

QUEEN'S BENCH DIVISION
(COMMERCIAL COURT)

Mar. 5, 2004

BRISTOW HELICOPTERS LTD.
v.
SIKORSKY AIRCRAFT CORPORATION

[2004] EWHC 401 (Comm)

Before Mr. Justice MORISON

Aviation — Conflict of laws — Declaration for negative relief — Crew of helicopter killed — Proceedings brought by operators against manufacturers — Operators also seeking declaration that their liability to crew was limited — Manufacturers commencing Part 20 Proceedings seeking declaration of non-liability to crew — Whether English proceedings should be set aside or stayed.

On July 16, 2002 a Sikorsky helicopter was lost during a flight between a drilling rig and a gas production platform some 28 miles north east of Cromer. Everyone on board, including two crew (employed by the claimants) and several passengers (employed by the fifth and sixth defendants and being carried under contract the claimants), was killed.

The claimants were the owners and operators of the helicopter. It was fitted with a rotor blade which had in November, 1999 been involved in a lightning strike incident when fitted to a helicopter of the same type, also operated by the claimants. The blades were sent to the United States for analysis and repair, and in due course it was returned to the U.K. duly certified for use. The claimants asserted that the blade had failed during the last flight and that this was the cause of the accident. There was an issue as to whether the claimants had contracted for inspection and repair with the first defendant, Sikorsky (the designer and manufacturer of the helicopter), the second defendant (the parent company of the first defendant) or the third defendant (a company approved by the U.S. Federal Aviation Authority for the repairing, servicing and certification of Sikorsky helicopters).

In the present proceedings the claimants claimed damages from the first three defendants, for the loss of the helicopter and for sums paid and payable to dependants. The claimants also sought a declaration against the estates of the passengers that the claimants' liability was limited to the figure of 100,000 special drawing rights under the Carriage by Air (Application of Provisions) Order, 1967 (as amended) and the EC Regulation 2027/97 and the Air Carrier Liability Order, 1998, on the basis that they were unaware of any latent defect in the blade, that they were entitled to rely on the airworthiness certificate relating to the blade and that they did not and could not know that there was any anomaly in the main joint where the blade was attached to the rotor mechanism. Further, the claimants sought a declaration that their liability to the employers of the

passengers was so limited. Finally, the claimants asserted as against the dependants of the two deceased crew that any liability fell to be determined in accordance with English law, and asked for a declaration to that effect.

Sikorsky issued a Part 20 claim against the dependants of the crew and passengers. Sikorsky pleaded that the blade had been sent to the third defendant in Texas, and accordingly that Sikorsky owed no duty of care to them or that there had been no breach of any duty of care. Sikorsky also alleged that the claimants, having fitted the blade which failed, should have noticed that there was a developing fatigue fracture, and Sikorsky asked for a declaration that they were not liable for the accident.

The claims of all the passengers were settled. The trial of the action was scheduled for January, 2005 and an appropriate slot had been allocated for the case.

The applications before the court were on behalf of the deceased crew and their dependants. The applicants sought to strike out or stay the claim for a declaration by the claimants and the claim made by Sikorsky. The applicants stated that they had commenced proceedings in the U.S. against Sikorsky to recover damages, and that the effect of permitting the claims against them by Bristows or Sikorsky might be to preclude them from bringing those claims in the U.S.A. The applicants wished to drop out of the English litigation so that it could be determined as between the corporate defendants which of them was liable, and the U.S. litigation against Sikorsky could then proceed.

—Held, by Q.B.D. (Com. Ct.) (MORISON, J.), that the applications would be dismissed.

(1) There was little if any difference between a claim for a positive declaration and one in negative in form. Whether such a claim was proper or not proper was not to be determined by the form of the claim, but by its substance. One of the grounds when a negative declaration was appropriate was where a person against whom the relief had been sought was "temporising". Unlike the passengers on board the helicopter, the applicants were not prepared to come forward and make their claims. It was proper for Bristows and Sikorsky to force the issue. The use of such declaratory relief was both valuable and constructive because it sought to ensure that the applicants' claims were determined at the one trial. It was also a legitimate tool to "fix" the timing and venue of litigation in a potential trans-national dispute (*see par. 25*);

—*Messier-Dowty Ltd. & Another v. Sabena S.A. & Others*, [2000] 1 W.L.R. 2040, applied; *Owners of Cargo lately laden on board the ship Tatry v. Owners of the ship Maciej Rataj*, [1999] Q.B. 515, referred to.

