

UKRAINE INTERNATIONAL AIRLINES FOUND LIABLE FOR DAMAGES TO THE ESTATES OF DECEASED PASSENGERS AND THEIR FAMILY MEMBERS ARISING FROM THE DOWNING OF UIA FLIGHT PS752 ON JANUARY 8, 2020

Toronto, June 11, 2024 / On June 10, 2024, the Honourable Justice Jasmine Akbarali of the Ontario Superior Court of Justice released her judgment in a mass tort liability trial brought against Ukraine International Airlines JSC (“**UIA**”) by the estates and family members of the passengers who tragically died aboard UIA Flight PS752 when it was shot down on January 8, 2020 by two surface-to-air missiles launched by Iran’s Islamic Revolutionary Guard (the “**IRGC**”).

This liability trial determined UIA’s liability in 101 individual actions and 1 class proceeding, almost all of which are governed by the *Montreal Convention* and the *Carriage by Air Act*.

In a 78-page decision delivered after an 18-day trial, Justice Akbarali held that UIA had failed to satisfy its unique burden under the *Montreal Convention* to prove that it was not negligent in allowing Flight PS752 to depart from Tehran in the early hours of January 8, 2020. As such, UIA has unlimited liability to the estates and family members of the deceased passengers for their compensable damages.

On the morning of January 8, 2020, Flight PS752 departed from Tehran Imam Khomeini International Airport (“**IKA**”). Minutes after takeoff, Flight PS752 was shot down by the IRGC and, tragically, all 176 passengers and crew lost their lives.

Justice Akbarali found that UIA, by allowing Flight PS752 to depart in the circumstances that existed at the IKA on the morning of January 8, 2020, breached the standard of care expected of international air carriers operating over or near conflict zones.

Justice Akbarali found that on the morning of January 8, 2020, the Tehran FIR was a “textbook example of a conflict zone.” There had been months of escalating military conflict between Iran and the US leading up to the morning January 8, which included a US missile attack at an international civilian airport (Baghdad International Airport) on January 3rd, which targeted and killed the leading general of the IRGC. Iran followed with retaliatory missile strikes on two US military bases in Iraq a few hours before the scheduled departure of Flight PS752. Justice Akbarali noted that UIA’s own expert testified that “prior to the take-off of PS752, Iran would have been in a heightened state of military alert or tension, as it would have been anticipating retaliatory strikes from the United States.”

Under the circumstances, a thorough conflict zone risk assessment was required to determine whether Flight PS752 should have been cancelled or at least delayed.

Justice Akbarali found that UIA breached the standard of care for conflict zone risk assessments. The predominant focus of her lengthy and careful analysis was UIA’s “lackadaisical approach” to security assessments. She found that had the security assessment been done appropriately, UIA would have reached the same conclusion as the Plaintiffs’ aviation security expert John M. Edwards—the flight should have been cancelled or at least delayed.

The Plaintiffs in this proceeding were comprised of the families and estates of 103 passengers who tragically died aboard Flight PS752. The families and estates of 73 of these passengers were represented at trial by Vincent Genova, Peter Jervis, Douglas Worndl and Pritpal Mann of *Rochon Genova LLP* (“**RG**”). The successful trial result was due to a team effort amongst counsel from other firms who participated and played a unique role. As Justice Akbarali stated, “Rochon Genova

LLP took the lead for the plaintiffs with respect to the issues around the sufficiency of the security threat risk assessment, which analytically was very important” RG is grateful for the contributions of the other firms who commenced actions and represented the estates and families of the other 30 passengers.

Lead trial counsel Vincent Genova commented “It was the greatest honour of my career to have been asked to represent the families of 73 passengers in their efforts to obtain accountability from those responsible for this terrible, and entirely avoidable, tragedy. I commend Justice Akbarali for her thoughtful consideration throughout the trial, and for her carefully reasoned and comprehensive judgment which sends a firm message to the civil aviation industry that, in making any operational decisions, their paramount responsibility and obligation is to protect the safety and lives of their passengers.”

The decision is the first trial consideration of the standard of care expected of international airlines operating over or near conflict zones.

The Plaintiffs will now proceed to assessments of their individual damages.

For further information, please contact Vincent Genova (vgenova@rochongenova.com).