

London Market Snippets, March 2023

## Aviation / war risks update

02 March 2023

[← Previous](#)

Political risk update

[Next >](#)

Fine art and specie update

### Aercap Ireland Limited v (1) AIG Europe S.A. (2) Lloyd's Insurance Company S.A. and Fidelis Insurance Ireland DAC

The Commercial Court recently held that Fidelis Insurance Ireland DAC ("Fidelis") could be joined as a separate defendant to the representative proceedings that had been commenced by Aercap Ireland Limited ("Aercap") against AIG Europe S.A. ("AIG") and Lloyd's Insurance Company S.A. ("LIC") following losses arising out of Russia's invasion of Ukraine.

AIG and LIC had been sued (by Aercap) on their own behalf and on behalf of various following insurers subscribing to different sections of an aviation policy. Although Fidelis subscribed to both sections of the policy and could have been represented by either AIG or LIC, the Commercial Court found that it was sufficient that Fidelis had a *bona fide* desire to conduct its own case, with its own lawyers that had only its interests at heart and allowed Fidelis to join the proceedings as the Third Defendant.

The Judge found that joining Fidelis as a party to the proceedings would assist the Court to resolve the matters in dispute and it was not necessary for Fidelis to show that its position would not be adequately put forward by the representative parties. The test was not whether a party seeking to join would be able to "bring something to the party" but whether Fidelis had shown a sufficiently different perspective to make it appropriate to join the proceedings.

This case is a reminder that although representative proceedings are an effective tool for conducting proceedings involving multiple parties with similar interests in a way that is efficient and practical, this should not go against the fundamental principle that a party is entitled to defend itself in a claim made against it.

This is just one action in a raft of litigation that has arisen (and continues to arise) from the conflict in Ukraine. It is likely that similar issues will arise in the future, and not just in the aviation arena. It is a reminder that the interests of a party may not always align with those purporting to represent it and this is particularly relevant in large, complex litigation where each party has a significant financial interest in the outcome.

A full copy of our note of the judgment can be found [here](#).

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## Contents

[London Market Snippets, March 2023](#)



[Directors and officers update](#)



[Political risk update](#)



[Aviation / war risks update](#)



[Fine art and specie update](#)



[Warranties and indemnities update](#)



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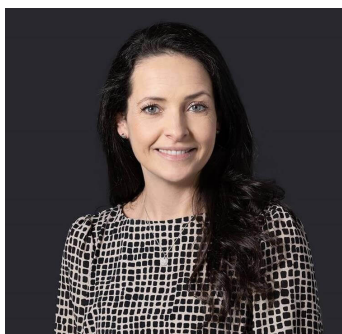


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