

LABATON SUCHAROW FIGHTS TO GROUND SOARING SURCHARGES IN THE AIR CARGO INDUSTRY

By Kellie Safar

Rising surcharges blamed on 9/11 and the Iraq war are pretenses for price-fixing among large air cargo carriers.

The air cargo industry is the subject of an inter-governmental investigation by US and EU agencies, spanning several continents, for allegedly fixing the prices of various surcharges that are passed on to consumers. Raids in leading airline offices in Asia, Europe and the United States have prompted at least one airline carrier, Lufthansa, to cooperate with officials and testify before a grand jury in Washington D.C.

Labaton Sucharow is a central figure in the private litigation commenced in reaction to this inappropriate scheme by several of the world's most prominent airlines and air cargo carriers, including, among others, Cathay Pacific, British Airways, Virgin Atlantic, Air France-KLM Cargo, American Airlines, and United Airlines. On February 17, 2006, Labaton Sucharow filed the first class action complaint against the airline defendants, alleging that they conspired to impose fixed surcharges for purported increased fuel costs, heightened post-September 11th security measures, and enhanced insurance premiums as a result of the war in Iraq.

For instance, Plaintiffs allege that in 2000, defendants established a fuel surcharge price index to coordinate industry-wide surcharges. Plaintiffs believe that defendants used this price index to signal surcharge increases when fuel spot prices reached predetermined levels and/or remained for a certain length of time at predetermined price levels. The potential for the index to be used for improper objectives was underscored by the U.S. Department of Transportation, which declared it as "fundamentally flawed and unfair to shippers and other users of cargo air transportation" who could be subjected to "unjustified and unwarranted rate increases."

Plaintiffs further allege that defendants exploited the September 11th terrorist attacks to impose additional surcharges. Defendants announced that the new charges were necessary to defray the cost of additional security measures. In reality, plaintiffs believe that the new charges were a result of secret meetings wherein the defendants agreed to collectively impose additional charges to generate increased profits. Defendants then coordinated the timing and amount of these surcharges through public press releases. Not surprisingly, defendants also added a surcharge after the U.S. led invasion of Iraq, which they inappropriately justified as a measure to offset the increased costs of insurance premiums after the invasion.

Plaintiffs allege that the above practices amount to price-fixing in violation of Section 1 of the Sherman Act, which prohibits coordinating to artificially raise, fix, maintain, and/or stabilize prices. As such, plaintiffs allege that customers of air cargo services would have paid less absent defendants' price-fixing scheme.

Plaintiffs are currently awaiting a decision from the Judicial Panel on Multidistrict Litigation, which will determine whether all later-filed class actions will be transferred to the Eastern District of New York for pre-trial proceedings.

