

JUDGMENT SUMMARY

Neutral Citation	[2021] ADGMCFI 0008
Case Number	ADGMCFI-2020-051
Name of Case	Global Private Investments RSC Limited v Global Aerospace Underwriting Managers Limited & Others
Judge	Justice Sir Andrew Smith
Date Issued	5 December 2021
Catchwords	Principles for construing insurance contract for property damage. Indemnity for partial loss. Meaning of “ <i>cost of repairs</i> ”. Measure of diminution in value under valued policy. Relevance of owner’s intention to sell the property at the time of the incident. Limit on coverage for loss of use.
Cases Cited	<p>Arnold v Britton and ors [2015] UKSC 36</p> <p>Chartbrook Ltd v Persimmon Homes Ltd [2009] UKHL 38 [2009] 1 AC 1001</p> <p>FCA v Arch Insurance (UK) Ltd [2021] UKSC 1</p> <p>Firma C-Terra SA v Newcastle P & I Association [1991] 2AC 1</p> <p>Sveriges Angfartygs Assurans Forening (The Swedish Club) and Ors v Connect Shipping Inc & Anor (The “Renos”) [2019] UKSC 29</p> <p>Kusel v Atkin (The “Catariba”) [1997] 2 Lloyd’s Rep 749, 755</p> <p>The London Corporation [1935] P 70</p> <p>Sartex Quilts & Textiles Ltd v Endurance Corporate Capital Ltd [2020] EWCA Civ 308</p> <p>Coles v Hetherton [2013] EWCA Civ 1704</p> <p>Payton v Brooks [1974] RTR 169</p> <p>Gilbert Ash (Northern) Ltd v Modern Engineering (Bristol) Ltd [1974] AC 689, 717H</p> <p>Seadrill Management Services Ltd v OAO Gazprom [2010] EWCA Civ 691</p>

	<p>Cornish v Accident Insurance Co Ltd (1889) 23 QBD 453</p> <p>Impact Funding Solutions Ltd v Barrington Services Ltd [2016] UKSC 57</p> <p>Gard Marine & Energy Ltd v China National Chartering Co Ltd (The “Ocean Victory”) [2013] EWHC 2199</p> <p>Lancashire County Council v Municipal Mutual Insurance Ltd. [1997] QB 897</p> <p>US Fire Ins Co v Welch (1982) 163 Ga App 480, 294 SE 2d 713</p> <p>State Farm Mutual Automobile Insurance Company v Mabry et al (2001) 2754 Ga 498, 556 SE 2d 114</p> <p>Squire (Senko) v Insurance Corp of BC (1990) 69 DLR (4th) 300</p> <p>Elcock v Thomson [1949] 2 KB 755</p> <p>Western Trading Ltd v Great Lakes Reinsurance (UK) SE [2016] EWCA Civ 1003</p> <p>Barnardo’s v Buckinghamshire and ors [2018] UKSC 55</p> <p>Torvalt Klaveness A/S v Arni Maritime Corp [1994] 1 WLR 1465</p>
<p>Legislation and Authorities Cited</p>	<p>ADGM Application of English Law Regulations 2015 – Article 1</p> <p>MacGillivray on Insurance Law (14th Ed, 2012) – Paragraphs 107 and 21-012</p>
<p>Executive Summary</p>	<p>This judgment concerned a dispute between Global Private Investments RSC Limited (“GPI”) and several insurance companies (the “Insurers”) over the interpretation of an Aircraft Hull and Spares all risks and aviation liability policy (the “Policy”). The core issues were the interpretation of the Policy's clauses regarding partial loss and whether diminution in the aircraft's value after repairs is covered. The judgment also addresses whether GPI's intention to sell the aircraft or the agreed value of the aircraft impacted any potential coverage for diminution in value, and the limit on the Insurers' liability for renting replacement aircraft. Ultimately, the Court ruled in favour of the Insurers on the key points of Policy construction, determining that partial loss indemnity is limited to repair costs and does not include diminution in value.</p>
<p>Overall Summary</p>	<p>Background</p> <p>This Abu Dhabi Global Market (“ADGM”) Court of First Instance (Commercial & Civil Division) judgment considers a dispute between Global Private Investments RSC Limited (“GPI”) as the Claimant several insurers (the “Insurers”) as the Defendants.</p> <p>The dispute concerned the interpretation of an Aircraft Hull and Spares all risks and aviation liability policy (the “Policy”) issued to Luxaviation</p>

