ADGM COURTS
محاكم سوق أبوظبي العالمي

In the name of
His Highness Sheikh Mohamed bin Zayed Al Nahyan
President of the United Arab Emirates/ Ruler of the Emirate of Abu Dhabi

COURT OF APPEAL
BETWEEN

GLOBAL AEROSPACE UNDERWRITING MANAGERS LIMITED
First Appellant

XL INSURANCE COMPANY SE, DIREKTION FUR DEUTSCHLAND (company number HRB 94266)
Second Appellant

SWISS RE INTERNATIONAL SE NIEDERLASSUNG DEUTSCHLAND (company number HRB 171487)
Third Appellant

STARR INTERNATIONAL (EUROPE) LTD
Fourth Appellant

ALLIANZ GLOBAL CORPORATE & SPECIALITY SE
Fifth Appellant

and

GLOBAL PRIVATE INVESTMENTS LIMITED
Respondent

AND

COURT OF APPEAL
BETWEEN

GLOBAL PRIVATE INVESTMENTS LIMITED
Appellant

and

GLOBAL AEROSPACE UNDERWRITING MANAGERS LIMITED
First Respondent

XL INSURANCE COMPANY SE, DIREKTION FUR DEUTSCHLAND (company number HRB 94266)
Second Respondent

SWISS RE INTERNATIONAL SE NIEDERLASSUNG DEUTSCHLAND (company number HRB 171487)
Third Respondent

STARR INTERNATIONAL (EUROPE) LTD
Fourth Respondent

ALLIANZ GLOBAL CORPORATE & SPECIALITY SE
Fifth Respondent

JUDGMENT

Neutral Citation:	[2023] ADGMCA 0001
Before:	Chief Justice, Lord David Hope, Justice Kenneth Hayne and Justice Sir Peter Blanchard
Decision Date:	3 July 2023
Decision:	**In Case No.: ADGMCA-2022-001** 1. Appeal allowed. 2. Paragraph 6 of the trial Judge's Order dated 13 December 2021 is set aside and, in its place, it is declared that the Appellants' liability for expenses of rental of all replacement aircraft necessitated by the physical loss or damage to the insured aircraft on 10 July 2019 is limited to a maximum of USD$600,000. 3. The Respondent pay the Appellants' costs as agreed or to be assessed. **In Case No.: ADGMCA-2022-002** 1. Appeal dismissed. 2. The Appellant pay the Respondents' costs as agreed or to be assessed.
Hearing Dates:	7 and 8 June 2023
Date of Orders:	3 July 2023
Catchwords:	Interpretation of insurance contract in relation to an aircraft; extent of indemnity against physical loss of or damage to the aircraft; whether policy provided cover for cost of repairs or diminution of value; meaning of cost of repairs; extent of indemnity for replacement aircraft.
Cases Cited:	Arnold v Britton [2015] UKSC 36, [2015] AC 1619 FCA v Arch Insurance (UK) Ltd [2021] UKSC 1, [2021] AC 649 Sveriges Angfartygs Assurans Forening (The Swedish Club) v Connect Shipping Inc ("The Renos") [2019] UKSC 29, [2019] 2 Lloyd's Rep 78 Coles v Hetherton [2013] EWCA Civ 1704, [2015] 1 WLR 160 Payton v Brooks [1974] RTR 169 Gilbert Ash (Northern) Ltd v Modern Engineering (Bristol) Ltd [1974] AC 689 Lancashire County Council v Municipal Mutual Insurance Ltd [1997] QB 897 at 909-910 Castellain v Preston (1883) 11 QBD 380 Impact Funding Solutions Ltd v AIG Europe Insurance Ltd [2016] UKSC 57, [2017] AC 73 Sartex Quilts & Textiles Ltd v Endurance Corporate Capital Ltd [2020] EWCA Civ 308, [2020] 2 All ER (Comm) 1050

	Equitas Insurance Ltd v Municipal Mutual Insurance Ltd [2019] EWCA Civ 718, [2020] QB 418 Gan Insurance Co Ltd v Tai Ping Insurance Co Ltd (No 2) [2001] 2 All ER (Comm) 299
Legislation Cited:	Application of English Law Regulations 2015
On appeal from:	ADGMCFI-2020-051
Case Numbers:	ADGMCA-2022-001; and ADGMCA-2022-002
Parties and representation:	**ADGMCA-2022-001** Charles Dougherty KC and Lucas Fear-Segal for the Appellants Instructed by Kennedys Dubai LLP Gavin Kealey KC and Michael Ryan for the Respondent Instructed by Al Tamimi & Company **ADGMCA-2022-002** Gavin Kealey KC and Michael Ryan for the Appellant Instructed by Al Tamimi & Company Charles Dougherty KC and Lucas Fear-Segal for the Respondents Instructed by Kennedys Dubai LLP

JUSTICE SIR PETER BLANCHARD (with whom the Chief Justice, Lord David Hope, and Justice Hayne agree):

1. This appeal concerns the interpretation of a policy of insurance on an aircraft that suffered damage in a hailstorm, specifically about the extent of the indemnity against physical loss of or damage to the aircraft. The issue on the insured owner's appeal is whether, as well as paying for the cost of repairing the aircraft, the insurers must also indemnify the owner against any diminution in value of the aircraft remaining after repairs have been carried out, when such diminution is a result of the fact that the aircraft had been damaged.

2. The policy also provided cover for the expenses of rental of a replacement aircraft whilst the repairs were being carried out. There is an appeal by the insurers (in effect as a cross-appeal) concerning the maximum amount of that additional coverage; whether that maximum is fixed in relation to the insured aircraft, as the insurers contend, or in relation to each replacement aircraft if there is more than one used by the insured.

3. The hearing before the trial Judge, Sir Andrew Smith, was, as relevant to the appeal and cross - appeal, confined to issues of the interpretation of the insurance policy. We deal first with the insured's appeal.

The facts

4. The facts are not in dispute. They can be briefly stated before we move to the policy itself. The aircraft, a Gulfstream G65O, was owned by the appellant, Global Private Investments Limited ("**GPI**"). On 10 July 2019, while it was on the ground at Abruzzo International Airport near Pescara, Italy, it was badly damaged in a hailstorm. It took several months before temporary repairs could be completed in Italy by personnel from the makers, Gulfstream, so that it could be flown by

Gulfstream's pilots to its facilities in Savannah in the United States in December 2019. Even at the time of the trial in November 2021 the aircraft was still with Gulfstream and problems with it were still being encountered. We were supplied with an updating affidavit saying that the aircraft was sold in February 2022 for US$21,142,706 and has been delivered to the buyer.