(2) In order to obtain a stay the general rule was that the applicant had to show that there was another court with competent jurisdiction which was clearly and distinctly more appropriate than England for the trial of the action. The burden of proof was neither diluted, nor transferred to the other party simply because the claim was for declaratory relief. If a claim for a declaration served a useful purpose and was juridically sound then there was no sensible reason why a different approach to the task should be taken. The fact that as yet no

substantive claim had been formulated by the applicants did not give them better rights to a stay (*see par. 26*);

— *Spiliada Maritime Corporation v. Cansulex Ltd.*, [1987] 1 A.C. 460, applied.

(3) The applicants had come nowhere near discharging the burden on them. England was the most obvious and convenient forum for their damages claims. The applicants were here; the complaints upon which they wished to rely as against Sikorsky were precisely those which Bristows asserted in their case. The trial was well advanced, in the sense that a date has been fixed for it and preparations were, in the course of being made to get the case on, with expert witnesses instructed. The principal documents were here, or could be readily brought here; the helicopter's previous service was in England or over English waters; Bristows' evidence was all here; and the rotor blade in question was here. Connecticut was much less convenient as a forum, and Texas would not be as convenient as Connecticut. The applicable law was unquestionably English Law under s. 11 of the Private International Law (Miscellaneous Provisions) Act, 1995. The potential of a claim against Sikorsky did not change the focus of the case or displace the rule in s. 11 of the 1995 Act. Whilst it was understandable that the attempts by the deceased crew and their dependants to suggest that Connecticut was a more appropriate forum, as they wished to choose a forum where the damages might be higher, it would be contrary to authority to look favourably upon a party who attempted to select a forum based solely upon the level of damages that could be awarded (*see par. 27*);

— *Spiliada Maritime Corporation v. Cansulex Ltd.*, [1987] 1 A.C. 460, *Lubbe v. Cape plc*, [2000] 1 W.L.R. 154, applied.

The following cases were referred to in the judgment:

- Lubbe v. Cape plc*, (H.L.) [2000] 1 W.L.R. 1545;
Merrill Lynch Capital Services Inc. v. Municipality of Pireaus, [1997] C.L.C. 1214;
Messier-Dowty Ltd. & Another v. Sabena S.A. & Others, (C.A.) [2000] 1 W.L.R. 2040;
Owners of Cargo lately laden on board the ship Tatry v. Owners of the ship Maciej Rataj, (E.C.J.) [1999] Q.B. 515;
Roerig v. Valiant Trawlers Ltd., (C.A.) [2002] 1 W.L.R. 2304;
Spiliada Maritime Corporation v. Cansulex Ltd., (H.L.) [1987] 1 A.C. 460;
Talbot v. Berkshire County Council, (C.A.) [1994] Q.B. 290.

The applicants, representatives of the deceased crew of a crashed helicopter and their dependants, sought to have English proceedings brought by the operators and manufacturers of the helicopter, in

which it was asserted that any liability was limited (in the case of the operators) or not established (in the case of the manufacturers), set aside or stayed.

Philip Shepherd, Q.C. and B. Shah, instructed by Beaumont & Son for the claimants; H. Davies, instructed by Ince & Co., for the first defendant; T. Brennan, Q.C. and R. Weir, instructed by Simpson Millar, for the 15th, 16th and 42–47th defendants.

The further facts are stated in the judgment of Mr. Justice Morison.

Friday, Mar. 5, 2004

JUDGMENT

Mr. Justice MORISON:

Background

1. This is an application by certain of the defendants for a stay of the Action.

2. The Action is concerned with the loss of a helicopter during a flight between a drilling rig and a gas production platform some 28 miles north east of Cromer on July 16, 2002. Everyone on board was killed. There were two crew and several passengers.

