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Nishi Rail Pays At Least \$20M To Exit Freight Price-Fixing Suit

By **Bill Donahue**

Law360, New York (June 15, 2012, 5:34 PM ET) -- Japanese rail company Nishi-Nippon Railroad Co. Ltd. will pay more than \$20 million to escape a suit that claims it conspired with Deutsche Bahn AG, DHL Express USA Inc., and others to jack up prices for freight forwarding, according to a settlement filed Wednesday.

Under the deal, Nishi will also pay half of any money it recovers as a class member in a separate air cargo price-fixing multidistrict litigation, and it will fully cooperate with the plaintiffs in bringing their claims against the remaining defendants.

The Japanese freight company will also turn over to plaintiffs all documents related to investigations by the U.S. Department of Justice and the Japanese Fair Trade Commission. The probes — which spawned the current suit — accused Nishi and others of colluding under the guise of a trade organization to artificially inflate the price of forwarding, the business of supply-chain management and coordination.

The settlement would certify a class of anyone who used the company's services in the U.S. between Jan. 1, 2001, and May 9, 2012, which the court said included over 1,000 members.

Nishi-Nippon — one of Japan's major rail operators — is the latest forwarding company to settle out of the suit, following a \$29 million September agreement between the plaintiffs and Deutsche Bahn, EGL Inc. and Vantec Corp.

Like Nishi-Nippon, EGL and Vantec pledged a portion of their proceeds as claimants in the higher-profile Air Cargo Shipping Services MDL, in which dozens of air freight companies and airlines are accused of working together to increase rates charged for various shipping routes.

Another defendant in the current suit, Expeditors International of Washington Inc., agreed to pay 70 percent of its winnings from the air cargo MDL last month as part of a similar settlement.

Lodged in January 2008, the freight forwarding case accuses dozens of companies of using the trade group Freight Forward International — whose members together control more than 25 percent of the market share for forwarding — to “meet and engage in collusive conduct under the pretext of engaging in lawful activity.”

The plaintiff companies — Mail Boxes Etc. Inc., Precision Associates Inc. and JCK Industries Inc. — will be hoping for quick final approval of Wednesday's settlement after major class member objections were filed against their September deal with Deutsche Bahn.

Hewlett-Packard Co. and Dell Inc. have both ripped the agreement, saying an excessively

strong opt-out provision would unfairly force class members to either blindly accept the deal or exit the case entirely. According to Dell's objection in April, the settlement means that big plaintiffs, which feel the proposed settlement wouldn't compensate them enough, are out of luck.

The larger air cargo MDL began in 2006, when more than 90 lawsuits were filed against more than two dozen airlines following U.S. Department of Justice and European Commission investigations into the air freight industry. The cases sought to represent anyone who had purchased air freight shipping services from air cargo companies in two dozen countries, and were later bundled together in New York.

Nishi, Expeditors, EGL and Vantec were all class members in the consolidated case.

Attorneys for the plaintiffs declined to comment, while counsel for Nishi-Nippon was not immediately available for comment.

The plaintiffs are represented by Lockridge Grindal Nauen PLLP, Gustafson Gluek PLLC, Lovell Stewart Halebian Jacobson LLP and Cotchett Pitre & McCarthy LLP.

Nishi-Nippon is represented by Brian J. Fischer of Jenner & Block LLP.

The case is Precision Associates Inc. et al. v. Panalpina World Transport (Holding) Ltd. et al., case number 1:08-cv-00042, in the U.S. District Court for the Eastern District of New York.

--Editing by Cara Salvatore.

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