5. The sole use of the aircraft had been for chartering to the Russian Direct Investment Fund. It was operated on behalf of GPI by Luxaviation Holding Company SA ("**Luxaviation**").

6. The aircraft was insured with the various respondents to the appeal ("the **insurers**") under an Aircraft Hull and Spares all risks and aviation policy ("the **policy**"). It covered a fleet of corporate jets. It was issued to Luxaviation but also insured each of the owners of these aircraft including GPI.

7. The insurers have paid the appellant almost US$9.5 million towards the cost of the repairs but GPI says, and the insurers appear to accept, that even if the remedial work successfully restores the aircraft to its former physical condition, it has suffered and will continue to suffer substantial diminution in value. In the words of a joint report by experts instructed by each party, an aircraft "*may suffer a decrease in value when the aircraft suffers substantial damage, notwithstanding that remedial work is carried out which renders the aircraft airworthy and in compliance with all applicable technical requirements and/or remedies the physical damage suffered*".

The policy

8. The policy is governed by the law of the Abu Dhabi Global Market and thus by English common law: *Application of English Law Regulations 2015*, article 1.

9. Under the policy each aircraft had an agreed value. In the case of the GPI aircraft, that value was US$70 million, although its actual value before it suffered damage in the hailstorm was much less than that agreed sum. In fact, as the Judge found, at the time of the hailstorm GPI had firm plans to sell the aircraft for about US$40 million and had set about doing so.

10. Section One of the policy provides the cover for loss of or damage to aircraft and is as follows:

> ***1.1 Coverage***
>
> *The Insurers agree to pay for physical loss of or damage to Aircraft, provided that such loss or damage is sustained during the Period of Insurance.*
>
> ***1.2 Dismantling Costs, Emergency Expenses and Salvage Charges***
>
> *The Insurers will also pay*
>
> *1.2.1 the cost of dismantling the Aircraft in the event that, through force majeure or error in judgement it lands in any place from which it is unable to take off again together with the cost of transport from the place of landing to the nearest suitable airport and the cost of reassembling there even if no damage is incurred. The total amount payable under this paragraph shall not, together with the cost of repair, exceed the agreed value of the Aircraft.*
>
> *1.2.2 reasonable emergency expenses necessarily incurred by or on behalf of the Insured for the immediate safety or preservation of the Aircraft, up to 10% of the agreed value of such Aircraft.*
>
> *1.2.3 subject to their prior agreement, salvage charges incurred by or on behalf of the Insured for the recovery of the Aircraft and such salvage charges shall be payable by the Insurers in addition to any other claim under this Section.*

1.3 Cost of Repairs - Partial Loss

In the event of loss of or damage to an Aircraft the Insurers will pay the cost of repairs less

1.3.1 the amount of the applicable deductible, and

1.3.2 such proportion of the Overhaul Cost of any Unit repaired or replaced as the used time bears to the Overhaul Life of the Unit.

The cost of repairs shall include:

1.3.3 the cost of transportation of personnel, materials, tools and equipment required to effect the repairs to and from the place where the repairs are carried out and/or the cost of transporting the Aircraft or damaged parts to and from the place where repairs are to be carried out.

1.3.4 the cost of necessary test flights and the cost of obtaining reinstatement of the Certificate of Airworthiness.

In the event of loss of or damage to the Aircraft being repaired by the Insured, Insurers will pay the actual wages paid for labour plus 150% or, at the Insured's option, labour costs shall be charged on the Insured's average man hour tariff applicable at the time. Materials shall be charged at replacement cost (plus insurance and transportation costs incurred in connection with their delivery to the Insured's base) plus any applicable import taxes and/or duties.

In the event of any other firm effecting repairs, the cost of repairs shall be the actual amount of the account increased by the reasonable cost to the Insured for supervising the repairs.

Unless the Insurers agree otherwise, repairs and transportation shall be by the most economical means.

In no event shall the amount due with respect to a partial loss exceed the agreed value less the amount of the applicable deductible.

No dismantling or repairs may be commenced without the consent of the insurers except whatever is necessary in the interests of safety, or to prevent any or further damage, or to comply with orders issued by the appropriate authority. *[Bolding in original]*

1.4 Agreed value - Total Loss

In the event of a claim arising under this Section being settled as a Total Loss, Constructive Total Loss or Arranged Total Toss, the Insurers shall pay the agreed value of the Aircraft concerned, less the amount of the applicable deductible.

The Insurers may then elect to take the Aircraft (together with all documents of record, registration and title thereto) as salvage and the cover afforded by this Section shall be terminated in respect of such Aircraft whether or not payment for such Aircraft has been made by the Insured.

Unless the Insurers elect to take the Aircraft as salvage the Aircraft shall at all times remain the property of the Insured who shall have no right of abandonment to the Insurers.

1.5 Exclusions applicable to this Section only

This section does not cover

1.5.1 wear and tear, deterioration, depreciation, freezing, breakdown, defect or failure howsoever caused in any Unit of the Aircraft and the consequences

thereof within such Unit, but this exclusion shall not apply to resultant loss of or damage to the Aircraft caused thereby.

In the event of a landing as described in paragraph 1.2.1 of this Section the Insurers will pay the costs as set forth therein even though no impact damage may have resulted from such landing.

1.5.2 loss of or damage to an engine caused by the ingestion of stones, grit, dust, sand, ice or any corrosive or abrasive material or any other substance which has a progressive or cumulative engine damage effect. Such loss or damage shall be deemed to be wear, tear or deterioration and shall be excluded.

Nevertheless, ingestion causing sudden loss or damage attributable to a single recorded incident shall be covered hereunder.

1.5.3 loss of use of an Aircraft.

1.5.4 theft of an Aircraft by an Insured.

11. Under the definitions found in the policy a "*Total Loss*" *arises when:*

"(a) The cost of repairs exceeds the agreed value of the aircraft; or

(b) The aircraft is damaged to such an extent that it cannot be repaired; or

(c) The aircraft is missing and not reported for a period of 7 days or more",

and a "*Constructive Total Loss*" occurs when the cost of repairs to the aircraft is estimated at 75% or more of the agreed value of the aircraft. There would therefore be a constructive total loss in this case if and when the cost of repairs proves to be US$52,500,000 or more.