3. The claimants [Bristows] were the owners and operators of the helicopter during its non-international flight for reward. The helicopter was fitted with a rotor blade which had been involved in a lightning strike incident when fitted to a helicopter of the same type, also operated by the claimants. The strike occurred in November, 1999, and thereafter the blades were examined and sent to the U.S. for analysis and repair. The first named defendant, a company incorporated under the laws of Delaware, is the designer and manufacturer of helicopters of this type [Sikorsky]. It is alleged that the second named defendant, also incorporated under the Laws of Delaware, is the parent company of Sikorsky and describes itself as a world leader in the design and manufacture of advanced helicopters suitable for commercial and other uses. The third defendant (M) is also an American company, incorporated in California and with its principal office in Dallas, Texas. It is alleged to be engaged in the business of repairing, servicing and certifying rotor blades of Sikorsky helicopters and is approved for doing this work by the U.S. Federal Aviation Authority, the F.A.A.

4. There is an issue as to which of the three defendants contracted with the claimants for the inspection, repair and certification of the damaged rotor blade and which of them, if any, is responsible for the alleged faulty repair and certification. But in due course the blade was returned to the U.K. duly certificated for use. It is the claimants' case that this blade failed during the last flight and was the cause of the accident. They blame the first three defendants for what happened. They say that the rotor blade was unfit for use in service and was wrongly certificated.

... the claimants contend that the [rotor blade] should not have been released to service after such a lightning strike given the limitations in the testing and inspection techniques adopted ...

5. The fourth and fifth defendants are the companies with whom the claimants contracted to provide the relevant commercial helicopter services, and the contract forms the basis upon which the claimants, as carriers, assert their entitlement to rely upon the terms and limitations of the Carriage by Air (Application of Provisions) Order, 1967 (as amended) and the EC Regulation 2027/97 and the Air Carrier Liability Order, 1998. The claimants say that all the passengers were employed by the fourth and fifth defendants and were being carried at their request and for reward. They further say that under the contract they are obliged to indemnify these two defendants. The claimants seek a declaration that any liability of theirs to the fourth and fifth defendants "is limited and co-extensive with such liability as [the claimants] may or will have to the deceased passengers in accordance with" the statutory provisions referred to.

6. The claimants say that the effect of the statutory framework is that the passengers' claims would be limited to the figure of 100,000 special drawing rights and they seek a declaration to that effect. It is their case that the accident happened without any fault on their part since, and I summarize,

- (1) they were unaware of any latent defect in the blade,
- (2) they were entitled to rely on the airworthiness certificate relating to the blade and
- (3) did not and could not know that there was any anomaly in the main joint where the blade was attached to the rotor mechanism.

Accordingly, the claimants claim against the estates of the passengers a declaration that their entitlements are limited by the statutory provisions.

7. The two deceased crew members, whose personal representatives are the 15th and 16th defendants, (deceased crew) were employed by the claimants under employment contracts governed by

English Law. The claimants say that the helicopter was "equipment" within the meaning of the Employers Liability (Defective Equipment) Act, 1969. They further assert as against the two deceased crew and their families (dependants), who are named as the 43rd to the 47th defendants:

In the circumstances of the accident which occurred in British Territorial waters on a non-international flight ... and which involved the flying of a helicopter that was registered in the U.K. and which occurred while the deceased crew were performing contracts of employment which were governed by English law ... that the liability of the claimants or any of them in respect of claims arising out of the death of the deceased crew falls to be determined in accordance with English Law in all respects. They seek a declaration to that effect.

8. Apart from "substantive" claims for damages against the first three defendants seeking to recover damages for the loss of the helicopter and an indemnity in of monies already paid out to dependants prior to the issue of the proceedings and to be paid in the future, the claimants are, as I have indicated, asking for declaratory relief

9. Sikorsky have issued a Part 20 Claim against the deceased crew and the representatives of their estates. Sikorsky plead that the helicopter blade which failed was sent to the third defendant, based in Texas, and that the blade was sent back by that defendant to Bristows and installed onto the helicopter.

In the premises by reason of the matters pleaded above, it is averred that

- (a) [Sikorsky] owed no duty of care to the deceased (and hence no duty of care to any of the Part 20 defendants);
- (b) Further and in any event, [Sikorsky] did not breach any alleged duty of care owed to the deceased (and hence no breach of duty owed to the Part 20 defendants).

10. In their Part 20 claim, Sikorsky allege that Bristows, having fitted the blade which failed should have noticed that there was a developing fatigue fracture causing the blade to droop more than the other blades when the helicopter was at rest and that further investigation was appropriate and Bristows should have known about the impending problem because of vibrations recorded on the IHUMS system. Sikorsky ask for a declaration that they are not liable for the accident.

