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Court File No. CV-18-00609498-00CP

ONTARIO
SUPERIOR COURT OF JUSTICE

B E T W E E N:

JOHN SOMWAR, TULSIDAI SOMWAR and SHANTA PERSAUD

Plaintiffs

and

FLY JAMAICA AIRWAYS LTD., THE BOEING COMPANY,
BASIL FERGUSON, KEONE BRYAN, MEXICANA MRO, S.A. DE C.V.,
JOHN DOE #4 AIRCRAFT MAINTENANCE MECHANIC

Defendants

Proceedings under the Class Proceedings Act, 1992

SETTLEMENT AGREEMENT WITH THE DEFENDANTS, FLY JAMAICA AIRWAYS LTD., THE BOEING COMPANY, BASIL FERGUSON, KEONE BRYAN, MEXICANA MRO, S.A. DE C.V., JOHN DOE #4 AIRCRAFT MAINTENANCE MECHANIC

WHEREAS:

A. The Plaintiffs have commenced this Class Action in the Ontario Superior Court of Justice as Action No. CV-18-00609498-00CP under the *Class Proceedings Act, 1992* against the Defendants for damages allegedly arising from the events of Fly Jamaica Flight 0J256 on November 9, 2018;

B. By Order of Morgan, J. dated September 19, 2019 and entered on September 24, 2019, the Ontario Superior Court of Justice certified this action as a class proceeding against the Defendants, Fly Jamaica Airways Ltd., Basil Ferguson, Keone Bryan (collectively the “Fly Jamaica Defendants) andThe Boeing Company (“Boeing”), pursuant to Section 2 and Section 5 of the *Class Proceedings Act*.

C. By Order dated March 10, 2022 and entered on March 25, 2022, Mexicana MRO, S.A. DE C.V. and John Doe No. 4 Aircraft Maintenance Mechanic (collectively the “Mexicana MRO”) were added as Defendants to the action.

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D. Certain passengers of Flight OJ246 opted out of the Class Action with some of these opted-out passengers' claims having been settled directly by Fly Jamaica Airways Ltd.;

E. The Fly Jamaica Defendants, The Boeing Company and the Mexicana MRO deny any and all allegations asserted against them by the Class Members in this proceeding;

F. Class Counsel have conducted extensive investigations with respect to liability and damages relating to all the Defendants in this proceeding;

G. The Defendants have also conducted extensive investigations with respect to potential liability and, as noted above, the Defendants deny all allegations asserted against them by the Class Members in this proceeding;

H. The Plaintiffs and the Defendants have reached a settlement to settle all claims of the Class Members;

I. Pursuant to the terms set out in the Minutes of Settlement agreed to by the Parties on or about June 21, 2023, the Plaintiffs and Defendants have reached a settlement agreement to settle the claims of all the Class Members;

J. The Plaintiffs, Fly Jamaica Defendants, The Boeing Company and the Mexicana MRO have conducted extensive settlement negotiations, at arms length, which resulted in this Settlement Agreement, which settles all claims by all Class Members;

K. Based on the analyses of the facts and law applicable to the claims of the Class Members, and having regard to the burdens and expense in conducting litigation of the Class Action including the risks and uncertainties associated with trials and appeals, the Plaintiffs and Class Counsel have concluded that this Settlement Agreement provides substantial benefits to the Class Members and that it is fair, reasonable and in the best interests of the Class Members;

L. The Plaintiffs, on their own behalf and in their capacity as Representative Plaintiffs, have entered into this Settlement Agreement with all named Defendants, subject to the approval of the Court;

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M. The division of the Settlement Amount between the Fly Jamaica Defendants, The Boeing Company and the Mexicana MRO is not to be disclosed to the Court, and shall remain confidential among the Defendants; and

N. Subject to the approval of the Court, the parties agree that this Class Action against the Fly Jamaica Defendants, The Boeing Company and Mexicana MRO, in particular, the Released Claims, shall be resolved as set forth in this Settlement Agreement.

THE PARTIES AGREE AS FOLLOWS:

Definitions

1. The following terms used throughout this Settlement Agreement shall be defined or construed as follows:

"Administrator" means the law firm of Howie, Sacks and Henry LLP

"Approval Date" means the date when this Settlement Agreement is approved, pursuant to Section 29 of the *Class Proceedings Act 1992*, S.O. 1992, c. 6.

"Approval Order" means the Order approving this Settlement Agreement pursuant to Section 29 of the *Class Proceedings Act*.

"Boeing" means The Boeing Company.

"Carriage by Air Act" means *Carriage by Air Act*, R.S. 1985, c. C-26, as amended.

"Certification Order" means the Order granted by Morgan, J. dated September 19, 2019 and entered on September 24, 2019, certifying this Class Action as a class proceeding.

"Claim" means a claim to participate in the distribution of the Settlement Amount made by a Class Member.

"Claims Process" means the process by which Claims by the Class Members will be valued and resolved.

"Class Action" means Class Action No. CV-18-00609498-00CP, Ontario Superior Court of Justice.