12. Section Two of the policy follows a similar format while subsequent sections, dealing with such matters as aircraft, premises and products liability and personal liability, for obvious reasons have a statement of coverage but no equivalents of 1.3 and 1.4.

13. The policy provides for a deductible of US$10,000 for certain types of larger aircraft but none for a Gulfstream G65O.

14. The business of the insured, namely Luxaviation, is stated in the policy to be the "[o]*peration, management and maintenance of Aircraft detailed in the Schedule of Aircraft as held on file*" by the brokers through whom the policy was arranged.

The Court of First Instance judgment

15. Justice Sir Andrew Smith identified the relevant issues of construction as being:

a. the interplay between clauses 1.1 and 1.3 of Section One of the policy - whether clause 1.3 exhaustively defined what is recoverable in the event of a partial loss by limiting it to the cost of repairs; and

b. the meaning of "*cost of repairs*" in clause 1.3 and in the definition of a constructive total loss - did it mean only the cost of repairing physical damage?

16. He referred to the guidance given on the approach to the interpretation of contracts by Lord Neuberger in *Arnold v Britton [2015] UKSC 36, [2015] AC 1619* at para 15 and to the application of that approach in construing insurance contracts by Lords Hamblen and Leggatt in *FCA v Arch Insurance (UK) Ltd [2021] UKSC 1, [2021] AC 649* at para 47.

17. The Judge accepted that the ordinary measure of indemnity under an insurance against damage to property is the depreciation in the value of the property attributable to the operation of the insured peril, citing Lord Sumption in *Sveriges Angfartygs Assurans Forening (The Swedish Club) v Connect Shipping Inc ("The Renos") [2019] UKSC 29, [2019] 2 Lloyd's Rep 78* at para 11. That was subject to the terms of the insurance contract but, in the absence of some applicable provision in the policy, the cost of repairs was not itself the measure of the indemnity, although it was often used as a practical way of calculating the recoverable loss: *Coles v Hetherton [2013] EWCA Civ 1704, [2015] 1 WLR 160*. If repairs would not restore the property to its full value before it was damaged, the cost of repairs would not sufficiently compensate the insured: *Payton v Brooks [1974] RTR 169*.

18. After setting out the respective submissions for the parties, which were essentially repeated in this Court and will be referred to below, Sir Andrew Smith said that he preferred the insurers' case about the role of clause 1.3. On its face, clause 1.3 set out an unqualified obligation on the insurers to pay the cost of the repairs, not an obligation that was conditional on that cost being less than any diminution in value. The context of the clause in Section One as a whole provided a formula to define the indemnity in the event of partial loss as a counterpoint to the formula in clause 1.4 dealing with total loss. The more natural view of the overall purpose of clause 1.3 was to enable the parties to ascertain what indemnity was payable in the event of partial loss but would provide no help in assessing the amount if the insured were entitled to an indemnity for diminution in value. Mr. Kealey KC, for GPI, had emphasized that it was known to the parties when the policy was taken out that an aircraft might have a reduced market value when it suffered substantial damage, despite remedial work making it operational and technically compliant with regulatory standards. But that did not indicate whether the parties intended to cover that reduction in value; that they chose not to mention it in the policy might be said to indicate that they did not intend it to be covered.

19. The trial Judge also saw great force in an argument by Mr. Dougherty KC, for the insurers, that the policy did not provide for any deductible to be applied to a claim for diminution in value, which, he said, did not make commercial sense if there could be a claim for diminution in value in the event of partial loss.

20. It had been submitted for GPI that clause 1.3 should be given a narrow interpretation because it was in the nature of an exclusion clause. It might be said that by clause 1.3, on the insurers' interpretation, that the insured would be giving up valuable rights that the policy would otherwise confer, namely an indemnity for diminution in value, a conclusion which required clear language: *Gilbert Ash (Northern) Ltd v Modern Engineering (Bristol) Ltd [1974] AC 689*. That was a rule of construction that applied to valuable rights given by other parts of a contract. The more improbable that a contracting party would give up, or agree to restrict, the right in question, the plainer the contractual words needed to evince that intention.

21. Sir Andrew Smith accepted that on the insurers' interpretation of clause 1.3, it removed a right to indemnity for diminution in value, the benefit of which GPI would prima facie enjoy under liability insurance providing the coverage described in clause 1.1, but it did not seem to him very surprising or truly improbable that the contracting parties intended this, not least because, on what he (mistakenly, we were told) took to be the insurers' interpretation, clause 1.3 conferred the benefit of an indemnity for the cost of repairs even if they were uneconomical in the sense of exceeding diminution in value. He said that an aircraft operating company such as the insured might well consider that overall this benefit outweighed the fact that the policy did not provide an indemnity for diminution in value.

22. The Judge then moved to GPI's second argument on the meaning of "*cost of repairs*" in clause 1.3 and the definition of a constructive total loss. It seemed to him clear that in both contexts the expression referred to physical repairs and not to diminution in value. That interpretation was required both by the ordinary and natural meaning of the term and the context in which they were

used. In a case cited by Mr. Kealey, *Lancashire County Council v Municipal Mutual Insurance Ltd [1997] QB 897 at 909-910*, Staughton LJ had observed that the word "*compensation*" when used by lawyers in connection with the recovery of damages from a wrongdoer usually meant a sum of money designed to repair or make good the loss that the victim had suffered, with the proviso, so far as money could do that. And there were American authorities in which "*repair*" was given this wide meaning. But Staughton LJ's observations about the general use of the word "*repair*" could not be applied to the composite phrase "*cost of repairs*". The context in clause 1.3 was a series of provisions directed to what was included in the indemnity for the cost of physical repairs. Clause 1.3.2 referred to units being "*repaired or replaced*" which put it beyond argument that the reference there was to physical repair. Clause 1.4 provided that the insurers should pay the agreed value of the aircraft in the event of a claim settled as a total loss, a constructive total loss or an arranged total loss. All those definitions included the words "*cost of repairs*". The definition of total loss included reference at (b) to the aircraft being damaged "*to such an extent that it cannot be repaired*". So, in (a) of the definition the term "*cost of repairs*" must similarly refer to physical repairs. The natural inference was that "*cost of repairs*" had the same meaning in the definition of constructive total loss.

23. Sir Andrew Smith therefore concluded that:

    a. clause 1.3 exhaustively defined the indemnity for a partial loss; and

    b. the term "*cost of repairs*" referred to the repair of physical damage and did not include diminution in value of the aircraft.