The applications

11. There are two applications made by the representatives of the deceased crew and their

dependants [the applicants]. The first relates to the claim for a declaration made by Bristows; the second relates to the Part 20 claim made by Sikorsky. Both applications are posited on the basis that the applicants intend to bring proceedings in the U.S.A. against Sikorsky to recover damages arising out of the deaths of the two crew members, and the effect of permitting the claims against them whether by Bristows or by Sikorsky "is that the applicants will or may well be precluded from bringing their claims for damages in the U.S.A. . . .".

12. The applicants submit that the Court retains a discretion not to hear the action as against the deceased crew members and their dependants and such discretion should be exercised so as to avoid prejudicing the U.S. action: this Action should be stayed as against these defendants. The Part 20 claim form should be set aside and the claim for a declaration by Sikorsky should be refused, in limine, alternatively the claim made in the Part 20 proceedings should be struck out or stayed.

13. In fact, I was told that proceedings had been commenced in the Federal Court in Connecticut in the U.S.A. against Sikorsky. I was also told that the claims of all the passengers have been settled with appropriate court approvals, both here and in the U.S.A. Some of the claims were settled on payment by Sikorsky, rather than or as additional to a contribution by Bristows. The trial of the Action in this country is scheduled for January, 2005 and an appropriate slot has been allocated for the case.

The applicants' case

14. The applicants' preferred solution is that they "drop out" of the English litigation; to let the corporate defendants and Bristows fight it out as to which of them is liable and then, on the back of a judgment from this court, to proceed with the U.S. litigation currently only brought against Sikorsky. Meanwhile, the proceedings in the U.S.A. would be stayed so that Sikorsky was not fighting on two fronts at the same time. The Action in this country against the applicants is "academic" and no good reason has been shown for the declarations being sought against them. It was submitted that if the deceased crew remained a party to the English Action they would be deprived of their opportunity to seek damages which would greatly exceed the sort of sums which, conventionally, would be awarded to them in this jurisdiction. They refer to *Talbot v. Berkshire County Council*, [1994] Q.B. 290. They contend that they should not have to engage in proceedings against Bristows to protect their position at the same time as pursuing their proceedings against Sikorsky in the U.S.A. For the same reason, they will have to elect now whether to

bring proceedings against Sikorsky in England for fear of losing any right of action against them.

15. Whether or not a counter claim was brought against Sikorsky, the Court will have to determine the applicable law to any claim which the applicants might bring against them. It is accepted that under the general rule, the applicable law is English law and s. 11 of the Private International Law (Miscellaneous Provisions) Act, 1995. The applicants may argue that the applicable law as regards Sikorsky was the law of the State where Sikorsky resides on the grounds that that law would be substantially more appropriate. Reference was made to the case of *Roerig v. Valiant Trawlers Ltd.*, [2002] 1 W.L.R. 2304.

16. The applicants also rely on the decision of the Court of Appeal in *Messier-Dowty Ltd. & Another v. Sabena S.A. & Others*, [2000] 1 W.L.R. 2040, and in particular a passage from the judgment of Lord Woolf at par. 44:

I would not quarrel, however, with [the Judge's] statement that: "it may well be that few such cases [actions for negative declarations] will lend themselves to relief of that kind, especially where the injured party has a choice of which defendant to sue.

Not only should the applicants have a choice of who to sue — their preferred choice is Sikorsky and they have no present intention of suing Bristows. There is no pressing need for the applicants to be involved in the forthcoming trial. Bristows' and Sikorsky's liability to the applicants will effectively be determined then. They also contend that Bristows' failed to write a letter before action was in breach of the Pre-action Protocol and that Bristows were engaged in "forum shopping".

