



No. S-134895
Vancouver Registry

In the Supreme Court of British Columbia

Between

Darren Ewert

Plaintiff

and

**Nippon Yusen Kabushiki Kaisha;
NYK Line (North America) Inc.; NYK Line (Canada), Inc.;
Mitsui O.S.K. Lines, Ltd.;
Mitsui O.S.K. Bulk Shipping (U.S.A.), Inc.;
Kawasaki Kisen Kaisha, Ltd.; "K" Line America, Inc.; EUKOR Car
Carriers, Inc.;
Wilh. Wilhelmsen Holding ASA; Wilh. Wilhelmsen ASA;
Wallenius Wilhelmsen Logistics Americas, LLC;
Wallenius Wilhelmsen Logistics AS;
Wallenius Lines AB; WWL Vehicle Services Canada Ltd.;
Toyofuji Shipping Co., Ltd.;
Compania Sud Americana De Vapores S.A.; CSAV Agency North
America, LLC; Nissan Motor Car Carrier Co., Ltd.;
World Logistics Service (USA) Inc.; Höegh Autoliners AS; Höegh
Autoliners, Inc.**

Defendants

**ORDER MADE AFTER APPLICATION
AMENDMENTS TO CERTIFICATION ORDER**

BEFORE THE HONOURABLE MR. JUSTICE)
MYERS) 14/Apr/2020
)

ON THE APPLICATION of the plaintiff, Darren Ewert coming on for hearing at the Courthouse, 800 Smithe Street, Vancouver, BC, March 5, 2020 and on hearing, David G.A. Jones and Rebecca Coad, counsel for Darren Ewert, the plaintiff; Katherine L. Kay, counsel for the Respondents Nippon Yusen Kabushiki Kaisha, NYK Line (Canada), Inc. and NYK Line (North America) Inc.; Robin Reinertson and Joshua Hutchinson, counsel for the Respondents Mitsui O.S.K. Lines Ltd., Mitsui O.S.K. Bulk Shipping (U.S.A.) Inc., Nissan Motor Car Carrier Co., Ltd. and World Logistics Service (USA) Inc.; Joan M. Young and Neil Campbell, counsel for the Respondents Kawasaki Kisen Kaisha, Ltd. and "K" Line America, Inc.; J. Kevin Wright, Todd Shikaze and Emily

Snow counsel for the Respondents EUKOR Car Carriers, Inc. Wilh. Wilhelmsen Holding ASA, Wilh. Wilhelmsen ASA, Wallenius Wilhelmsen Logistics Americas, LLC, Wallenius Wilhelmsen Logistics AS; Wallenius Lines AB and WWL Vehicle Services Canada Ltd. and on judgment being reserved to this date.

AND ON BEING ADVISED that on May 29, 2019, as amended on January 6, 2020, the Court of Appeal ordered that the within action is certifiable as a class action.

THIS COURT ORDERS that:

1. this action is certified as a class proceeding;
2. The class is defined as: All British Columbia resident persons who, during the Class Period of February 1, 1997 to December 31, 2012, purchased Vehicle Carrier Services from a Defendant, or purchased or leased a new Vehicle in British Columbia that had been transported using Vehicle Carrier Services provided by a Defendant. The definition of Vehicle includes automobiles, trucks and high and heavy equipment such as buses, trucks, and agricultural and construction vehicles.
3. The certified Common Issues are as follows:

Breach of the Competition Act

- (a) Did the defendants, or any of them, engage in conduct which is contrary to s. 45 of the *Competition Act*?
- (b) What damages, if any, are payable by the defendants to the Class Members pursuant to s. 36 of the *Competition Act*?
- (c) Can the amount of damages be determined on an aggregate basis and if so, in what amount?
- (d) Should the defendants, or any of them, pay the full costs, or any, of the investigation into this matter and of proceedings pursuant to s. 36 of the *Competition Act*?

Conspiracy

- (e) Did the defendants, or any of them, conspire to harm the Class Members?
- (f) Did the defendants, or any of them, act in furtherance of the conspiracy?
- (g) Was the predominant purpose of the conspiracy to harm the Class Members?
- (h) Did the conspiracy involve unlawful acts?
- (i) Did the defendants, or any of them, know that the conspiracy would likely cause injury to the Class Members?

- (j) Did the Class Members suffer economic loss?
- (k) What damages, if any, are payable by the defendants, or any of them, to the Class Members?
- (l) Can the amount of damages be determined on an aggregate basis and if so, in what amount?