GPI's submissions

24. GPI contended that clause 1.1, the provision stating that the insurers agreed to pay for physical loss or damage to an aircraft, was intended to be understood by reference to the established common law principles on the nature and measure of indemnity provided by insurance on property. A claim under an insurance contract was a claim for unliquidated damages for breach of contract by the insurer. The measure of damages was, *prima facie*, the sum that would put the insured in the same position as it would have been had the damage not occurred. An insured was entitled to a full indemnity for its losses, no more and no less: *Castellain v Preston (1883) 11 QBD 380* at 386 per Brett LJ. The ordinary measure of loss for a breach of contract that had caused damage to property was the diminution in value of the property. Courts had typically taken the reasonable costs of repairs, putting the property back into its former state, as evidence of the amount of the recoverable loss. But if the repairs did not restore the former value, the insurer's liability was not limited to the cost of those repairs, as illustrated in *Payton v Brooks* and *Coles v Hetherton*. The insured was always entitled, by the indemnity principle, to have the value, as well as the condition, of its property restored. This was, counsel said, the legal landscape in which the contract of insurance was entered into and was thus part of the relevant factual matrix against which it was to be construed.

25. Mr.Kealey KC recognised, however, that the parties to an insurance contract were free to agree that the exclusive measure of indemnity should instead be one specified in the policy; that the application of the general common law principles to which he referred was subject to the terms of the insurance contract in question.

26. Counsel said that there were two primary issues on GPI's policy: first, whether clause 1.1 provided cover the scope of which was consistent with the common law principles and, secondly, whether clause 1.3 exhaustively defined the measure of indemnity in cases of partial loss so as to displace the *prima facie* measure under clause 1.1.

27. It was submitted that clause 1.1 was the coverage provision, as its title directed, and that it provided a very wide all risks coverage - so wide, indeed, that the parties had thought it necessary in clause 1.5 to exclude an indemnity for loss of use of the aircraft (qualified by an attachment to the policy

which is the subject of the insurers' cross-appeal) and (seemingly unnecessarily) for wear and tear. If it had been intended and known all along that depreciation in value was not covered, one would have expected that to have been included in the exclusions, not left to argument. Clause 1.1 contained an undertaking to indemnify the insured in respect of all physical loss or damage, without restriction or qualification, provided it was sustained during the period of insurance. Clause 1.1 was not merely descriptive of the cover under the section. It used the language of obligation. The proviso would, it was said, be unnecessary if clause 1.1 were merely descriptive of cover to be set out later in the section.

28. Mr. Kealey said that clause 1.3 did not clearly make exhaustive provision for recovery of a partial loss so as to cut down the *prima facie* measure of damages and exclude the insurer's normal liability for an important component of damages arising naturally from their breach in failing to hold GPI harmless in respective damage to its aircraft. Under the *Gilbert Ash* principle clear words were needed before a party to a contract could be taken to have abandoned an ordinary legal remedy for breach. This principle applied when a contracting party lost through a subsidiary provision (as counsel characterised clause 1.3) part of the benefit it was apparently part of the purpose of the contract to provide, or through an exclusion or limitation provision, which it was alternatively suggested clause 1.3 was. Any term claimed to have that effect was to be narrowly construed: *Impact Funding Solutions Ltd v AIG Europe Insurance Ltd [2016] UKSC 57, [2017] AC 73* at para 35. There was no language or formulation in clause 1.3 (such as the word "*only*" or a synonym) indicating that it was to be the sole remedy in the event of a partial loss.

29. The function of clause 1.3 was, rather, merely to provide for what was recoverable by way of repair costs where those costs reflected or represented all or part of the indemnity for diminution in value under clause 1.1.

30. Counsel submitted that there were situations with which clause 1.3 could not satisfactorily deal if it did provide an exhaustive remedy, for example, if damage short of a total loss could not be repaired, such as where a manufacturer was not able to replace parts on a like-for-like basis or where damage of a cosmetic nature could not be completely repaired. It was submitted that at the time the contract of insurance was made, it could not realistically have been thought by the parties that in all cases of partial damage repairs would inevitably be able to restore both the condition and the value of the aircraft.

31. It was said that the trial Judge had attributed undue significance to the unqualified nature of the obligation to pay the cost of repairs and the fact that in a minority of cases that cost could exceed the diminution in value suffered by the insured. There was no benefit to the insured in such a situation as it would have had to pay, or at least to incur, the cost before receiving reimbursement. That requirement was burdensome for the insured. Furthermore, the insured could not even elect to sell the aircraft at a net loss that was less than the estimated cost of the repairs. It was also possible, because of the last, bolded paragraph of clause 1.3, for the insurers to withhold consent to repairs that they considered to be too expensive because the actual diminution in value was believed to be less than the cost of the repairs. Overall, therefore, clause 1.3 was not a neutral provision but was one favourable to or protective of the insurers as compared with the position at common law.

32. Mr. Kealey contended that the trial Judge should also not have accepted a submission that the insured under the policy was an aircraft operator whose main concern was to have the aircraft returned to operation. This did not recognise that the aircraft owners were also insured under the policy. Mr. Kealey reminded us that the Judge had found that GPI had "*firm plans*" to sell the aircraft for about $40 million.

33. It was submitted that the trial Judge was also wrong to attribute "*great force*" to the insurer's argument that the policy did not provide specifically for any deductible for a claim for diminution in value. GPI said, however, that the policy schedule did provide for a deductible for certain aircraft

which would apply to such a claim and, in any event, where it followed repair, the excess would already have been applied in relation to the repair costs.

34. In relation to the *Gilbert Ash* rule of construction, the Judge was criticised for considering that the insured would have been willing to give up an indemnity for diminution in value because of the benefit of an indemnity for repair costs that might exceed that diminution; there was no good reason to think that this would be a sufficient benefit.

35. The second ground of appeal concerning the meaning of "*cost of repairs*" was not pursued orally. In written submissions, it was said that a meaning going beyond physical repair was familiar in the courts in an appropriate context and was consistent with the common law principles relating to compensation for breach of contract. It was unsurprising that clause 1.3 defined what was included in the cost of physical repairs but it did not follow that the term in the initial words of the clause must exclude diminution in value for which a similar provision was not necessary.