	<p>Holding Company SA and associated companies, which also covered GPI as an ‘additional insured’.</p> <p>GPI's Gulfstream G650 Aircraft (the “Aircraft”) was extensively damaged in a hailstorm on 10 July 2019 (the “Incident”). The Insurers accepted liability for the physical damage and paid some US\$9.4 million for repairs and about US\$600,000 for hire of replacement aircraft. The Policy was a valued policy, with the agreed value of GPI's Aircraft stated as US\$70 million. The Policy is governed by ADGM law, which applies English common law.</p> <p>The main disputes were:</p> <ol style="list-style-type: none"> 1. whether GPI was entitled to an indemnity for any residual diminution in the value of the Aircraft after the physical damage had been repaired, and if so how was it to be calculated; 2. the meaning of “<i>cost of repairs</i>” in Clause 1.3 (Partial Loss) of the Policy; 3. whether the Aircraft was a “<i>Constructive Total Loss</i>” within the definition of the Policy; and 4. a discrete issue about the limit set in the Policy for rental of replacement aircraft necessitated by the damage to the Aircraft. <p>GPI argued that Clause 1.1 of Section One of the Policy, which covers physical loss or damage, provided coverage for residual diminution in value. It contended that Clause 1.3 (“<i>Cost of Repairs – Partial Loss</i>”) of the Policy was not exhaustive and only set out how repair costs were measured if recoverable. Alternatively, GPI argued that the term “<i>cost of repairs</i>” in Clause 1.3 and the definition of “<i>Constructive Total Loss</i>” should be interpreted broadly to include making good any residual loss of value.</p> <p>The Insurers argued that Clause 1.3 of the Policy exhaustively defined the indemnity for partial loss, limiting it to the cost of repairs. They submitted that “<i>cost of repairs</i>” meant only the cost of physical repairs. They argued that Clause 1.3 delineated the scope of their obligation and was not an exclusion clause to be interpreted narrowly.</p> <p>Analysis and Conclusion</p> <p>The Court concluded:</p> <ol style="list-style-type: none"> 1. Clause 1.3 of the Policy exhaustively defined the indemnity for “<i>Partial Loss</i>”. The Court preferred the Insurers' interpretation based on the ordinary meaning of the Clause, the context within Section One of the Policy, the purpose of the Clause, and commercial common sense of the policy, noting that interpreting Clause 1.1 as providing coverage for diminution in value outside Clause 1.3 would lead to issues with deductibles and limits;
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	<ol style="list-style-type: none"> 2. the term "<i>cost of repairs</i>" refers to repair of physical damage and does not include diminution in value. This applies in both Clause 1.3 and the definition of "<i>Constructive Total Loss</i>" of the Policy; 3. GPI's intention to sell the Aircraft at the time of the Incident, which the Court found was genuine, fixed, and settled with a reasonable prospect of being achieved, would not have affected the Insurers' liability if diminution in value had been covered; 4. if diminution in value were covered, the indemnity should be measured by reference to the agreed value of the Aircraft (US\$70 million); and 5. the limit on the Insurers' liability for rental of replacement aircraft is limited to US\$600,000 for any one replacement aircraft, not US\$600,000 for the damaged Aircraft.
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This statement is not intended to be a substitute for the reasons of the Court or to be used in any later consideration of the Court's reasons.