

Neutral Citation Number: [2024] EWHC 3299 (Comm)

Case No: CL-2022-000637

IN THE HIGH COURT OF JUSTICE
KING'S BENCH DIVISION
COMMERCIAL COURT

Royal Courts of Justice, Rolls Building
Fetter Lane, London, EC4A 1NL

Date: 8 November 2024

Before :

Mr Justice Picken

In Re:

**The Russian Aircraft Litigation – Operator Policy
Claims**

Tom Weitzman KC, Kate Holderness, Philip Hinks, Josephine Higgs KC, Michael Holmes KC, Henry Moore, Douglas Grant, Robert-Jan Temmink KC, Tom Nixon, Alexander Milner KC, Chirag Karia KC, Peter Stevenson and Benjamin Joseph on behalf of the **MLB Claimants**

Stephen Midwinter, Edward Ho, Sophie Bird and Sophie Shaw on behalf of the **HSF / AerCap Claimants**

Alistair Schaff KC, Rebecca Sabben-Clare KC, Sandra Healy, Daniel Corteville, Frederick Alliott, Alexander MacDonald and Julia Gibbon on behalf of the **Clifford Chance Claimants**

Emma Hughes and Sarah Parker on behalf of the **Wordley Partnership / Shannon Engine Support Claimant**

Matthew Reeve KC on behalf of the **McGuireWoods / Genesis Claimants**

Christopher Loxton on behalf of the **Fieldfisher / Deep Sky Claimants**

Timothy Killen and Eswar Kalidasan on behalf of the **Reed Smith Claimants**

David Bailey KC, Charles Kimmins KC, Susannah Jones, Michal Hain and Alex Demetriades on behalf of the **Kennedys Defendants**

Paul Stanley KC, John Bignall, Adam Board on behalf of the **DLA Piper Defendants**

Akhil Shah KC, Max Kasriel, Nick Daly and James Duffy KC on behalf of the **CMS Defendants**

Andrew Neish KC, James Leabeater KC, Bankim Thanki KC, Martyn Naylor and Rangan Chatterjee on behalf of the **HFW WR Defendants**

Guy Blackwood, Tom Bird and Robert Ward on behalf of the **Weightmans Defendants**

John Lockey KC and Edward Batrouney on behalf of the **DWF Defendants**

Nigel Tozzi, Sophie Allkins, Aidan Christie, Bajul Shah and James Hatt on behalf of the **DACB Defendants**

Ben Lynch KC, Daniel Schwennicke, Jeffrey Gruder KC, David Peters and Helen Morton on behalf of the **Dechert / Chubb Defendants**

Stephen Phillips KC and Sarah Cowey on behalf of the **Penningtons / Swiss Re Defendants**

Timothy Howe KC and Christopher Knowles on behalf of the **RPC / Fidelis Defendants**

Chris Smith, John Korzeniowski and James Payne on behalf of the **Air Law Firm Defendants**

Philippa Hopkins KC and Owen Lloyd on behalf of **BMII (CPB)**

Hearing dates: **8th November 2024**

RULING 1

Mr Justice Picken
(11:29am)

Friday, 8 November 2024

Ruling by **MR JUSTICE PICKEN**

1. This is a CMC in this very-large-scale litigation in which a substantial quantity of skeleton arguments have been prepared and submitted. I applaud the parties for the clarity of their positions and I applaud even more, as I did in the course of initial observations to Mr Weitzman KC, the preparation of the schedule summarising those positions.
2. The issue which I am addressing in this short ruling concerns the fixing of the trial and also an invitation, made to me by Mr Lynch KC and Mr Howe KC on behalf of their respective clients, that I should, at this juncture, order sampling of claims in the sense that I should order that that trial to be fixed should proceed on a sample claims basis.
3. There is along the way a further issue which concerns when the trial should take place. All parties, with the exception of Mr Lynch's clients, are contemplating a trial in the Michaelmas term of 2026 to last provisionally, at this juncture, between eight and ten weeks. Mr Lynch proposes, however, that the trial should take place earlier in 2026, in the Easter term.
4. I do not propose to set out my reasons in any detail. I should say that my conclusion is that the trial should indeed be fixed for the Michaelmas term of 2026 rather than earlier that year. I am not persuaded that I am in a position at this juncture to order that there should be sampling or indeed that there should, as others have suggested might be another way forward or an additional way forward, be a determination of certain preliminary issues.
5. I think it is premature to make a decision in these respects for a number of reasons, but in particular bearing in mind the ongoing trial before Mr Justice Butcher in the LP claims and the likelihood that the judgment arising from that trial will not be available until the early part of next year.
6. It seems to me that the right course is for the parties to be encouraged to do what is envisaged in paragraph 5 of the draft order put before me by Mr Weitzman, namely to endeavour to agree proposals in respect of a number of matters, including the scope and format of the trial in this matter