The insurers' submissions

36. Mr. Dougherty KC said that the parties were essentially agreed on the measure of damages that is applicable for breach of a contractual or tortious duty causing damage to property, usually damages for diminution in value. His clients accepted that even if the cost of repair is often used as a proxy for that diminution, in principle any residual diminution which remains after repair may be recoverable at common law if such damages are required to place the victim of the breach in the position enjoyed immediately before. Where there were no relevant terms in a policy of insurance expressly or implicitly providing for another measure of liability, the measure where property has suffered damage may be the relevant diminution in value, subject always to the proviso that it in fact reflects the insured's actual loss in the particular circumstances: *Sartex Quilts & Textiles Ltd v Endurance Corporate Capital Ltd [2020] EWCA Civ 308, [2020] 2 All ER (Comm) 1050* at [36]. But a policy will frequently, indeed typically, specifically define the measure of indemnity which is to apply. Where that is set out in the policy the common law on the measure of indemnity may have no application. Therefore, counsel said, one needed to ask what was actually covered by the specific promise in an insurance policy in terms of the losses agreed to be covered.

37. Turning to GPI's policy, Mr. Dougherty said that it was quite clear that diminution in value was not contemplated by the parties to the policy. He said that the argument that clause 1.1 provided an independent or self-standing measure of indemnity covering diminution in value was plainly wrong because it ignored the need to read Section One of the policy as a whole. On its clear and ordinary meaning clause 1.1 provided merely a description of, or introduction to, the all risks cover afforded by the rest of Section One, but no definition of the scope of the cover other than temporal and describing the perils covered, namely all risks physical damage. The measure of the indemnity, as the relevant headings underlined, was to be found in clauses 1.3 ("*Cost of Repairs – Partial Loss*") and 1.4 ("*Agreed Value – Total Loss*"). Clause 1.3 was cast in mandatory terms ("*Insurers will pay the cost of repairs*"). It set out in detail how the indemnity should be measured for loss or damage to the aircraft.

38. Clause 1.3 explicitly provided that the indemnity for any partial loss was to be calculated by reference to the cost of repair of the aircraft. Mr. Dougherty said that the notion that, in the event of a partial loss, clause 1.3 served only to provide a mechanism for calculation of the cost of repairs insofar as those formed part of a claim under clause 1.1 "made no sense". The absence from the opening of clause 1.3 of the word "only" was of no significance because the clause was not intended to exclude something that would otherwise be covered by the clause. There was no mention of diminution in value anywhere in the section. There was consequently no machinery for its assessment. It was unlikely that the parties would set out detailed provisions regarding repairs but omit any mechanism for calculating diminution in value. And total loss or constructive total loss was contracted for on the basis of an agreed value, no valuation evidence being required.

39. If clause 1.1 could somehow be read in isolation from clauses 1.3 and 1.4, counsel submitted that it would lead to the surprising result that no deductible would be payable in the event of a claim for physical damage. Mr. Dougherty said that the trial Judge was correct to take the view GPI's construction of clause 1.1 provided for no deductible in the event of a claim made solely under that clause. The Judge's finding that the schedule set out the amount of the deductible but not the circumstances of its application was correct. GPI's suggestion that it did not matter that no deductible was identified in clause 1.1 because any excess would already have been paid in the prior repair claim under clause 1.3 was wrong. There might have been no repair claim in excess of any deductible, in which case an insured would still be entitled to make a free-standing claim under clause 1.1 which circumvented any deductible. It might even choose not to seek any repair at all and insist only upon a diminution in value claim, in which case, on the insured's argument, there would be no applicable deductible. GPI's interpretation would also mean that there was no limit of indemnity, which would mean that if the aircraft were first damaged such that it suffered a diminution in value and was later destroyed, then GPI would *prima facie* be able to claim for both the diminution under clause 1.1 and the agreed value under clause 1.4. The fact that clause 1.3 limited partial loss to agreed value, less any deductible, underlined that it was referring to all partial loss.

40. Mr. Dougherty submitted that it was necessary to look at the whole package provided by the policy. It had not simply replaced diminution in value with a specific entitlement for cost of repairs. There were specific extra elements of indemnity in clause 1.2, provision for partial loss in clause 1.3, including beneficial uplifts for supervision and labour costs, and in clause 1.4 there was the very beneficial agreed value on total loss and also rules on constructive total loss. It was wrong to criticise the trial Judge for saying that an operating company might well consider that the benefit of an indemnity for cost of repairs exceeding diminution in value outweighed the fact that the policy did not provide an indemnity for diminution in value.

41. Responding to GPI's argument that there were situations which clause 1.3 could not encompass, like an inability to have the aircraft repaired to its former condition or the subsistence of a cosmetic defect, counsel said that it was inherent in any repair process that the chattel might not be in an absolutely identical state to its pre-repair condition. But that did not mean it had not been repaired or that an insured had not received a full insurance indemnity if the cost of the repairs was paid in terms of the policy. To the extent that an aircraft could not be repaired, then the policy might respond to the casualty as a total or constructive total loss.

42. It was submitted that the *Gilbert Ash* rule that a party is presumed not to have given up common law rights in the absence of clear words, was not relevant in this case because clause 1.3 delineated a primary obligation. It did not cut down an indemnity provided by clause 1.1 - it defined the measure of indemnity for partial loss (and, even if it did not, was sufficiently clear in its wording). The fixing of the measure of indemnity was a delineation of a primary obligation: *Impact Funding* at paras 35 – 36. A clause that did this was also not an exclusion clause. The scope of the cover depended entirely on what the insurer had agreed to provide in return for a given premium. The fact that its obligations might be circumscribed in their scope was not analogous to the removal of obligations which would otherwise exist, or akin to a situation where the purpose of a contract was undermined by a subsidiary provision.

43. Dealing with the argument that the words in bold type at the end of clause 1.3 were like a condition precedent to any performance by the insurers, Mr. Dougherty said that the provision did not say anything which had the same effect as a condition precedent (compared to Section Fifteen where that was express). Nor did it prevent the insured from incurring liability for repairs. Its purpose was twofold: first, to allow the aircraft to be inspected in order to work out what damage was directly related to the incident and what might be pre-existing damage, and what works were the most economical means to do the repairs; and, secondly, to assess whether there was a total or constructive total loss. Moreover, any discretion possessed by the insurers needed to be exercised not just in good faith but also not arbitrarily, capriciously or irrationally: *Equitas Insurance Ltd v*

Municipal Mutual Insurance Ltd [2019] EWCA Civ 718. [2020] QB 418 at para 106. Counsel accepted that consent could not be refused by the insurers just because the cost, though economical, would exceed the diminution in value.