Unlawful Means Tort

- (m) Did the defendants, or any of them, intend to injure the Class Members?
- (n) Was the Defendants' conduct actionable by a third party or would have been actionable by a third party if the party had suffered losses as a result of it?
- (o) Did the Class Members suffer economic loss as a result of the defendants' interference?
- (p) What damages, if any, are payable by the defendants, or any of them, to the Class Members?
- (q) Can the amount of damages be determined on an aggregate basis and if so, in what amount?

Unjust Enrichment and Waiver of Tort

- (r) Have the defendants, or any of them, been unjustly enriched by the receipt of overcharges on the sale of Vehicle Carrier Services?
- (s) Have the Class Members suffered a corresponding deprivation in the amount of the overcharges on the sale of Vehicle Carrier Services?
- (t) Is there a juridical reason why the defendants, or any of them, should be entitled to retain the overcharges on the sale of Vehicle Carrier Services?
- (u) What restitution, if any, is payable by the defendants, or any of them, to the Class Members based on unjust enrichment?
- (v) What restitution, if any, is payable by the defendants to the Class Members based on the doctrine of waiver of tort?
- (w) What restitution, if any, is payable by the defendants to the Class Members because of their unlawful conduct?
- (x) Can the amount of restitution be determined on an aggregate basis and if so, in what amount?

Punitive Damages

- (y) Are the defendants, or any of them, liable to pay punitive or exemplary damages having regard to the nature of their conduct and if so, what amount and to whom?

Interest

- (z) What is the liability, if any, of the defendants, or any of them, for court order interest?
- (aa) What is the appropriate distribution of damages and/or restitution to the class and who should pay for the cost of that distribution?

- 4. Darren Ewert is appointed as the representative plaintiff.
- 5. The Litigation Plan set out in Schedule "A" to this Order is approved as sufficient at this stage.
- 6. Notice shall be given to Class Members in the time and manner to be directed by this court after further submissions by the parties; and
- 7. The time and manner for opting out of the proceeding shall be as directed by this court after further submissions by the parties.

THE FOLLOWING PARTIES APPROVE THE FORM OF THIS ORDER AND CONSENT TO EACH OF THE ORDERS, IF ANY, THAT ARE INDICATED ABOVE AS BEING BY CONSENT:



David G.A. Jones
Counsel for the Plaintiff

BY THE COURT
Digitally signed by
Myers, J

Registrar

Counsel for Nippon Yusen Kabushiki
Kaisha, NYK Line (Canada), Inc. and
NYK Line (North America) Inc.

endorsement attached

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Interest

- (z) What is the liability, if any, of the defendants, or any of them, for court order interest?
- (aa) What is the appropriate distribution of damages and/or restitution to the class and who should pay for the cost of that distribution?


- 4. Darren Ewert is appointed as the representative plaintiff.
- 5. The Litigation Plan set out in Schedule "A" to this Order is approved as sufficient at this stage.
- 6. Notice shall be given to Class Members in the time and manner to be directed by this court after further submissions by the parties; and
- 7. The time and manner for opting out of the proceeding shall be as directed by this court after further submissions by the parties.

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BY THE COURT

David G.A. Jones
Counsel for the Plaintiff

Registrar



Katherine Kay, Counsel for Nippon Yusen
Kabushiki Kaisha, NYK Line (Canada),
Inc. and NYK Line (North America) Inc.

endorsement attached



Counsel for Mitsui O.S.K. Lines Ltd.,
Mitsui O.S.K. Bulk Shipping (U.S.A.) Inc.,
Nissan Motor Car Carrier Co., Ltd., World
Logistics Service (USA) Inc.

Counsel for EUKOR Car Carriers, Inc.,
WWL Vehicle Services Canada Ltd., Wilh.
Wilhelmsen Holding ASA, Wallenius
Wilhelmsen Logistics Americas, LLC, Wilh.
Wilhelmsen ASA, Wallenius Wilhelmsen
Logistics AS, Wallenius Lines AB

Counsel for Kawasaki Kisen Kaisha,
Ltd., "K" Line America, Inc.

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Mitsui O.S.K. Bulk Shipping (U.S.A.) Inc.,
Nissan Motor Car Carrier Co., Ltd., World
Logistics Service (USA) Inc.



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WWL Vehicle Services Canada Ltd., Wilh.
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