"Class Counsel" means members of the law firms of Howie, Sacks and Henry LLP, Camp Fiorante Matthews Mogerman LLP, and Rochon Genova LLP who have conduct of the Class Action.

"**Class Counsel Assessment**" means the valuation of a Class Member's claim conducted by Class Counsel and communicated to a Class Member.

"Class Member" means each person who is a Passenger Class Member or a Family Claimant Class Member as those terms are defined in this agreement.

"Convention Damages" means damages for bodily injury and baggage loss, damage and delay as specified in the *Montreal Convention* and the *Warsaw Convention*, as amended.

"Court" means the Honourable Justice Morgan, or any other judge of the Ontario Superior Court of Justice, designated to manage the Action or any other judge of the Ontario Superior Court of Justice.

"Defendants" mean Fly Jamaica Airways Ltd., The Boeing Company, Basil Ferguson, Keone Bryan, Mexicana MRO, S.A. DE C.V. and John Doe #4 – Aircraft Maintenance Mechanic.

"Effective Date" means the Approval Date unless the Court otherwise directs.

"Extra-Convention Damages" means such damages as are available under the laws of Canada and Ontario other than Convention Damages.

"Family Claimant Class Member" means a member of the Family Claimant Class as defined in the Certification Order of Justice Morgan dated September 19, 2019 and entered on September 24, 2019. Relatives of a Passenger Class Member who have chosen to opt out of the class proceeding are excluded from this class.

"Flight OJ256" means Fly Jamaica Flight OJ256, which landed at and overran/exited Runway 06 at the Georgetown Cheddi Jagan International Airport (CJIA) in Guyana on November 9, 2018.

"Fly Jamaica Defendants" means the Defendants, Fly Jamaica Airways Ltd., Basil Ferguson and Keone Bryan.

"John Somwar, Tulsidai Somwar and Shanta Persaud Members" means the spouse, children, grandchildren, grandparents, brothers and sisters of John Somwar, Tulsidai Somwar and Shanta Persaud, Family Claimant Class Members who are entitled to claim damages pursuant to Schedule II of the *Carriage by Air Act* and Section 61 of the *Family Law Act*.

"Mexicana MRO" means Mexicana MRO, S.A. DE C.V. and John Doe #4 Aircraft Maintenance Mechanic.

"OHIP" means the Ontario Health Insurance Plan.

"Parties" means the Plaintiffs, the Fly Jamaica Defendants, The Boeing Company and Mexicana MRO.

"Passenger Class Member" means a member of the Passenger Class as defined in the Certification Order of Justice Morgan dated September 19, 2019 and entered on September 24, 2019 and as set out and listed in Schedule "A" to this Settlement Agreement.

"Plaintiffs" means John Somwar, Tulsidai Somwar and Shanta Persaud.

"Released Claims" means any and all claims, lawsuits, demands and causes of action, whether class, individual, subrogated or otherwise in nature, damages whenever and wherever incurred, liabilities of any nature whatsoever, known or unknown, suspected or unsuspected, asserted or unasserted, in law or equity, including without limitation those based on any statute or any law of Canada or elsewhere providing any remedy or relief in respect of any claim or matter asserted or that could have been asserted in the Class Action, including interest, costs, expenses, legal fees, disbursements, notice and administration expenses that any of the Releasing Parties, whether directly, indirectly, representatively, derivatively or in any other capacity, ever had, now has, or hereafter can, shall or may have against the Defendants relating in any way to the events of Flight OJ256.

"Released Parties" means the Fly Jamaica Defendants, The Boeing Company and Mexicana MRO and their respective present and former, direct and indirect, parent companies, subsidiaries, lessors, affiliates, related entities, predecessors, successors, shareholders, insurers, re-insurers and assigns and all of their past, present and future directors, officers, attorneys, employees, agents, consultants, advisors, members, nominators, contractors and other representatives of any type and their executors, heirs, successors, administrators, and assigns, including, with respect to the Fly Jamaica Defendants, Wings Aviation Inc., Wings Aviation Limited, Air Guyana and Stine Seed Farm Inc., and "Released Party" shall mean any one of them.

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"Releasing Parties" means the Class Members and their respective executors, heirs, successors, administrators, insurers, assigns, and anyone else whose right to claim derives from a Class Member and "Releasing Party" shall mean any of them.

"Settlement Agreement" means this agreement reached among the Plaintiffs, the Fly Jamaica Defendants, Boeing and Mexicana MRO, including any schedules, as amended or supplemental from time to time.

"Settlement Amount" means the sum of $5,550,000.00 CAD.

Settlement Amount

2. The Settlement Amount shall be paid on behalf of the Defendants in full satisfaction of the Released Claims against the Released Parties.

3. The Settlement Amount shall be deposited on behalf of the Defendants with Howie, Sacks & Henry LLP in an interest bearing trust account as soon as reasonably possible, and no later than March 1, 2024.

4. Howie, Sacks & Henry LLP undertake that they will not dispense any of the funds constituting the Settlement Amount until the Effective Date.