44. On the second appeal point (the meaning of "*cost of repairs*"), counsel said in written submissions that GPI's suggested meaning was contrary to the natural and ordinary meaning of "*repairs*", let alone "*cost of repairs*". Payment of money and compensation for a loss of market value did not repair a damaged chattel. It also ignored the preceding words "*cost of*". Clause 1.3 provided for the cost of repairs effected by another firm to be the actual amount of that firm's account, increased by a supervision cost. This was a precise means of calculating the indemnity that left no scope for an indemnity in respect of diminution in value. GPI could point to no English authority in which "*cost of repairs*" had been defined in the manner for which it contended. "*Total loss*" was defined in the policy as arising when either (i) the cost of repairs exceeded the agreed value, or (ii) the aircraft was damaged to such an extent that it could not be repaired. The trial Judge was correct to conclude that, because these two provisions in the definitions section were adjacent, and because the second very clearly related to physical repairs, the reference to "*cost of repairs*" in the first similarly concerned physical repairs. Further, since the definition of cost of repairs should be consistent throughout the policy, the definition of that phrase in relation to total loss was supportive of the insurers' case concerning its definition in relation to both constructive total loss and clause 1.3.

Principles of interpretation of contracts

45. As was said at the outset of this judgment, this is a case about interpretation of a contract. I begin, then, with the principles of interpretation, which, as Sir Andrew Smith said, are pretty clearly established. In *Arnold v Britton [2015] UKSC 36, [2015] AC 1619* at para 15 Lord Neuberger confirmed the correct general approach:

> "*When interpreting a written contract the court is concerned to identify the intention of the parties by reference to "what a reasonable person having all the background knowledge which would have been available to the parties would have understood them to be using the language in the contract to mean", to quote Lord Hoffmann in Chartbrook Ltd v Persimmon Homes Ltd [2009] AC 1101, para 14. And it does so by focusing on the meaning of the relevant words…….. in their documentary, factual and commercial context. That meaning has to be assessed in light of (i) the natural and ordinary meaning of the clause, (ii) any other relevant provisions of the [contract], (iii) the overall purpose of the clause and the [contract], (iv) the facts and circumstances known or assumed by the parties at the time that the document was executed, and (v) commercial common sense, but (vi) disregarding subjective evidence of any party's intentions."*

Section One

46. With that guidance, the provisions of Section One of the policy can now be examined, bearing in mind, as the trial Judge did, that the ordinary measure of indemnity under a contract of insurance against damage to property is the depreciation in the value of the property attributable to the operation of the insured peril, to use the words of Lord Sumption in "*The Renos*" at para 11. It is necessary to begin with the trite and obvious point that the provisions of Section One, like the policy generally, must be read as a whole. It is necessary to make that point because much of GPI's argument about Section One proceeded explicitly or implicitly from a premise that clause 1.1, read alone, must be understood as obliging the insurers to provide a full indemnity for all the insured's losses and that the other provisions of Section One, particularly clause 1.3, were subordinate to and did not either qualify or fix the extent of the cover provided in accordance with the asserted meaning of clause 1.1. The premise begs the question. It assumes rather than demonstrates that Section One, read as a whole in the context of the whole policy, has the operation asserted by GPI.

47. Clause 1.1 is headed "*Coverage*", which immediately suggests that its function is to spell out the nature of the perils for which cover under the section is to be given, rather than operating as the source of any obligations of the insurers, as GPI has submitted as a fundamental part of its case. The clause says that the insurers "*agree to pay for physical loss of or damage to Aircraft*" (namely those specified in the broker's schedule of aircraft) provided that such loss or damage is sustained during the period of insurance. Although this could, if it stood on its own, possibly be taken to be a statement of obligation, it cannot fairly be so read in isolation from the rest of the section. In that context it has the appearance of being simply an introduction to what follows in clauses 1.2 - 1.5.

48. Clause 1.2 adds something to the described coverage in clause 1.1 ("*The Insurers will also pay*"). What it adds are three categories of costs which may well be incurred if an aircraft is lost or damaged but are consequential and not themselves physical loss or damage. These are dismantling costs, emergency expenses necessarily incurred for the safety or preservation of the aircraft and agreed salvage charges. Salvage charges are said to be payable "*in addition to any other claim under this Section*" and so would be additional even to a payment of the agreed value on a total or constructive total loss.

49. Clause 1.3 is headed "*Cost of Repairs – Partial Loss*" and clause 1.4 "*Agreed Value - Total Loss*". Partial loss and total loss are the only two possible forms of loss of a chattel (leaving aside consequential losses). So an immediate response to the headings is that this is likely to be where the indemnity provisions are to be found.

50. Clause 1.3 commences with the statement that, in the event of the [partial] loss of or damage to an aircraft, "*the Insurers will pay the cost of repairs*" less any applicable deductible (nil in this case) and an apportionment for the overhaul cost of a unit which has an overhaul life. That statement is unqualified, even elsewhere in the clause, by any limitation in that cost, other than that it cannot exceed the agreed value and that repairs and transportation are to be by the most economical means unless agreed by the insurer. Significantly, there is simply no reference at all to any indemnity based on diminution in value at this point where it might have been expected to appear if there were to be any such indemnity afforded under Section One.

51. The clause continues, in 1.3.3 and 1.3.4 and the unnumbered paragraphs that follow, first to add some consequential costs (transportation and test flights and the cost of reinstatement of the certificate of airworthiness); and then to spell out what is to be paid depending upon whether the work of repair is done by the insured or by another firm (in both cases allowing the insured sums over and above actual costs).

52. Lastly in clause 1.3, comes a statement in bold type requiring that no dismantling or repairs may be commenced without the consent of the insurers except whatever is necessary in the interests of safety, or to prevent further damage or to comply with orders issued by the appropriate authority. As we discuss below, however, and as Mr. Dougherty readily accepted, the evident purpose of this provision is quite limited.

53. Clause 1.4 says what is to happen if a claim is settled as a total loss, a constructive total loss or an arranged total loss. In that event, the insurers must pay the agreed value of the aircraft less any deductible. The insurers can then elect to take the aircraft as salvage. A total loss, by definition, arises when:

    a. the cost of repairs exceeds the agreed value; or

    b. the aircraft is damaged to such an extent that it cannot be repaired; or

    c. the aircraft is missing for at least 7 days.

