corp. Sec. Litig.,* 187 F. Supp. 2d 80, 83 (E.D.N.Y. 2002); *In re Joint E. & S. Dists. Asbestos Litig.,* 878 F. Supp. 473, 567 (E.D.N.Y. 1995). Further, when the settlement that results from such negotiations is being championed by experienced and informed counsel, courts afford counsel's opinion considerable weight because they are closest to the facts and risks associated with the litigation itself. *See Joint E.,* 878 F. Supp. at 567 ("[a] substantial factor in determining the fairness of a settlement is the opinion of counsel involved in the settlement" (citations omitted)); *In re PaineWebber Ltd. P'ships Litig.*, 171 F.R.D. 104, 125 (S.D.N.Y. 1997) (stating that "great weight" is accorded to the recommendations of counsel, who are most closely acquainted with the facts of the underlying litigation), *aff'd*, 117 F.3d 721 (2d Cir. 1997). The process that led to this settlement confirms that the initial presumption of fairness is correct.

The Court has found that Class Counsel are highly capable and have the requisite qualifications and experience to handle this litigation. *See* Class Cert. R&R at 56 ("as the court has already noted on several occasions, the proposed class counsel is undoubtedly qualified to maintain this action"), adopted July 10, 2015, and amended on August 3, 2015; Lufthansa Prel. App. R&R, at 8-9; *see also In re Air Cargo Shipping Servs. Antitrust Litig.*, 240 F.R.D. 56, 57 (E.D.N.Y. 2006); *In re Air Cargo Shipping Servs. Antitrust Litig.*, No. 06-md-1775, 2012 WL 3138596, at *4 (E.D.N.Y. Aug. 2, 2012) (incorporating the reasoning and conclusions set forth in

the Court's previous opinions approving settlements in this litigation); *In re Air Cargo Shipping Servs. Antitrust Litig.*, 2011 WL 2909162, at *6; *In re Air Cargo Shipping Servs. Antitrust Litig.*, 2009 WL 3077396, at *7. Here, settlement negotiations involved a day-long mediation by an experienced mediator, and follow-up telephone and email communications. *See* Landau Decl. ¶¶ 4-6. The discussions were meaningful and informed as Class Counsel took steps to ensure that they had all of the necessary information to advocate for a fair settlement that served the best interests of the Class. *Id*. ¶¶ 7-8. Class Counsel analyzed and evaluated the contested legal and factual issues posed by the litigation so that adequate demands could be made. *See id.*; *see also* Class Cert. R&R at 47-110 (analyzing issues in context of class certification); *In re Air Cargo Shipping Servs. Antitrust Litig.*, 2009 WL 3077396, at *7 (discussing negotiation process arriving at Lufthansa settlement). Class Counsel were well informed of the facts of the case and the strength of the claims asserted when the terms of the Settlement Agreement were negotiated. *See Global Crossing*, 225 F.R.D. at 458.

2. The Proposed Settlement Falls Within the Range of Possible Approval.

To preliminarily approve this settlement, the Court must decide that the proposed settlement falls within the range of settlement that could *possibly* be approved as "fair, reasonable and adequate." *NASDAQ I*, 176 F.R.D. at 102. The settlement here provides for a substantial cash payment. Continuing this litigation against Air India would entail a highly expensive legal battle, involving complex legal and factual issues where motions *in limine* and *Daubert* motions would be vigorously contested. At trial, the ultimate outcome remains uncertain for both parties because it would turn on questions of proof, many of which would be the subject of complicated expert opinions, particularly with regard to damages. *See NASDAQ II*, 187 F.R.D. at 475-76. In denying defendants' summary judgment motions, the Court stated that the

defendants "raise[d] difficult questions that are defendant specific" which "may in the end of the day be very persuasive arguments to the jury as to why a jury should not conclude that these remaining entities were involved in this conspiracy." Hr'g. Tr., 93-94, ECF No. 2351. Given this uncertainty, "[a] very large bird in the hand in this litigation is surely worth more than whatever birds are lurking in the bushes." *In re Chambers Dev. Sec. Litig.*, 912 F. Supp. 822, 838 (W.D. Pa. 1995).

The Settlement Amount represents in excess of 10% of Air India's sales of Airfreight Shipping Services to and from the United States to Class Members during the Class Period, well above prior settlements in this action. Plaintiffs achieved this excellent result even though, unlike many of the other air carriers that have settled, the Department of Justice elected not to bring charges against Air India.

Based upon the foregoing, the Settlement Agreement is well within the *possible* range of approval as a "fair, reasonable, and adequate" settlement of the Class's claims. *See Grinnell,* 495 F.2d at 463.

C. Notice to the Class

Plaintiffs will submit notice regarding the Settlement Agreement to Class Members informing them of their rights with respect to the proposed settlement. Plaintiffs propose combining notice of this settlement with the two settlements that have received preliminary approval – Polar and Air China – and, if preliminarily approved, with the Air New Zealand settlement. *See* Settlement Agreement, ¶ 24.

IV. PRELIMINARY APPROVAL ORDER

Plaintiffs respectfully submit that the proposed Settlement Agreement with Air India falls well within the range of possible approval. Plaintiffs therefore request that the Court:

1. Preliminarily approve the Settlement Agreement and find that its terms are sufficiently fair, reasonable, and adequate for notice to be issued to the Class;

2. Order Class Counsel to disseminate notice to the Class, upon submission of proposed notices and approval by the Court of the form of notice and the notice plan; and

3. Approve The Garden City Group as Administrator of the Settlement and Citibank, N.A. as escrow agent.

V. CONCLUSION

For the foregoing reasons, the Court should grant plaintiffs' motion for preliminary approval of this settlement with Air India.

Dated: May 19, 2016

Respectfully Submitted,

/s/ Brent W. Landau
Brent W. Landau
Michael D. Hausfeld
Hilary K. Scherrer
Melinda R. Coolidge
HAUSFELD LLP
1700 K Street NW
Suite 650
Washington, DC 20006
(202) 540-7200

/s/ Howard J. Sedran
Howard J. Sedran
Austin B. Cohen
Keith J. Verrier
LEVIN, FISHBEIN, SEDRAN & BERMAN
510 Walnut Street
Philadelphia, PA 19106
(215) 592-1500

/s/ Robert N. Kaplan
Robert N. Kaplan
Gregory K. Arenson
Elana Katcher
KAPLAN FOX & KILSHEIMER LLP
850 Third Avenue, 14th Floor
New York, NY 10022
(212) 687-1980

/s/ Hollis Salzman
Hollis Salzman
Meegan Hollywood
ROBINS KAPLAN LLP
601 Lexington Avenue, Suite 3400
New York, NY 10022
(212) 980-7400

Gary L. Specks
KAPLAN FOX & KILSHEIMER LLP

423 Sumac Road
Highland Park, IL 60035
(847) 831-1585

Class Counsel