5. In the event the Settlement Agreement is not approved or is terminated for any reason, the Settlement Amount and accrued interest shall revert to the Defendants as directed by them.

6. The Class Members shall be solely responsible for all tax reporting and payment requirements arising from the investment of the Settlement Amount, including any obligation to report taxable income and make tax payments. All taxes payable on any interest, which accrues on any or all of the Settlement Amount, shall be the responsibility of the Administrator, and shall be paid out of the Settlement Amount as the Administrator sees fit.

7. Class Counsel shall be responsible for resolving the subrogated interest of OHIP, or any other entity that may assert a subrogated claim on behalf of the Class Members from the Settlement Amount and shall provide confirmation to the Defendants that OHIP will not seek to recover its subrogated interest from the Defendants.

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8. The Defendants shall have no obligation to pay any amount in addition to the Settlement Amount in connection with the Released Claims.

9. In no event shall the Defendants have any liability or responsibility with respect to the costs of providing any notice to Class Members, or the distribution and administration of the Settlement Amount including, but not limited to, the costs and expenses of such distribution and administration.

10. Upon granting of the Approval Order, the Settlement Amount shall be administered in accordance with the provisions of the Claims Process, Distribution Protocol and the Approval Order herein.

Court Approval Hearing

11. The Parties shall appear before the Court to seek an Approval Order substantially in the form attached as Schedule “B”.

Minor Settlements

12. The Order approving this Settlement Agreement shall also approve the settlement of the claims of any minor Class Members.

Notice of Settlement

13. A notice will be issued after the Effective Date advising Class Members of the approval of the Settlement Agreement and the Claims Process. The notice will be in the form of a letter in English. The cost of preparing and issuing the notice will be paid by Class Counsel and will be recovered as a disbursement from the Settlement Amount. The Notice will be substantially in the form attached as Schedule “C”.

14. Notice to a Passenger Class Member shall be deemed to be notice to all relatives of the Passenger Class Member entitled to assert claims as a Family Claimant Class Member.

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Class Counsel Fees and Disbursements

15. The fees and disbursements of Class Counsel will be set by the Court on further application by Class Counsel.

16. Class Counsel, on or after the Effective Date, may apply to the Court for approval to pay themselves from the Settlement Amount:

    (a) fees, disbursements and applicable taxes; and

    (b) costs of any notice or other administrative costs incurred on behalf of the Class.

17. The Defendants shall have no obligation or responsibility to pay Class Counsel fees and disbursements.

Administrator, Claims Process and Distribution Protocol

18. The terms of the Claims Process are attached as Schedule “D” to this Settlement Agreement.

19. The terms of the Distribution Protocol are attached as Schedule “E” to this Settlement Agreement.

Release of the Released Parties

20. In consideration of the payment of the Settlement Amount and accrued interest set out in this Settlement Agreement, and for other good and valuable consideration, the sufficiency and adequacy of which is hereby acknowledged, the Releasing Parties release and forever discharge the Released Parties from the Released Claims.

21. Except as necessary to enforce this Settlement Agreement and as provided in the foregoing paragraphs, the Releasing Parties shall not now or hereafter institute, continue, maintain or assert, whether directly or indirectly, before the courts of any country, judicial body, government authority or any other entity anywhere in the world, on their own behalf or on behalf of any Releasing Party or any other person,

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any action, suit, cause of action, claim or demand against any Released Party or any other person who may claim contribution or indemnity from any Released Party in respect of any Released Claim or any matter related thereto.

22. The Released Parties do not admit any liability or obligation whatsoever to the Releasing Parties and such liability and obligation are expressly denied.

23. The Releasing Parties agree that if any claim, demand or complaint is made or action taken or proceeding commenced or continued against the Released Parties arising out of the matters described above, this Release and Settlement Agreement shall be deemed to be a complete defence and bar to any such claim, demand, complaint, action or proceeding.

24. The Releasing Parties further agree to indemnify and hold harmless the Released Parties from any and all actions, causes of action, claims or demands now or hereafter brought by or on behalf of any person or corporation for loss resulting from or related to any Released Claim or any matter related thereto.

25. Except as otherwise provided in this Settlement Agreement, the Class Action shall be dismissed against the Defendants without costs and with prejudice, and each Releasing Party shall be deemed to consent to the dismissal.

Settlement Not An Admission of Liability

26. Neither this Settlement Agreement nor any step taken to carry out this Settlement Agreement may be construed as, or may be used as, an admission by or against the Released Parties, or of the truth of any allegations or of liability of the Released Parties or as a waiver of any applicable legal right or benefit other than as expressly stated in this Settlement Agreement. Likewise, this Settlement Agreement may not be construed as or used as an admission by or against the Class Members or as a waiver of any applicable legal right or benefit of the Class Members other than as expressly stated in this Settlement Agreement. Further, neither this Settlement Agreement nor any document relating thereto (including the Schedules) shall be offered or received in evidence in any Class Action or

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proceeding against the Released Parties, the Plaintiffs or the Class Members, or any of them, in any Court, administrative agency or other tribunal for any purpose whatsoever other than to enforce the provisions of this Settlement Agreement or to seek Approval Orders in accordance with paragraph 11.

