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Success for aircraft lessors in Russian aircraft lessor policy claims

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Background

The English Commercial Court has handed down a highly anticipated judgment in a multi billion-dollar insurance claim arising out of the failure of various Russian airlines to return leased aircraft to lessors following Russia's invasion of Ukraine in February 2022.

The proceedings focused on claims made by owners of aircraft under their all risk and war risk insurance policies in relation to numerous aircraft which were on lease to various Russian airlines at the time of the invasion.

Separate proceedings relating to insurance claims made under the Russian airlines' insurance policies remain on foot, with those proceedings scheduled for trial in late 2026.

Summary of the judgment

In summary, the judge, Mr Justice Butcher held:

- all of the aircraft were lost because following the introduction of Russian Government Resolution 311 ("**GR311**"), which banned the return of leased aircraft to foreign lessors, the lessors were deprived of possession of their aircraft;
- GR311 amounted to a "restraint" and/or "detention" within the meaning of the war risks perils; and
- the date of the loss was 10 March 2022, this being the date GR311 came into force.

Mr Justice Butcher ruled that the lessors' insurance claims fell under the government perils section of their war risk policies meaning the agreed values of the aircraft will be paid out to lessors, less any sums recovered in the interim. The claims under the war risk policies therefore succeeded for all lessors, except one, whose claim failed on the basis that cover had been cancelled by the insurer prior to the loss of the aircraft.

The lessors had all argued that their claims were valid under either the contingent or possessed cover and that the cause of their loss was either a war risk or an all risk. The majority of lessors were agnostic as to whether their claims fell under contingent or possessed cover, or war risk or all risk.

Legal issues considered

The judge undertook a thorough and lengthy consideration and analysis of various legal issues, including:

- the interpretation of various parts of the insurance policy, particularly the war risk policy;
- the scope of the grip of peril doctrine;
- the relevant test to be applied in respect of loss of an insured asset by way of deprivation of possession; and
- whether various other sums held by the lessors under the terms of the aircraft lease agreements (e.g. maintenance reserves, security deposits etc.) acted to reduce the quantum of their insurance claim.

This article considers below some of these issues, with a focus on those which may be of interest and/or may be of general application to aircraft lessors and owners.

Lessor efforts to recover aircraft

One of the defences run by insurers, but conceded at trial, was that the lessors had not taken sufficient steps to recover their aircraft in the aftermath of the invasion of Ukraine. Notwithstanding the insurers' concession, the judgment considers in detail the steps taken by each individual lessor to attempt to recover its aircraft in February and March 2022 (and onwards), which included:

- issuing grounding and termination notices;
- exploring diplomatic options and also exploring the possibility of consensual repossession of the aircraft. The judge noted that this involved representatives of the lessors travelling to Russia to meet with airlines, sometimes at personal risk to themselves; and
- attempting to arrest aircraft which were flown out of Russia.

The judge concluded that the lessors had taken reasonable steps to recover the aircraft, and whilst any future situation will be dictated by its own facts, this provides helpful clarity as to the steps lessors should take to recover aircraft before claiming under their insurance policies.

Grip of peril doctrine

Under the terms of some of the war risk policies, the insurers could seek to amend the scope of the geographical coverage of their policies by issuing a notice of review. These notices acted to either terminate the policy or amend it to exclude certain countries effective from 7 days after the notice was issued. Unsurprisingly, many of the war risk insurers issued notices of review shortly after the invasion commenced seeking to exclude Russia from the scope of their coverage.

The timing of some of these notices meant that the 7 day period amending the geographical limits of the coverage expired before 10 March 2022 (this being the date the judge held the aircraft were deemed 'lost'). In respect of these policies, the lessors argued that the loss flowed from a peril that was operative prior to the end of the period of insurance and relied upon the grip of peril doctrine to argue that there was cover under the insurance policy notwithstanding the total loss had occurred outside of the relevant policy period.

Following lengthy consideration of the relevant authorities and arguments raised by the parties, the judge agreed that the grip of peril doctrine applied and there was cover under the relevant insurance policy. In doing so, he clarified that "*the relevant 'grip of the peril' principle is that if an insured is within the policy period, deprived of possession of the relevant property by the operation of a peril insured against, and, in circumstances which the insured cannot reasonably prevent, that deprivation of possession develops after the end of the policy period into a permanent deprivation by way of a sequence of events following in the ordinary course from the peril insured against, which has operated during the policy period, then the insured is entitled to an indemnity under the policy*".

No reduction in claims due to sums held by lessors under the relevant leases

One of the more minor issues in the proceedings, but one that will be of interest to aircraft lessors, was the claim by insurers that they had the right to be subrogated to certain sums the lessors had received under the terms of the leases with the Russian airlines. In particular, the Court considered whether the insurers had rights of subrogation in respect of:

- maintenance reserves, which are monies received by a lessor during the course of the lease term depending upon the usage of the aircraft. The intention is that the lessor will use this to contribute to the cost of certain maintenance events which take place during the lease term; and
- security deposits and letters of credit, which were paid to the lessors as security for performance of the lessee's obligations under the lease.

With respect to maintenance reserves, absent any specific terms, the judge held there was no right of subrogation, because the lessor has received contractual payments prior to the loss, which it has been entitled to treat as its own and to which the lessee has no right. In making this finding, the judge paid particular mind to the fact that the leases set out an agreed value to be paid to the lessor in the event of a loss, which was fixed by reference to an estimate of the costs of keeping the aircraft in an airworthy condition and that it would amount to a windfall to the insurer if it reduced the agreed value.

With respect to the security deposit, the judge held that these were designed to cover uninsured costs and so the insurers had no rights of subrogation.

Conclusion

The English Commercial Court has once again proved to be a successful arena for aircraft lessors to bring claims. The ability of the English court to consolidate claims and hear them in an efficient manner and produce a lengthy, thorough and considered judgment in short order, yet again emphasises why English law and the English courts remains the jurisdiction of choice for many lessors.

Link to the judgment

https://www.judiciary.uk/wp-content/uploads/2025/06/Judgment-Russian-Aircraft-Lessor-Policy-Claims-2025-EWHC-1430-Comm-1.pdf

If you have any questions about this article, please contact **Helen Biggin** at hbiggin@vedderprice.com or any other Vedder Price attorney with whom you have worked.