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## CASE SUMMARY: FAMILY OF VICTIM OF ACCIDENTAL MILITARY ACTIVITY RECOVERS FROM INSURERS

Family of deceased passenger on Ukraine International Airlines Flight PS752 shot down by Iranian military recovers accidental death benefit coverage from insurers.

**Insurance law – Accident and sickness insurance – Death benefits – Exclusions – Interpretation of policy – Practice – Summary judgments**

*Arbabbahrami Estate V. MSH International (Canada) Ltd.*, [2022] O.J. No. 4535, 2022 ONSC 5723, Ontario Superior Court of Justice, October 11, 2022, R. Centa J.

The Court held that the deceased insured's estate was entitled to the accidental death and dismemberment benefit under the insured's health insurance policy. The insurers had denied coverage based on the following exclusions: (1) losses related to an act of declared or undeclared war; and (2) losses related to an act of military or usurped power.

The insured was a passenger on the Ukraine International Airlines Flight PS752, which was shot down on January 8, 2020. The Court accepted the Canadian Forensic Examination and Assessment Team Report ("Report") as the best evidence of what happened to Flight PS752. The attack on Flight PS752 followed the United States' drone strike which killed Major General Qassem Soleimani, the commander of Iran's Islamic Revolutionary Guard Corps ("IRGC"). The Report described the IRGC as the main actor influencing and implementing Iran's security policy and thus the Court held for the purposes of this motion that the IRGC formed part of the Iranian state apparatus. The Report concluded that there was no evidence to contradict the Iranian account that the Iranian missile operator misidentified Flight PS752 as a hostile target and fired without receiving the necessary approvals from command and control.

The "act of declared war" exclusion did not apply because neither the United States nor Iran had declared a state of war at the time.

The "act of undeclared war" exclusion also did not apply. The Court found that there was not a state of undeclared war at the time: (1) the attack was not deliberate, long-planned, and intended to destroy human life; (2) the attack was not launched by an operator to whom the government had delegated authority to make the decision to fire missiles; (3) the Iranian government described it as a great tragedy and unforgivable mistake caused by human error; and (4) the Canadian Forensic Team concluded that a properly functioning military command and control operation would have prevented the attack.

The "act of military or usurped power" exclusion also did not apply. This was interpreted as a single exclusion for losses caused by the military activities of a usurping power. This loss did not fall within this exclusion as the operator who fired the missile did not usurp the power of the military, despite having acted without instructions from his commander.

Finally, the insured's family also argued that the loss was caused by terrorism and, as such, coverage was not excluded. However, the Court had found that the attack on Flight PS752 was not intentional therefore did not meet the test for an act of terrorism.

This case was digested by [Dionne H. Liu](#), and first published in the LexisNexis® Harper Grey Insurance Law Netletter and the Harper Grey Insurance Law Newsletter. If you would like to discuss this case further, please contact Dionne H. Liu at [dliu@harpergrey.com](mailto:dliu@harpergrey.com).