Entire Agreement

27. Subject to paragraph 28, this Settlement Agreement, together with the recitals and the attached appendices and schedules, constitutes the entire agreement between the Parties pertaining to the subject matter hereof, and supersedes all prior understandings, representations, negotiations, discussions, and agreements, whether oral or written, which may have occurred prior hereto. There are no other warranties or representations between the Parties in connection with the subject matter of this Settlement Agreement except as specifically set forth herein and none have been relied upon by the Parties in entering into this Settlement Agreement.

28. Notwithstanding paragraph 27, nothing in this Settlement Agreement modifies or replaces any of the individual settlements that were completed by or on behalf of the Defendant, Fly Jamaica Airways Ltd.

Effect of Non-Approval by the Court

29. In the event an Approval Order is not granted:

    (a) the Settlement Amount together with accrued interest shall revert to the Defendants as directed by them;

    (b) this Settlement Agreement shall be null and void and shall have no force or effect, and no party to this Settlement Agreement shall be bound by any of its terms, except the terms of this paragraph;

    (c) this Settlement Agreement and all of its provisions and all negotiations, statements and proceedings relating to it shall be without prejudice to the rights of the Class Members and the Defendants, all of whom shall be

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restored to their respective positions existing immediately before the execution of this Settlement Agreement; and

(d) this Settlement Agreement, and the fact of its negotiation and execution, shall not constitute an admission by the Defendants and shall not be used against the Defendants or referred to for any purpose in this or in any other proceeding and, without limiting the generality of the foregoing, this Settlement Agreement and the fact of its negotiation and execution shall not constitute any admission or be used by anyone (whether or not a party to these proceedings) in an effort to establish any of the alleged facts in the Class Action.

Continuing Jurisdiction of the Court

30. The Court will retain jurisdiction over the Settlement Agreement and Claims Process and over the Parties including, but not limited to, all Class Members to ensure that all payments and disbursements are properly made, and to interpret and enforce the terms, conditions and obligations of this Settlement Agreement.

31. No person may bring any action or take any proceedings against the Administrator, or any of their employees, agents, partners, associates, representatives, successors or assigns for any matter in any way relating to this Settlement Agreement, including the administration of the settlement terms, except with leave of the Court.

32. The law of the Province of Ontario governs this Settlement Agreement.

Miscellaneous

33. The Parties and their respective counsel shall expeditiously do all things as may be reasonably required to give effect to this Settlement Agreement.

34. The recitals to this Settlement Agreement are true and form part of the Settlement Agreement.

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35. Class Counsel and the Defendants may apply to the Court for directions in respect of the implementation and administration of this Settlement Agreement.

36. The Parties agree that this Settlement Agreement may be executed by their respective counsel.

37. The Parties further agree that this Settlement Agreement may be executed by email and in counterparts, each of which shall be deemed to be an original for all purposes and all executed counterparts taken together shall constitute the complete Settlement Agreement.

Computation of Time

38. In the computation of time of this Settlement Agreement, except where a contrary intention appears,

    (a) where there is a reference to a number of days between two events, the number of days shall be counted by excluding the day on which the first event happens and including the day on which the second event happens, including all calendar days; and

    (b) only in the case where the time for doing an act expires on a holiday, the act may be done on the next day that is not a holiday.

Negotiated Settlement

39. This Settlement Agreement has been the subject of negotiations and discussions among the undersigned, each of which has been represented and advised by competent counsel, so that any statute, case law, or rule of interpretation or construction that would or might cause any provision to be construed against the drafter of this Settlement Agreement shall have no force and effect. The Parties further agree that the language contained in or not contained in previous drafts of this Settlement Agreement, or any agreement in principle, shall have no bearing upon the proper interpretation of this Settlement Agreement.

DATED this _____ day of December, 2023.

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Representative Plaintiffs, by their counsel

DocuSigned by:
Paul Miller 12/26/2023
2111384AA5854E1...

Paul Miller / Valérie Lord
Howie, Sacks & Henry LLP
3500 – 20 Queen Street West
Toronto, ON M5H 3R3

DocuSigned by:
Joe Fiorante 12/27/2023
6B36EB5DEFDD497...

Joe Fiorante / David G.A. Jones
Camp Fiorante Matthews Mogerman LLP
400 – 856 Homer Street
Vancouver, BC V6B 2W5

DocuSigned by:
Vincent Genova 12/28/2023
44A3F32145D04EE...

Vincent Genova / Douglas Worndl /
Sara Nagalingam
Rochon Genova LLP
121 Richmond Street West
Suite 900
Toronto, ON M5H 2K1

Fly Jamaica Airways Ltd., Basil Ferguson and Keone Bryan, by their counsel

DocuSigned by:
Clay Hunter 1/8/2024
937EB33C5F5C40F...