It can be seen that, once again, the insurers' obligation to pay is determined in the first two of these situations by what has happened in relation to repairs - either they exceed the agreed value, or they cannot be effected. There is no mention of diminution in value. The cost of repair is the measuring stick if repair is possible; and for constructive total loss the test is whether the cost of repairs is estimated at 75% or more of the agreed value.

54. The final part of the section is clause 1.5 which is couched as an express exclusion provision and details four matters for which the section does not provide cover. This clause seems in part to have been included out of caution because it excludes such things as wear and tear and ingestion of material which produces progressive and cumulative damage to an engine. It would seem very likely that such matters would not anyway have fallen within the coverage of physical loss of or damage to an aircraft. Clause 1.5.4 also excludes from the section loss of use of an aircraft or theft by an insured. However, the former of those exclusions is, as we will see in relation to the cross-appeal, qualified by an attachment to the policy, applicable to Section One, extending coverage to include expenses for rental of a replacement aircraft, but subject to a monetary cap.

55. I take full account of the position at common law where the primary measure of indemnity is, as both parties agree, the diminution in value resulting from claimable loss or damage, with cost of repair acting as a proxy only and not setting any limit of liability. In my view, this policy deliberately departs from that position. It contains its own rules and installs cost of repair as the only measure of indemnity for a partial loss.

56. Clauses 1.3 and 1.4 make it abundantly clear that no indemnity is given in Section One for diminution in value. As I have said, it is nowhere mentioned in the section. In reaching this conclusion, I have not forgotten that GPI was not an operator of the aircraft and in fact was minded to sell it. Such an intention cannot influence the clear words of clause 1.3 in the context of Section One as a whole.

57. Clauses 1.3 and 1.4 contradict any notion that clause 1.1 is intended to operate as a contractual promise of a stand-alone indemnity. Nor does it seem to me that in agreeing to take clause 1.3, in effect as a substitute for an indemnity against diminution in value, GPI was giving up a valuable right without getting any substantial benefit in exchange. For the following reasons the *Gilbert Ash* rule of construction can have no application in this situation.

58. GPI pointed to what it saw as a disadvantageous requirement in clause 1.3 that it could receive reimbursement for repairs only after first paying out for them. I do not read the clause in that way. The obligation is "*to pay the cost of the repairs*", not " *to reimburse the cost of the repairs*". The clause does not say that the cost has first to be met by the insured. It would, in my view, be sufficient for the insured to have incurred the cost by accepting a price from the party carrying out the repairs. That is not an unreasonable or particularly unusual stipulation. There is an exception to this when the insured is doing its own repairs and has to pay the wages of those that it employs for that purpose but when that occurs the clause allows a margin of 150% to be claimed. Similarly, when the work is done by another firm, supervision costs are claimable.

59. Furthermore, contrary to GPI's submissions, and as the insurers through their counsel agreed, consent to repair cannot be refused just because the cost, although as economical as circumstances allow, will exceed the diminution in value. The insurers cannot use the consent requirement in the words in bold at the end of clause 1.3 to negative the insured 's right to receive a full repair which may exceed any diminution in value. The purpose of the bolded sentence, as Mr. Dougherty accepted, is limited to enabling the insurers to inspect the damaged aircraft so as to determine what damage has been caused to it by the insured peril and what repairs need to be carried out to restore it, or whether there has been a constructive total loss. The insurers' consent to repairs cannot be refused in bad faith or arbitrarily, capriciously or irrationally. In *Equitas Insurance Ltd v Municipal Mutual Insurance Ltd [2019] EWCA Civ 718, [2020] QB 418* at para 148 Leggatt LJ remarked:

"An important development in the English law of contract which has gathered momentum in recent years is the readiness of the courts to imply a term as to the manner in which a contractual power may be exercised so as to ensure that the power is not abused and is exercised in good faith. The doctrine of good faith in this context requires a contractual power to be exercised in a way which is consistent with the justified expectations of the parties arising from their agreement, construed in its relevant context."

60. Leggatt LJ referred by way of example to *Gan Insurance Co Ltd v Tai Ping Insurance Co Ltd (No 2) [2001] 2 All ER (Comm) 299* in which a clause in a contract of reinsurance forbidding the entry into any settlement or compromise by the insurer or the admission of liability without the prior approval of reinsurers was held to be not an absolute right but subject to an implied limitation that it must be exercised in good faith after consideration of and on the basis of the facts giving rise to the particular claim, and not with reference to considerations wholly extraneous to the subject matter of the particular reinsurance or arbitrarily.

61. I consider that the insurers cannot refuse consent to the carrying out of repairs inconsistently with GPI's right to receive the cost of repairs which are economical. Consent could not be refused, for example, just because the cost, although economical in the circumstances, would exceed the diminution in value of the aircraft.

62. I should explain what I mean by "*economical in the circumstances*". The insurers have committed themselves to paying for the full repair of the aircraft unless there has been a total loss or a constructive total loss. The insured has, by implication at least, agreed that there can be no claim for diminution in value. Consequently, it behoves the insurers to pay for the full restoration of the aircraft even though some part of the repairs may be difficult and costly to achieve, such as where there has been cosmetic damage like stained or pitted surfaces, or where a part has to be specially manufactured to provide a like-for-like replacement. If this cannot be accomplished, the situation may well be one in which it can fairly be said that the aircraft is not able to be repaired. In this way the insurers' strict obligation to repair substitutes for any indemnity for diminution in value.

63. For these reasons, I agree with the trial Judge that the *Gilbert Ash* principle has no application in this case. Likewise, clause 1.3 is clearly not an exclusion clause, as clause 1.5 expressly is. Because clause 1.1, as I have said, does not create any obligation on the part of the insurers, clause 1.3 is not cutting down something found elsewhere in Section One. Clauses 1.3 and 1.4 are the primary obligations under the section.

64. Before leaving this first ground of appeal, I should mention something which weighed with the trial Judge and was the subject of contention between counsel. The Judge took the view that there was "*great force*" in the insurers' argument that the policy did not provide for any deductible under clause 1.1 to be applied to the asserted claim for diminution in value, as this would not make commercial sense. He also said that it would, to his mind, be strange if it were necessary to imply a term to this effect into the contract when elsewhere the policy dealt with the application of the deductible in clear and express terms. Whilst I agree with the Judge's second point and with his overall conclusion about Section One, I consider that the position as to commercial sense regarding any deductible is not of much weight either way. If a claim were able to be made for diminution in the value of an aircraft over and above the cost of repairs, there would in practice already have been a reduction under clause 1.3 for any "*applicable deductible*". Mr. Dougherty disputed this, arguing that for some insured parties the repair cost might have been less than the deductible. But, as the maximum deductible (for larger aircraft) is only US$10.000, it is very unlikely that an incident requiring such a relatively minor repair would ever have caused any real diminution in value. Counsel also suggested that the insured might not bring a claim for repairs, seeking to rely only upon the alleged diminution under clause 1.1. That too strikes me as highly unlikely. Counsel's argument depended upon an extreme case and is therefore to be regarded with some suspicion as a guide to interpretation of what objectively the parties must have been contemplating

when the insurance contract was entered into. The arguments advanced on this issue therefore do not assist in the construction of the section.

