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Kenneth and Linda Lipton v BA Cityflyer Ltd

The Supreme Court's ruling on July 10 2024, in the case of **Kenneth and Linda Lipton v BA Cityflyer Ltd** has significant implications for the airline industry and, by extension, the legal insurance sector. This landmark decision addresses the interpretation of "**extraordinary circumstances**" under **EC Regulation 261/2004**, specifically in relation to pilot illness.

Background of the Case:

The case originated from a flight cancellation in January 2018, when Kenneth and Linda Lipton's flight from Milan to London was cancelled due to a pilot falling ill at home while off duty. The Liptons arrived in London over two hours late and sought compensation of approximately £220 under EC Regulation 261/2004.

BA Cityflyer, a subsidiary of British Airways, initially refused compensation, arguing that the pilot's illness constituted an "extraordinary circumstance" beyond their control. The airline's position was upheld in two lower courts before being overturned by the Court of Appeal. The case then proceeded to the Supreme Court.

Supreme Court Decision:

In a unanimous decision, the Supreme Court rejected BA Cityflyer's appeal, ruling that pilot illness, even when occurring off-duty, does not qualify as an "extraordinary circumstance" under EC Regulation 261/2004.

Key points of the ruling include:

- 1. Integral part of operations:** The Court emphasised that pilots remain an integral part of airline operations even when off duty.
- 2. Inherent risks:** Issues such as pilots being unfit to fly due to illness, excessive drinking, or inadequate rest during stopovers are considered inherent risks of airline activities.
- 3. Off-duty responsibilities:** The Court noted that pilots and cabin crew have ongoing responsibilities to their employer and the public, even during rest periods.

Implications for the Legal Insurance Industry:

- 1. Increased claims volume:** This ruling is likely to result in a surge of compensation claims against airlines for flight cancellations or delays caused by crew illness. Legal insurers may see an increase in policies covering such claims.
- 2. Policy wording review:** Insurers offering legal expense coverage to airlines or passengers may need to review and potentially revise policy wordings to reflect this new interpretation of "extraordinary circumstances"
- 3. Risk assessment:** The decision introduces new considerations for insurers when assessing the risk profile of airline clients. The potential for increased liability due to crew illness may need to be factored into underwriting decisions and premium calculations.
- 4. Claims handling processes:** Legal insurers may need to adapt their claims handling procedures to accommodate the expected increase in flight delay and cancellation claims related to crew illness.
- 5. Dispute resolution strategies:** With the clarification provided by this ruling, insurers may need to reassess their approach to dispute resolution in similar cases, potentially favouring earlier settlements to avoid costly litigation.
- 6. Cross-border considerations:** While this ruling applies directly to the UK, it may influence interpretations of EC Regulation 261/2004 in other jurisdictions. Legal insurers operating internationally should monitor potential ripple effects.
- 7. Retroactive claims:** There may be an influx of retroactive claims for past incidents of flight cancellations or delays due to crew illness. Insurers should prepare for potential exposure to historical liabilities.
- 8. Education and guidance:** Legal insurers may need to provide updated guidance to policyholders, particularly airline clients, on the implications of this ruling and best practices for managing crew illness situations.
- 9. Product development:** There may be opportunities for insurers to develop new products or enhance existing ones to address the specific risks highlighted by this ruling, such as coverage for airlines facing increased compensation liabilities.
- 10. Collaboration with airlines:** Insurers may need to work more closely with airline clients to develop strategies for mitigating the financial impact of crew illness-related cancellations and delays.

11. Data analysis: The ruling underscores the importance of comprehensive data collection and analysis related to crew illness incidents, which can inform both underwriting decisions and risk management strategies.

12. Regulatory compliance: Legal insurers will need to ensure their policies and practices align with this new interpretation of EC Regulation 261/2004, potentially requiring updates to compliance frameworks.

Broader Industry Impact:

This ruling has far-reaching implications beyond the immediate case. It contributes to the evolving landscape of passenger rights in aviation and sets a precedent for interpreting "extraordinary circumstances" under EC Regulation 261/2004.

For the legal insurance industry, this decision highlights the need for adaptability in a rapidly changing regulatory environment. Insurers must stay abreast of legal developments that can significantly impact their risk exposure and client obligations.

The supreme court's application of EC regulation 261/2004 in the Lipton case, despite Brexit, highlights the complex interplay between EU and UK law post Brexit. The court chose to apply the original regulation rather than the amended UK version (Passenger Fights and Air Travel Organisers' Licencing (Amendment) (EU Exit) Regulations 2019) for a crucial reason; the events of the case occurred before the UK's exit from the EU.

The decision reflects the principle the law in force at the time of the incident should govern the case. Since the Lipton's flight cancellation happened in January 2018, well before Brexit, the original EC regulation 261/2004 was still applicable.

The amended regulations, introduced to adapt EU law to the UK's post Brexit legal framework, largely preserved the substance of EC regulation 261/2004. However, they made some changes to reflect the UK's new status outside the EU. These changes primarily involved replacing references to EU institutions with UK equivalents and adjusting the scope to cover only UK air carriers and flights departing from the UK.

For the Lipton's specific claim, the application of the amended regulations would likely not have significantly altered the outcome. The core provisions regarding compensation for flight delays and cancellations remained largely unchanged.

However, for claims arising after the IP completion date (December 31, 2020), the amended regulations would apply. While the fundamental principles remain similar, there may be subtle differences in terms of interpretation and application, particularly as UK courts developed their own body of case law independent of EU jurisprudence.

This case highlights the importance for legal insurers to consider both pre and post Brexit regulations when dealing with claims, depending on when the events occurred. It also highlights the ongoing relevance of EU derived law in the UK legal system, even after Brexit.

Therefore, the Supreme Court's ruling in Lipton v BA Cityflyer Ltd marks a significant shift in the interpretation of airline obligations under EC Regulation 261/2004. For the legal insurance industry, this decision necessitates a comprehensive review of policies, practices, and risk assessments related to flight delay and cancellation claims.

As the full impact of this ruling unfolds, legal insurers must remain agile, ready to adapt their strategies to protect both their interests and those of their policyholders. This case serves as a reminder of the dynamic nature of legal interpretations and the critical role that insurance plays in navigating these changes.

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