Clay S. Hunter
Paterson MacDougall LLP
900 – 1 Queen Street East
Toronto, ON M5C 2W5

The Boeing Company, by its counsel

DocuSigned by:
Robert Fenn 12/28/2023
70FBC606527E4F1...

Robert J. Fenn
Lerners LLP
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Mexicana MRO, S.A. DE C.V. and John Doe #4 Aircraft Maintenance Mechanic, by their counsel

Leon Beukman
Meridian Law Group
1401 – 808 Nelson Street
Vancouver, BC V6Z 2H2

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Schedule "A"

List of Passenger Class Members

1. AHMAD/ALIBASIL RAFIQ
2. AHMAD/IBAAD-URREMAN (infant)
3. ALI/ALTAF
4. ALI/BEBE ZAIMOON
5. ALLI/SADIQ
6. ALLY/ALIYA
7. ALLY/ZAKRAN
8. ALLY/ZEESHAN
9. BARTLEY/TANYA
10. BEDESSEE/INVOR
11. BENTINCK/DENISE
12. BOODHAN/SAVITRI
13. BRYAN/CYRIL
14. BUDHRAM/NARAINE
15. BUDHRAM/WILHELMINA
16. CALEB/ONIKA
17. CALEBAUGUSTI/JAIDEN
18. CALEBAUGUSTI/JANELLA
19. CALEBWATSON/JANAE
20. CHALLU/INDROUTIE
21. CURRY/SWARSATIE
22. DANDRADE/TARMATEE
23. DHANRAJH/DEODAT
24. FORRESTER/DEVON
25. GANPAT/HARDEO
26. GHOUCHANDRA/VIJAI KUMAR
27. GOMES/LEONARD
28. GOONIAH/DIANAND
29. HOOSAIN/ZABEDA
30. IMRIT/HOVASHMINI
31. IYANAM/NATHANIEL
32. IYANAM/NAZARIAH
33. JUMAN/EGERTON
34. KALLOO/ROOKHIA
35. KEMRAJH/EVON
36. KHAN/CHANDROWTIE
37. KISHORE/YOOGOOL
38. LEKHRAJ/MOWSHANI
39. LIM/YVONNE
40. LORDE/EDDISON
41. MACHADO/ELROY
42. MOUNSEY/ELROY

DocuSign Envelope ID: 13F08974-E647-4869-8AF2-AEE74860DBB1

43. MUBASHAR/ANEELA
44. MUKHTAR/ROBINA
45. NARINE/SEETA
46. NARINE/WILLIAM
47. PERMAUL/BHAGWANDAI
48. PERMAUL/ANTHONY
49. PERSAUD/CHANDRAWATTIE
50. PERSAUD/CHARLINE
51. PERSAUD/DHANMATTI
52. PERSAUD/HARRY
53. PERSAUD/LILWATIE
54. PERSAUD/MARIA
55. PERSAUD/SHANTA
56. PERSAUD/SURENDRA
57. PITAMBER/PARMESHWARIE
58. PUNIT/DAYARAM
59. RAGNAUTH/BRAMKA
60. RAGNAUTH/SEERAJIE
61. RAMPADARAT/BHEEM
62. RAMPADARAT/JAINARINE
63. RAMPHAL/PAMELA
64. RAMSARRAN/DRUPATIE
65. RAVJI/ANITA
66. REYNOLDS/LENNOX GREGORY
67. ROBERTS/COLIN WARREN
68. SATAR/ABDOOL WATTIM
69. SIEWDIN/CLARICE
70. SINGH/ERROL
71. SINGH/HARPREET
72. SINGHGANPAT/MANORAMA
73. SOMWAR/JOHN
74. SOMWAR/TULSIDAI
75. SOMWARU/MAHADAI
76. SUKHDEO/POORANDAI
77. SUKHNANDAN/ANGELA JOHANNE
78. SUKHRAM/DAVANAN
79. SULAYMAN/ANDREW
80. SULAYMAN/SHAN
81. SURUJ/HANUMAN
82. TULARAM/HANSRAJIE

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SCHEDULE "B"

Court File No. CV-18-00609498-00CP

ONTARIO
SUPERIOR COURT OF JUSTICE

The Honourable Mr. Justice Morgan	))	Wednesday, the 10th day of January, 2024.

B E T W E E N:

JOHN SOMWAR, TULSIDAI SOMWAR and SHANTA PERSAUD

Plaintiffs

and

FLY JAMAICA AIRWAYS LTD., THE BOEING COMPANY, ~~JOHN DOE #1 PILOT, JOHN DOE #2 CO PILOT~~ BASIL FERGUSON, KEONE BRYAN, ~~JOHN DOE #3 AIRCRAFT MAINTENANCE PROVIDER~~ MEXICANA MRO, S.A. DE. C.V., JOHN DOE #4 AIRCRAFT MAINTENANCE MECHANIC

Proceedings under the Class Proceedings Act, 1992

ORDER

THIS MOTION made by the Plaintiffs for an Order approving the Settlement Agreement entered into with the Defendants, Fly Jamaica Airways Ltd., The Boeing Company, Basil Ferguson, Keone Bryan, Mexicana MRO, S.A. DE C.V. and John Doe #4 Aircraft Maintenance Mechanic, was heard January 10, 2024 at 393 University Ave. - 10th Floor, Toronto, Ontario.