17. They say that Sikorsky would be a defendant in its own State; the documents relating to the claim would be found there. In reality, once the English Action had been completed, there would be no need for another trial as Sikorsky and Bristows would settle the outstanding claims on the basis of the English Court's judgment. Thus, Sikorsky would not be subject to a second trial unless it chose to have one. The applicants have no present intention of suing Bristows: it is obvious to them that the cause of the accident stemmed from the inadequate work done on the rotor blade. The applicants further contend that the deceased crew and their dependants have been joined in the proceedings and made Part 20 defendants as a deliberate tactic to prevent them from proceeding in another forum and depriving them of their choice to sue in the U.S.A. Bristows had no valid claim as there has never been a threat by the applicants to hold Bristows responsible for the accident. The proceedings were started without any such threat and before any letter before

action. Unless Bristows had some grounds for believing that the applicants would or might sue them, the claim for a Declaration was misconceived: it was a pre-emptive strike designed to lock the deceased crew and their dependants into an English Action. As to the Part 20 claim it was a transparent attempt to bolster the endeavour to force the crew and families to litigate here. There is nothing in the Part 20 claim to suggest that Sikorsky are not liable. The Part 20 claim is not couched in language which denies responsibility for the accident but blames someone else for it; the declaration that no duty of care was owed to the applicants by Sikorsky is ridiculous and the claim for a negative declaration as to liability has been crafted for purely procedural reasons and will not serve any useful purpose.

18. The applicants invite me to exercise my power to strike out or set aside an action on grounds of *forum non conveniens*. I was referred to *Spiliada Maritime Corporation v. Cansulex Ltd.*, [1987] 1 A.C. 460 and *Lubbe v. Cape plc*, [2000] 1 W.L.R. 1545. Although the general rule is that an applicant for a stay must show that there is another court with competent jurisdiction which is clearly and distinctly more appropriate than England for the trial of the action, this is not a burden which should be assumed in case such as this, where the applicants are simply defendants to a claim for declaratory relief. There is no substantive claim against them; their substantive rights are not in issue. They wish to assert their substantive rights in another forum of their own choosing. The court should be slow to prevent them from doing so. But in any event the burden has been discharged: see the first witness statement of Mr. Hows at par. 23. As to the second stage of the inquiry, namely whether it would be unjust to deprive the claimants of their right to trial in England, there is a distinction between Sikorsky's right to a trial of the action brought against them by Bristows and Bristows' and Sikorsky' rights to a trial against the applicants. Since the claims against the applicants are for negative declaratory relief, it would not be unjust to refuse to permit those claims to be tried elsewhere.

19. Alternatively, the applicants say that I should stay these proceedings against them so that they can apply to the court in Connecticut to deal with any jurisdictional challenge that Sikorsky might make to those proceedings. These proceedings have been brought only to obtain jurisdictional advantage. The only good reason for the Part 20 claim is to try and stall the appropriate bringing of proceedings in Connecticut. The question of the convenient forum will have to be determined by the court in Connecticut and that is the most appropriate forum for it.

Bristows' case

20. The action was properly started by Bristows against the deceased crew and their dependants. Indeed, under the Council Directive (E.C) 44/2001 this was the only country with jurisdiction. The accident happened in this country on an aircraft registered in this country. The applicants are English. The crew were employed in England under contracts of employment governed by English law. The air accident investigation was instituted here and the report of the AAIB which is likely to feature largely in the litigation is to be published in England. The only possible reason for the deceased crew not wanting to bring their claim here is because they hope that they would get larger compensation from a jury in Connecticut. It is the applicants who are forum shopping, not Bristows. This Court should not facilitate the applicants' action in the U.S.A. The remedies here are sufficient and just. To say that Bristows are not a target in the sights of the applicants cannot be right. The Connecticut court might conclude that Bristows were themselves at fault or that Sikorsky were entitled to rely on the work done in Texas by CTI the third defendant and were not at fault. The accident might have occurred without anyone being to blame. An inevitable consequence of the U.S. proceedings is that Bristows will become joined as a party, if not by the applicants then by Sikorsky. The applicants have no defence to Bristows' claim for a declaration. The applicable law of the tort is quite clearly English law: s. 11(2) of the 1995 Act recognizes that where elements of the events constituting the tort occur in different countries, in the event of death it is the law of the country where the individual was injured that applies. It is simply not possible to conclude that the general rule should be displaced in this case. There is no more appropriate applicable law [the law of the State of Connecticut as contended for] just because the repair of the relevant rotor blade may be attributable to Sikorsky who are based in Connecticut, even though some of the work on it was carried out in Texas.