and including in that respect whether there should be a trial of all claims, a trial of preliminary issues, a trial of sample claims or some combination of a trial of preliminary issues and sample claims, and that they should do so with the benefit of having completed the pleadings process and with the benefit hopefully of Mr Justice Butcher's judgment in the LP claims trial.

7. I can indicate that in principle it is obviously sensible for the trial in this matter to be as economical, by which I mean as focused, as is possible. Whether, however, ultimately that proves possible, as opposed to having to try all the Russian OP claims, is a matter that will have to be reviewed at a subsequent hearing.
8. I note that, whilst there is a hope expressed by a number of parties, perhaps all parties, including Mr Weitzman's clients, that there will be a way of avoiding having to try all the Russian OP claims, nonetheless, as Mr Midwinter KC, on behalf of his clients, pointed out a short while ago, that may not prove possible. All I can do at this juncture is to encourage what is obviously to be desired, which is to see if it is possible to avoid having to try all Russian OP claims. If it is, then good, the court is likely to go along with that, and if it is not, with regret, the court may find that it cannot do anything other than try all the Russian OP claims.
9. I have referred to paragraph 5 of the draft order, which seems to me to capture the essence of what everybody before me is really saying, which is to try and achieve a position where not all of the OP claims have to be tried at the trial that I am ordering.
10. The next question is whether there should be a CMC taking place in June or July of next year, where the question of the format of the trial, amongst other things, can be considered or whether there should instead be a CMC in April of next year or alternatively whether there should, as it were, be a staging-post hearing in about April of next year with a June or July CMC to follow.
11. I was initially attracted to the notion that there should be what I have described as a "staging-post hearing" or a CMC ahead of a CMC in June or July, to take place in April, hopefully after Mr Justice Butcher has been able to produce his judgment in the LP trial, but on balance I consider it

probably is not sensible to order a further hearing at that stage, that is April 2025, because I am conscious, looking around the courtroom, of the vast amount of costs that any hearing, however short, is likely to entail.

12. I am conscious also that there must at least be a possibility that Mr Justice Butcher will not have produced his judgment in that timescale or, alternatively, if he has, that the parties will not have had time sufficiently to consider the implications of that judgment, and so to order a hearing in April is probably not a good idea.
13. In any event paragraph 5 of the draft order, to which I have referred a few times now, seems to me essentially to cover the point in setting out a requirement that the parties should endeavour to agree proposals of the nature I have outlined, as it goes on, by a date three weeks before the June 2025 CMC. I am absolutely clear that the CMC should take place in early June 2025 rather than in July, and the upshot of what is envisaged by paragraph 5 is that the parties should, by about mid-May, have done the very thing which I was minded to think they should be doing by the putative staging-post hearing in April 2025. In short, I think paragraph 5 captures the point that I had in mind in any event.
14. As to the timing of the summer CMC, as I have indicated, I am clear it should take place in early June. The term starts after the short Whitsun break on 3 June and I am contemplating that there should be a CMC that week, probably, to allow a little bit of reading, on the Thursday and Friday, but the parties can fix that with the listing office, albeit that I will be telling them that those are the two dates that -- unless there is a very good reason -- the court will be offering.
15. I think I have covered everything. I am grateful to Mr Lynch and Mr Howe in particular for their valiant submissions and I am sorry that they did not entirely prevail, but what I have been able to do is to endorse the mood, as it were, of the room, which is, as I say, to try and avoid having to try every single OP claim if that proves possible, but I do emphasise, as Mr Midwinter points out, that it may not proved possible.