ON READING the materials filed, including the Settlement Agreement attached to this Order as Schedule "A" (the "Settlement Agreement"); and

ON HEARING counsel for the Plaintiffs and the Defendants:

DRAFT

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1. **THIS COURT ORDERS AND DECLARES** that this action is certified as a class proceeding as against the Defendant Mexicana MRO, S.A. De C.V., pursuant to sections 2 and 5 of the *Class Proceedings Act, 1992* for settlement purposes only.

2. **THIS COURT ORDERS AND DECLARES** that for the purpose of the settlement approval Order the definitions set out in the Settlement Agreement will apply to and are incorporated into the Order, provided always that “Released Parties” in this order shall mean all Released Parties as defined in the Settlement Agreement and “Released Party” shall mean any one of the Released Parties.

3. **THIS COURT DECLARES** that the Settlement Agreement between the Class Members and the Defendants is fair, reasonable and in the best interests of the Class Members.

4. **THIS COURT ORDERS** that the Settlement Agreement is hereby approved pursuant to Section 29 of the *Class Proceedings Act*, 1992 and shall be implemented in accordance with its terms. Where any term of this Order and the Settlement Agreement conflict, the term contained in this Order shall govern.

5. **THIS COURT DECLARES** that the Settlement Agreement is incorporated by reference into and forms part of the Order and is binding upon the Defendants and the Class Members. Where any term of this Order and the Settlement Agreement conflict, the term contained in this Order shall govern.

6. **THIS COURT ORDERS AND DECLARES** that each Class Member is deemed to consent to the terms of the Settlement Agreement and to the dismissal of this Action, without costs and with prejudice, of his, her or its claims against the Released Parties.

7. **THIS COURT ORDERS AND DECLARES** that this Order does not affect rights, not otherwise subject to agreement or resolved, of parties in any other action arising from the accident to seek contribution and indemnity in respect of the claims made in such other action.

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8. **THIS COURT ORDERS AND DECLARES** that except as provided in this Order or as may be required to enforce the Settlement Agreement, the Releasing Parties shall not now or hereafter institute, continue, maintain or assert, whether directly or indirectly, before the courts of any country, judicial body, government authority or any other entity anywhere in the world, on their own behalf or on behalf of any Releasing Party or any other person, any action, suit, cause of action, claim or demand against any Released Party or any other person who may claim contribution or indemnity from any Released Party in respect of any Released Claim or any matter related thereto.

9. **THIS COURT ORDERS AND DECLARES** that this Order, including the Settlement Agreement, is binding upon each Class Member including those persons who are minors or mentally incapable, and the requirements of Rules 7.04(1) and 7.08(4) of the *Rules of Civil Procedure* are dispensed with in respect of this action.

10. **THIS COURT ORDERS AND DECLARES** that, upon the Effective Date, the Releasing Parties are deemed to, and to hereby, release and forever discharge the Released Parties of and from any and all Claims arising from or in any way related to the Released Claims.

11. **THIS COURT ORDERS** that the Defendants shall have no responsibility or liability relating to the administration, investment, or distribution of the Settlement Amount.

12. **THIS COURT ORDERS** that the Court will retain jurisdiction over the Settlement Agreement and the Claims Process and over the Parties to the Settlement Agreement including, but not limited to, all Class Members to ensure that all payments and disbursements are properly made, and to interpret and enforce the terms, conditions and obligations of the Settlement Agreement.

13. **THIS COURT ORDERS** that the Class Members be given notice of this Order/Judgment in writing by letter, within 14 days of the date of this Order/Judgment and that such notice be sent by email or regular mail to all Class Members.

14. **THIS COURT ORDERS** that notice to the Passenger Class Members shall be deemed to be notice to the Family Claimant Class Members.

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15. **THIS COURT ORDERS** that any one or more of the Parties may apply to the Court for directions in respect of implementation or administration of the Settlement Agreement.

16. **THIS COURT ORDERS** that any distribution of the Settlement Amount under the Claims Process to infant Class Members shall be paid into Court in trust in accordance with the provisions of Rule 7.09 of the Ontario *Rules of Civil Procedure*.

17. **THIS COURT ORDERS** that this Action be and is hereby dismissed against the Defendants without costs and with prejudice.

18. **THIS COURT ORDERS** that this Order shall be declared null and void in the event that the Settlement Agreement is terminated in accordance with its terms.

_____

Morgan, J.

DRAFT

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JOHN SOMWAR et al -and- FLY JAMAICA AIRWAYS LTD. et al.

Plaintiffs Defendants

Court File No. CV-18-00609498-00CP

ONTARIO
SUPERIOR COURT OF JUSTICE

PROCEEDING COMMENCED AT
TORONTO

ORDER

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SCHEDULE "C"

NOTICE OF SETTLEMENT APPROVAL of
FLY JAMAICA CLASS ACTION
and CLAIMS PROCESS

This Notice is for all persons and their immediate family members who were onboard Fly Jamaica Flight OJ256, which landed at and overran/exited Runway 06 at the Georgetown Cheddi Jagan International Airport (CJIA) in Guyana on November 9, 2018 (the "Class").

