Global Transportation Finance Newsletter

September 2025

Inside

VedderPrice

East Palestine Derailment Lawsuits Highlight the Limits of Lessor Liability

Despite Northfolk Southern's attempt to shift responsibility relating to the 2023 East Palestine train derailment to railcar owners and lessors, the resolution of a pair of recent lawsuits yielded positive results for railcar owners and lessors.

On February 3, 2023, 38 railcars carrying hazardous materials on a Norfolk Southern freight train derailed in East Palestine, Ohio when the bearing of one of the railcars overheated, caught fire, and failed. The derailment caused an assortment of hazardous materials and chemicals in the cars to spill and catch fire. Following the derailment, officials blew open five tank cars carrying vinyl chloride in a "vent and burn" operation. This operation generated a massive black plume of smoke that spread over the surrounding area and forced evacuations of around 2,000 local residents. The derailment was one of the worst rail disasters in the United States in recent memory.

Since the derailment, Norfolk Southern has faced an onslaught of lawsuits, including a Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) claim brought by the federal government and a large scale class action suit brought by residents and businesses in the East Palestine area. In both these suits Norfolk Southern sought to shift some of the liability to railcar owners and shippers, but was unsuccessful.

CERCLA Claim

In the aftermath of the derailment, the U.S. Environmental Protection Agency (EPA) issued a CERCLA Unilateral Administrative Order to Norfolk Southern. This order required the company to undertake all necessary response actions to address the contamination resulting from the derailment, including the removal of large amounts of contaminated soil and water. The scope of this extensive cleanup cost the railroad more than a billion dollars. Norfolk Southern sought contribution from the shippers and railcar owners under provisions of CERCLA that distribute cleanup costs among the relevant parties.[1]

Specifically, Norfolk Southern claimed that the shippers and railcar owners were liable to contribute to the cleanup costs under Section 113(f) of CERCLA on the basis that they "owned and operated" a facility at which hazardous substances were disposed of.[2] However, Norfolk Southern's argument ignored the fact that CERCLA specifically defines any common or contract carrier that has accepted a hazardous substance for transportation as the "owner or operator." Thus, the court found that Norfolk Southern, not the shippers or railcar owners, was the owner or operator and responsible under CERCLA for any release of hazardous substances that occurred.[3]

Class Action Lawsuit

Norfolk Southern also faced a class action lawsuit brought by individuals who lived, worked, owned property and operated businesses near the East Palestine derailment.[4] In April of 2024, Norfolk Southern agreed to pay $600 million to settle the lawsuit. Subsequently, Norfolk Southern filed a motion in the U.S. District Court for the Northern District of Ohio to have GATX (the owner of the railcar that failed and caused the derailment) and Oxy Vinyls (the owner of the vinyl chloride that was discharged and burned) share the cost of the settlement.[5] While Norfolk Southern and Oxy Vinyls ultimately reached an undisclosed settlement, the claim against GATX was decided by a jury in April 2025.[6]

Norfolk Southern argued that GATX should have been more diligent in the maintenance of the railcar, particularly considering that it had been damaged several years earlier when it was caught in the floodwaters of Hurricane Harvey. However, the jury seemed to accept GATX's position that it had complied with all relevant rules and regulations and that it was Norfolk Southern's responsibility to identify and repair any damage, concluding that GATX was not responsible for any of the $600 million settlement.[7]

IN THE NEWS

Jeff Landers Selected for 2025 ISTAT PDP Americas

Global Transportation Finance Associate, Jeff Landers has been selected for the 2025-2026 ISTAT Professional Development Program (PDP) Americas class. The program is designed for aviation professionals with one to five years of experience and provides a thorough overview of the commercial aviation industry. Participants gain knowledge in aircraft design, manufacturing, maintenance, valuation, trading, and financing, while also building connections with peers and industry leaders through networking events. Sessions are led by ISTAT members who share their expertise and perspective on the business.