21. The decision in the *Messier-Dowty* case is readily distinguished. There, Sabena had made a contract with Airbus which was governed by an exclusive jurisdiction clause in favour of the French courts. The aircraft crashed on landing in Brussels due to faulty landing gear manufactured by Dowty and others. Sabena were joined into an English Action in which the claimants sought a negative declaration that there was no liability to Sabena. Sabena had commenced litigation in the French courts after the English Action had started. The court struck Sabena from the English Action on the grounds that at that stage of the litigation it would

be unjust to force Sabena to litigate in two jurisdictions: their main claim was against Airbus with whom the contract had been made and it was inevitable that such litigation would take place in France. Here, the applicable law was English; the applicants were English and the appropriate forum for the trial of deceased crew's claims was England.

Sikorsky's case

22. The Part 20 proceedings were properly brought against the applicants and will serve a useful purpose. In order to advance a credible case for a stay, the applicants, who are within the jurisdiction and are joined as of right, must demonstrate that England is not the natural or appropriate forum for the trial of the Part 20 claim and that there is another available forum that is clearly or distinctly more suitable for such trial in the interests of all the parties and for the ends of justice. The fact that the U.S. had a different approach to the heads of compensation and the levels of compensation was not a relevant factor. It did not make Connecticut a just or more just or suitable forum for their claims. The trial is currently fixed for this case [seven weeks commencing Jan. 24, 2005]. The trial will involve factual and expert evidence. Whether based in the U.S. or the U.K., these witnesses will attend to give evidence. Likewise, disclosure of documents will take place here, whether the documents were originally from the U.S.A. or England. If a stay were granted, Sikorsky would be faced with two sets of proceedings covering the same issues in two different jurisdictions and that would be grossly unfair.

23. Negative declarations are permissible if they advance the ends of justice. Here, it is plainly sensible that all issues arising out of the loss of the helicopter should be determined at one trial in the most natural forum and subject to the applicable law of England. There is no substantial connecting factor between the crew and Connecticut. Apart from the fact that some evaluation work on the rotor blade was undertaken in Connecticut there is nothing else which links the claim to that jurisdiction. The loss occurred in this jurisdiction; that is the loss of the aircraft and any financial loss sustained by the applicants. Most if not all the relevant material is within the jurisdiction and being examined by the AAIB. Any additional documents can easily be sent from the U.S.A. All of the technical logs of the helicopter are in Bristows' custody in this jurisdiction. Bristows and Sikorsky have already instructed experts in England, although it is possible that an expert from the U.S.A. may be called to give evidence as to the meaning of the airworthiness certificate which was attached to the rotor blade. The applicants will have the benefit of a trial

conducted and funded by Bristows. Meanwhile they could be preparing their financial claims for presentation to the court at the end of the main trial. This Court should not "pass the buck" and accede to the application to stay this Action until after the court in Connecticut has given its jurisdictional ruling.

Decision

24. I have not been persuaded that I should conclude that Bristows and Sikorsky have put their heads together in order to force the applicants to litigate here or have acted in any way improperly as suggested in the papers before me. It is true that the effect of what they have done, and probably the intended effect, is to tie the applicants into a trial in which their rights will be determined, or, if the applicants still make no claims for compensation their rights may be extinguished by operation of law. The effect of the claims for declaratory relief will be to compel the applicants to come off their fence of indecision and make a claim in the proper forum: their home court which is properly seized of the Action.

25. It seems to me that the Courts now recognize that there is little if any difference between a claim for a positive declaration and one that is negative in form. A positive declaration may well have a negative effect and vice versa. Whether such a claim is proper or not proper is not to be determined by the form of the claim, but by its substance. This seems to me to be the effect of the decision in *Messier Dowty*. One of the grounds when a negative declaration is appropriate is where a person against whom the relief has been sought is "temporising". I refer to the passage in par. 23 of the Advocate General's Opinion in *Owners of Cargo lately laden on board the ship Tatry v. Owners of the ship Maciej Rataj*, [1999] Q.B. 515 which is cited in par. 34 of Lord Woolf's judgment. Here, unlike the passengers on board the helicopter, the applicants were not prepared to come forward and make their claims. It was, I think, proper for Bristows and Sikorsky to force the issue. The use of such declaratory relief is both valuable and constructive because it seeks to ensure that the applicants' claims are determined at the one trial. It is also a legitimate tool to "fix" the timing and venue of litigation in a potential trans-national dispute.