READ THIS NOTICE CAREFULLY,
IT MAY AFFECT YOUR LEGAL RIGHTS.

The Ontario Superior Court of Justice has approved the settlement of a class action against Fly Jamaica Airways Ltd., Basil Ferguson, Keone Bryan (collectively the "Fly Jamaica Defendants), The Boeing Company ("Boeing") and Mexicana MRO, S.A. DE C.V. and John Doe No. 4 Aircraft Maintenance Mechanic (collectively the "Mexicana MRO") (together, "the Defendants") on behalf of the Class in the action Somwar et al. v. Fly Jamaica, Court File No. CV-18-00609498-00CP.

The Settlement Agreement is a compromise of disputed claims, without any admission or findings of liability or wrongdoing against the Defendants. The class action alleged that, as a result of the crash landing of Fly Jamaica Flight OJ256, the Class suffered injuries. The Defendants dispute these allegations.

The Defendants have agreed to pay the all-inclusive amount of $5,550,000 CAD (the "Settlement Fund") to settle the class action, in return for releases and a dismissal of the class action. The Court has approved payment of Class Counsel's legal fees in the amount of $1,293,432.50 plus $168,146.225 HST, which is 25% of the Settlement Amount, exclusive of the costs of disbursements, HST and monies set aside for the Ontario Health Insurance Plan's subrogated claims. Class Counsel will also be reimbursed for the disbursements and expenses they incurred. These amounts will be deducted from the Settlement Fund. The total fees, disbursements and taxes paid to Class Counsel, as approved by the Court, is $1,756,578.72 CAD.

This Notice provides a summary of the Settlement Agreement. The full Settlement Agreement may be viewed at:

https://hshlawyers.com/expertise/mass-tort-class-action-litigation/fly-jamaica-crash/

BASIC INFORMATION

1. Why is there a Notice?

This action was previously certified as a class action by Order dated September 19, 2019. The Court has now determined that the Settlement Agreement is fair, reasonable, and in the best interest of the Class, and it has been approved.

Eligible Class Members may now receive a portion of the Settlement Fund.

2. What are the settlement benefits?

The Defendants will pay the Settlement Amount of $5,550,000 CAD in full and final settlement of all claims against it, including class counsel fees, in return for a comprehensive release from the Class and the Provincial Health Insurers, and a dismissal of the class action. The Settlement Amount, less class counsel fees, will be distributed in accordance with the Court-approved and supervised Distribution Protocol, which is Schedule "E" to the Settlement Agreement, and can be viewed at: https://hshlawyers.com/expertise/mass-tort-class-action-litigation/fly-jamaica-crash/

Class Members will be eligible to receive the following:

a. $2,228,000.00 (the "**Severe Claims Fund**") shall be distributed among those Eligible Class Members with "severe" claims based on Class Counsel Assessments, Class Counsel Reassessments or Review Assessments, as the case may be; and

    i. $18,000.00 of the Severe Claims Fund shall be distributed among these Eligible Class Members' *Family Law Act* claimants with identifiable and documented income loss claims.

b. $605,000.00 (the "**Moderate Claims Fund**") shall be distributed among those Eligible Class Members with "moderate" claims based on Class Counsel Assessments, Class Counsel Reassessments or Review Assessments, as the case may be; and

c. $542,000.00 (the "**Other Claims Fund**") shall be distributed among those Eligible Class Members with claims that are neither severe nor moderate and are based on Class Counsel Assessments, Class Counsel Reassessments or Review Assessments, as the case may be.

3. How do I make a claim?

THERE IS NO NEED TO SUBMIT A CLAIM FORM

Class Counsel have conducted a valuation of each Class Member's claim (the "**Class Counsel Assessment**") and will deliver to each Eligible Class Member a summary of their Class Counsel Assessment.

Class Counsel will begin to distribute the funds to Class Members in accordance with the Class Counsel Assessment and Distribution Protocol after the review process is complete and the total final assessed value of all claims is known.

THERE IS NO NEED TO DO ANYTHING FURTHER AT THIS TIME TO RECEIVE COMPENSATION.

4. How do I dispute my allocation?

Each Eligible Class Member will have the option of accepting the Class Counsel Assessment or requesting that the assessment be reviewed by an independent arbitrator. Eligible Class Members will have 20 days from the date Notice of the Settlement Approval is sent to make this election and shall do so by communicating their election in writing to Class Counsel. Failure to do so will be deemed an acceptance by the Eligible Class Member of the Class Counsel Assessment of their claim.

More information on the dispute process can be found in the Settlement Agreement at **Schedule "E" – Distribution Protocol**

THE LAWYERS REPRESENTING YOU

5. How will Class Counsel be paid?

You will not have to pay any of the fees and expenses of Class Counsel. The Court granted their fee approval request, and Class Counsel's fees and expenses have been deducted from the Settlement Amount, in the total amount of $1,756,578.72 CAD, as approved by the Court.