THOUGHT LEADERSHIP

100% Bonus Depreciation Returns: What OBBBA Means for Aircraft, Rail and Heavy Equipment

The One Big Beautiful Bill Act (OBBBA), signed into law on July 4, 2025, permanently restores 100 percent bonus depreciation for qualifying property placed in service after January 19, 2025. It also raises the Section 179 expensing limit and reinstates the EBITDA-based cap on interest deductions. These updates offer major tax benefits for businesses investing in aircraft, rail, and heavy equipment. Read the full article to see how your operations may benefit. Shareholders Geoff Kass, Tom Geraghty, David Hernandez and Associate Cody McDavis contributed to this update.

Key Takeaways for Railcar Owners

The results in these two lawsuits underscore the legal limitations in claiming against passive railcar owners and financiers relating to railcar derailments and accidents. However, it remains critical that railcar owners and financiers ensure that their contractual provisions clearly allocate responsibility for maintenance, repair, operation and inspection of the railcars and that appropriate indemnity and insurance coverage is in place.

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30TH ANNIVERSARY CHI-STAT RECEPTION

What started as an informal gathering of aviation professionals in Chicago grew into a long-standing tradition and a cornerstone of the aviation community. We celebrated three decades of connection, collaboration, and camaraderie at the 30th Anniversary Chi-Stat Reception. Thank you to our hosts: Thomas Heimsoth, Nick Popovich, Dean Gerber, Pete Seidlitz, Greg May, Stan Chmielewski, Chris Cox and Petar Todorovic.

Chi-Stat has always been about more than networking. It honors Chicago's deep aviation roots and reflects the strength of our community. Vedder Price is proud to support this remarkable group and celebrate the spirit of the aviation industry in Chicago.

Watch the reel for highlights from this milestone evening.

Strengthening the Cape Town Convention in India

India's new Protection of Interests in Aircraft Objects Act (2025) strengthens enforcement of the Cape Town Convention, addressing challenges faced by lessors during the Go First airline insolvency. The Act ensures that aircraft repossession rights are upheld even during insolvency proceedings, overriding conflicting national laws. It mandates cooperation from the Directorate General of Civil Aviation (DGCA) in de-registration and export processes, aligning India's legal framework with international aviation finance standards. For aviation financiers and lessors, this development enhances legal certainty and asset protection in India. To understand the full implications of this legislative change, read the complete article here. Partner Helen Biggin contributed to this update.

Litigation Shareholder Helen Biggin authors article titled: UK Court Judgment Highlights Febrile Geopolitical Climate for Aviation in Corporate Jet Investor

A recent UK High Court ruling has granted Western aircraft lessors substantial insurance payouts for planes stranded in Russia due to the 2022 invasion of Ukraine. The court's decision clarifies the application of 'war risk' and 'government perils' clauses, establishing important precedents for the aviation and insurance industries. Key aspects of the judgment include the determination of proximate cause, the scope of insurance coverage, and the 'grip of peril' doctrine. These findings highlight the necessity for proactive risk management, precise policy interpretation, and well-documented repossession efforts in politically unstable regions.

For a comprehensive analysis of the case and its implications, read the full article in Corporate Jet Investor.

In Discussion with Adelfio Ronci

Adelfio Ronci is Director, Environmental Products at ICE Futures Europe, He is responsible for sales and market development of ICE's carbon credits portfolio, both Futures and Spot Auctions. He joined ICE in January 2022. Previously he was Sales director Global Commodities at EEX and Head of sales at Nasdaq for their Commodity derivatives business. Both roles were in Singapore. Prior to that he worked as a Forward Freight Agreement (FFA)/ Option trader for a shipping operator, as well as an FFA/Iron Ore broker for Imarex/Clarksons. He holds a degree in Economics and Business from La Sapienza (Rome - Italy)

1. Adelfio, CORSIA has come a long way since its adoption in 2016, but many market participants still describe it as a work in progress. From ICE's vantage point, what's working well - and where do you think the mechanism still needs refinement?

CORSIA is moving in the right direction - just not as fast as expected. The system is reviewed every three years to assess progress toward carbon neutral growth (CNG) from 2020 and the latest Committee on Aviation Environmental Protection (CAEP) report expects emissions to fall 7–10% below 2019 levels by 2035. But with ICAO's net-zero 2050 goal, CORSIA must evolve beyond CNG.