26. The attitude which the Court will take to a situation such as that between, the applicants and Sikorsky is to apply the well-known principles enunciated in *The Spiliada*. I reject the contention that the burden of proof is either diluted, or transferred to the other party simply because the claim is for declaratory relief. If a claim for a declaration serves a useful purpose and is juridically sound then

I can see no sensible reason why a different approach to the task should be taken. The effect of the claims for declaratory relief is to force the applicants to seek damages in relation to the death of the two crew members. That is the nature of the, unjustified, complaint about the form of action. The fact that as yet no substantive claim has been formulated by them does not give them better rights to a stay. If they take no further action in the English proceedings then, as they realise, they are in danger of losing a right to sue. Logically, I can see no distinction between the position of the applicants and that of any defendant whose substantive rights are in issue. The applicants may put their substantive rights in issue in this Action. It is for them to decide whether to do so. By not doing so and risking losing their rights by default they cannot escape the burden on them to show that the proceedings here, begun as they were as of right, should be stayed because there is another more suitable forum.

27. In my view the applicants have come nowhere near discharging the burden on them. It seems to me that for the reasons advanced by counsel for the other two parties, England is the most obvious and convenient forum for their damages claims. The applicants are here; the complaints upon which they wish to rely as against Sikorsky are precisely those which Bristows assert in their case. The trial is well advanced, in the sense that a date has been fixed for it and preparations are, in the course of being made to get the case on, with expert witnesses instructed. The AAIB has done its work here; the principal documents are here, or may be readily brought here; the helicopter's previous service was in England or over English waters; Bristows' evidence is all here; the rotor blade in question is here. Connecticut is much less convenient as a forum: indeed it must be open to some doubt as to whether, if the U.S.A. were a suitable place at all, Texas would not be as convenient as Connecticut. The applicable law is unquestionably English law. The potential of a claim against Sikorsky does not change the focus of the case or displace the rule in s. 11 of the Act. One element of the claim may concern what was done in Connecticut but that is dealt with by s. 11(2). Finally, whilst understandable, the attempts by the deceased crew and their dependants to suggest that Connecticut is a more appropriate forum is based entirely on their desire to choose a forum where the damages may be higher. It would be contrary to authority, that is both *The Spiliada* and the *Lubbe* case, to look favourably upon a party who attempted to select a forum based solely upon the level of damages that could be awarded. There is no

perceived injustice in requiring the applicants to litigate their claims here: their damages are not limited by any Convention and will be calculated on the same basis as every other case decided by the English Courts following a tragedy of this sort involving loss of life.

28. The suggestion that this Court should "pass the buck" to the District Court in Connecticut is to be rejected. Proceedings here were begun as of right. The applicants have been properly joined. There is no arguable case for a stay, to permit the litigation to be conducted in a forum which is less suitable or appropriate. There would be no purpose in staying this action until the District Court had determined jurisdictional issues in the U.S.A. I have not been shown the proceedings in U.S.A. They have only recently been sent to Sikorsky, but I am unclear whether they have been formally served on them. Until the shape of those proceedings has been established, (Sikorsky may themselves seek a stay or may seek to join in Bristows and the third defendant from California), the court there may not be in a position to rule on the matter. It may also be that it requires any party which challenges jurisdiction also to file defences pending the jurisdictional challenge. This will put the parties to unnecessary expense. I have not been advised of the Rules of Private International Law to be applied by a District Court in Connecticut. But it could well be that the applicable law is English law, and that would involve the court receiving evidence of English law. These matters would require to be investigated and the parties put to expense. The fact that Sikorsky may not be able to recover those costs is a small factor which I take into account. If this court were to abdicate its responsibilities and allow the District Court to decide its approach, unnecessary costs would be involved. The fact is that this court is so obviously the correct forum that there would be no point in postponing any decision on the application.

29. In case management terms, it would be open to the applicants to take little or no part in the main action but to formulate damages claims against all potential targets. There are no allegations of contributory negligence against the crew. It would be an odd result of this case if they were to end up without a claim against anyone. It is a matter for them how they now proceed. If they formulate their claims, the probable consequence is that they will be settled, just as the passengers' claims have been settled. Both Bristows and Sikorsky are anxious to negotiate the claims as soon as possible.

30. I therefore dismiss the applications.