GETTING MORE INFORMATION

6. How do I get more information?

You can obtain more information about this case by contacting Class Counsel using the contact details listed below:

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SCHEDULE "D" - CLAIMS PROCESS

1. Class Counsel has conducted a valuation of each Class Member's claim (the "**Class Counsel Assessment**") and will deliver to each Eligible Class Member a summary of their Class Counsel Assessment, together with a copy of this Claims Process document along with Schedule "D", the Distribution Protocol.

2. Each Eligible Class Member will have the option of accepting the Class Counsel Assessment or requesting that the assessment be reviewed by an independent arbitrator (the **"Arbitrator**"). Eligible Class Members will have 20 days to make this election and shall do so by communicating their election in writing to Class Counsel. Failure to do so will be deemed an acceptance by the Eligible Class Member of the Class Counsel Assessment of their claim.

3. All Eligible Class Member review requests, together with any supporting material submitted by the Eligible Class Member, will be sent by Class Counsel to the Arbitrator. In particular, Class Counsel will provide to the Arbitrator a review record consisting of the damages file of the Eligible Class Member, the Class Counsel Assessment and any new information submitted by the Eligible Class Member requesting the review.

4. If the Eligible Class Member has submitted information for the review process which was not previously provided to Class Counsel, the new material will be reviewed by Class Counsel for re-consideration of the Class Counsel Assessment, and the review process will be temporarily stayed. In all other cases, the review record will be forwarded directly to the Arbitrator.

5. If, in the opinion of Class Counsel, an increase in the valuation of the claim is warranted, a new Class Counsel Assessment will be issued (the "**Class Counsel Reassessment**") and the Eligible Class Member will be given the option of either accepting the revised assessment or proceeding with the review by the Arbitrator. The deadline for the Eligible Class Member's re-election is an additional 20 days from the date they receive the Class Counsel Reassessment.

6. If, in the opinion of Class Counsel, no increase in the valuation of the claim is warranted, the review record will be forwarded to the Arbitrator for review.

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7. The Parties have proposed that Justice Gloria Epstein, former judge of the Court of Appeal for Ontario, be appointed as Arbitrator, subject to the approval of the Court.

8. The Arbitrator will determine the nature and format of the review hearing. In reviewing and valuing the claims, they will have the discretion to increase or decrease an Eligible Class Member's Assessment or Reassessment by no more than 10%;

9. The Arbitrator will identify to Class Counsel any claims where she was of the view that the Class Counsel Assessment could result in serious injustice to the Eligible Class Member.

10. The claim valuations of the Arbitrator (the "**Review Assessments**") will be communicated in writing to Class Counsel who will forward same to the Eligible Class Members. All decisions of the Arbitrator are final and binding and not subject to any further review by the Court or otherwise.

11. Payment of all Eligible Class Members' claims will only be made after the review process is complete and the total final assessed value of all claims is known.

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SCHEDULE "D" - DISTRIBUTION PROTOCOL

1. The Settlement Amount shall be paid by the Defendants to Class Counsel upon approval of the Settlement by the Court, and shall first be used to pay the following amounts:

a. $1,461,578.72 to Class Counsel for legal fees, inclusive of applicable taxes; and
b. $295,000.00 to Class Counsel for disbursements, inclusive of applicable taxes.

2. Class Counsel will hold back, in trust, the remaining balance of the Settlement Fund **"Net Settlement Fund"**) until the claims review process is complete.

3. Once the claims review process has been completed by Class Counsel and the Arbitrator, Class Counsel will distribute the Net Settlement Fund in the following order and in the following amounts (subject to the outcome of the review process which may increase or decrease the amounts allocated to each fund):

a. $105,000.00 minus applicable legal fees shall be paid to OHIP in full satisfaction of any and all subrogated claims it may have arising from the cost of insured services provided to Eligible Class Members related to the Class Action;

b. The amount payable to the Arbitrator;

c. $2,228,000.00 (the "**Severe Claims Fund**") shall be distributed among those Eligible Class Members with "severe" claims based on Class Counsel Assessments, Class Counsel Reassessments or Review Assessments, as the case may be; and

    i. $18,000.00 of the Severe Claims Fund shall be distributed among these Eligible Class Members' *Family Law Act* claimants with identifiable and documented income loss claims.

d. $605,000.00 (the "**Moderate Claims Fund**") shall be distributed among those Eligible Class Members with "moderate" claims based on Class Counsel Assessments, Class Counsel Reassessments or Review Assessments, as the case may be; and

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e. $542,000.00 (the "**Other Claims Fund**") shall be distributed among those Eligible Class Members with claims that are neither severe nor moderate and are based on Class Counsel Assessments, Class Counsel Reassessments or Review Assessments, as the case may be.

4. If any balance remains in the Net Settlement Fund following payment of the above amounts, it shall be distributed *pro rata* to each Eligible Class Member.

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