65. For the foregoing reasons, the first ground of appeal fails.

Meaning of "cost of repairs"

66. GPI's second ground of appeal was that the words "*cost of repairs*" when used in Section One of the policy have a meaning wide enough to include damage in the form of diminution in value; that in clause 1.3 they should be construed as referring to the restoration of both the condition of the aircraft and its value. Mr. Kealey in his written submissions referred to some authorities on the word "*repair*" to that effect. But they were in rather different contexts and provide no assistance in construing the word in the present policy. It seems to me that GPI's argument is quite forlorn when the word is used as part of a phrase, "*cost of repairs*". It refers, in my view, to the cost of carrying out physical repairs. As the trial Judge said, that can be seen in the definition of a total loss of an aircraft where para (a) ("*the cost of repairs exceeds the agreed value*") is immediately followed in para (b) by "*the Aircraft is damaged to such an extent that it cannot be repaired*". Both are plainly speaking of the costs involved in physically repairing the aircraft, not loss of value. There is no good reason to think that the same phrase has any wider meaning in clause 1.3 in which there are several references to payments for repair costs or for supervision of work.

67. The second ground of appeal therefore also fails.

Result of the appeal

68. The appeal by GPI should accordingly be dismissed with costs.

The insurers' cross-appeal

69. The insurers appeal against the trial Judge's construction of the limitation of the insurers' liability under an extra expenses clause attached to the policy extending the insurers' liability to include "*expenses for rental of a replacement aircraft*". The extra expenses clause provided (so far as now relevant) that:

> *"The coverage provided under Section One of this Policy is extended to include…. [e]xpenses for rental of a replacement aircraft necessitated by physical loss or damage to an Aircraft provided that such loss or damage is covered under Section One of this policy."*

70. The extra expenses clause further provided that "[t]*he limit of Insurers' liability is stated in the Schedule*". The relevant part of the schedule, headed "*Extra Expenses Clause*", provided, against the words "*Amount Insured*":

> *"USD$60,000 per day subject to a maximum of USD$600,000 any one aircraft and USD$2.000,000 in the aggregate".*

71. The trial Judge concluded that the limit on the insurers' liability for rental of replacement aircraft was limited to USD$600,000 for any one replacement aircraft and not to USD$600,000 for the insured aircraft the loss or damage to which (covered under Section One of the policy) necessitated the rental of a replacement aircraft. This conclusion, the trial judge held, was compelled by the limitation clause in the schedule using the word "*aircraft*" (with a lowercase letter "*a*") rather than the defined term "*Aircraft*" (spelt with an uppercase initial "*A*"). The policy provided that "*Aircraft*" "*means an aircraft and in respect of Sections One and Three means the aircraft specified in the Schedule of Aircraft together with*" certain engines and equipment usually installed in or on the aircraft.

72. Much of the argument of the parties focused on whether the use of the word "*aircraft*" as distinct from "*Aircraft*" in the provision of the schedule limiting liability for rental of replacement aircraft was deliberate or a mistake. But that is a question which cannot be answered by looking only at what appears in the limitation of liability provision in the schedule. It is necessary to begin with the extra expenses clause itself.

73. When that is done, it is seen that the limit of the insurers' liability set out in the schedule is a limit on the amount of "[e]*xpenses for rental of a replacement aircraft necessitated by physical loss of or damage to*" an insured aircraft. That is, the subject of the limitation is the amount of expenses for rental of replacement aircraft necessitated by loss or damage to the insured aircraft. It is not a limitation that varies according to whether one or more than one replacement aircraft is used. However many aircraft are rented to replace the insured aircraft that has been lost or damaged, the insurers' liability is limited to USD$60,000 per day (up to a maximum of USD$600,000) for each occasion of loss or damage to an insured aircraft necessitating the rental of a replacement aircraft (and USD$2,000,000 in the aggregate).

74. Understood in this way, the use in the schedule of the word "*aircraft*" is no more than a reference back to what the extra expenses clause calls a rental aircraft in the composite expression "*rental of a replacement aircraft necessitated by physical loss or damage to an* [insured] *Aircraft*". The use of the word "*aircraft*" as distinct from "*Aircraft*" is apposite and it is not necessary to treat the use of the lower case "a" as a drafter's mistake.

75. Contrary to the conclusion of the trial Judge, understanding the operation of the limitation in the way that has been described does not lead to any commercially strange result. The trial Judge said that if two insured aircraft suffered damage from an insured peril during the insurance period and the owners chose, or happened to rent, the same replacement aircraft, one or other (or both) of them might be caught by the limit of USD$600,000 even if its rental charges were more modest, "*the amount available for the particular replacement aircraft having already been used by another insured*". The example given would, however, arise only if the limitation were read (as GPI suggested) as hinging on the identity of the replacement aircraft rather than, as we conclude, hinging upon whether rental expenses have been incurred because of (were "*necessitated by*") physical loss or damage to an insured aircraft. So construed, the limitation of liability operates in a way that is commercially sensible. That construction should be adopted. Indeed, it would be odd if the insured's construction prevailed because then the limit of USD$600,000 would apply if only one replacement aircraft were used but could be avoided (subject to the overall limit of US$2million) if other aircraft were also utilised by that insured in place of the damaged aircraft. Quite why that should be the case has not been explained by GPI.

Result of the cross-appeal

76. The insurers' appeal should therefore be allowed with costs. Paragraph 6 of the trial Judge's order of 13 December 2021 should be set aside and, in its place, there should be a declaration that the insurers' liability for expenses of rental of all replacement aircraft necessitated by the physical loss or damage to the insured aircraft on 10 July 2019 at Abruzzo International Airport, Italy is limited to a maximum of USD$600,000.

Re-issued by:

Linda Fitz-Alan
Registrar, ADGM Courts
6 July 2023