Phase 1 is the first real test for CORSIA but still two bottlenecks persist:

1. *The **slow transposition of Standard and Recommended Practices (SARPs) into domestic law**, which is improving but still patchy*

2. *The **limited eligible supply** hitting the market*

*The legal transposition of SARPs is essential to create enforceable demand. CAEP estimates offset demand between **950 and 1500 MtCO$_2$** across Phases 1 and 2, with **105–150 MtCO$_2$** for Phase 1 alone. On the supply side, while about **100–130 million tonnes of credits technically meet the CORSIA eligibility criteria, only one project (Guyana, under ART TREES)** is currently fully eligible and authorized. Bottlenecks persist at the country level — mainly in the **issuance of Letters of Authorization (LOAs) and confirmation of Corresponding Adjustments (CAs)** through Biennial Transparency Reports (BTRs). There are also challenges at the standard level, particularly around the use of insurance to mitigate double claiming risks when CAs are not reflected in BTRs. Currently, only the Multilateral Investment Guarantee Agency **(MIGA) is officially providing this insurance for Gold Standard (GS)**, but both Gold Standard and Verra have recently started the process of formal approval of additional private insurance companies.*

2. With Phase I now well underway and the EU's "Stop the Clock" measure still partially frozen, what signals are you seeing from airlines and regulators about how seriously CORSIA is being taken — particularly in jurisdictions with overlapping regional schemes like the EU ETS?

*Governments are signaling growing seriousness about CORSIA while airlines are already preparing for compliance and launching Requests for Information (RFIs). Momentum seems to be picking up as regards the SARPs implementation with countries like **Brazil, Canada, Japan, New Zealand, Kenya, and Sri Lanka** fully transposing them, including penalties to address the first bottleneck we highlighted previously. The **EU has implemented about 80%** of its CORSIA package. What remains are a few key implementing acts — one of which will clarify how much the Corsia Eligible Emission Units **(CEEU) s list** will diverge from the ICAO list. Crucially, we're also waiting to see what **penalty level** will be applied once the directive is fully transposed by Member States. If it matches the EU ETS penalty (as proposed in the UK) it would send a strong enforcement signal.*

*The main trigger for broader engagement will be to address the second bottleneck **— increased eligible supply —** and probably the first **offsetting requirements reports**, which airline will receive in **November 2025**. We've seen some progress, especially from several African countries issuing*

HONORS & AWARDS

Chambers TOP RANKED High Net Worth 2025

Global Transportation Finance Business Aviation Practice and Attorneys Recognized in *Chambers HNW* Rankings 2025.

The Global Transportation Finance Business Aviation team was ranked Band 1 by *Chambers* in its *High Net Worth Guide* 2025. In addition, three Global Transportation Finance attorneys were also recognized in the guide. Edward Gross and David Hernandez were recognized in Band 1 and Derek Watson in Band 2

MARINE MONEY

Global Transportation Finance Team Wins *Marine Money* "Securitization Deal of the Year" Award

The Global Transportation team was honored with Marine Money's 2024 Securitization Deal of the Year award for its role as borrower's counsel in a $750 million warehouse loan facility transaction for Maritime Partners. The deal, finalized in November 2024, involved a syndicate of lenders led by ATLAS, along with Deutsche Bank and Goldman Sachs, and was secured by three of Maritime Partners' business lines. The team included Shareholders Clay Thomas, John Imhof and Joel Thielen, as well as Associates John Geager, Jeff Landers and Troy Guglielmo. Read the full announcement here.

Letters of Authorization (LOAs), but a faster pace is needed. Countries are setting up the Art6 reporting infrastructure and probably in the next round of BTR reports we could see more LOAs and CAs, which in turn would ease pressure on the insurances.

3. Carbon markets can be intimidating — full of acronyms, vintage years and quality debates. What role do you see ICE playing in demystifying access to high-integrity offsets for aviation players?

ICE's primary role as a regulated futures exchange and clearing house is to provide standardized products and transparency to price and transfer risk. As the world's largest platform for trading environmental derivatives, we give participants the tools they need to manage their exposure to price risks across the environmental market ecosystem — whether under cap and trade programs, energy attribute certificates or carbon crediting programs, like CORSIA. Over $1 trillion of environmental assets have traded on ICE in each of the last four years.

Airlines already use our futures products to manage price risk for their aviation fuel (including SAF) requirements and their carbon price risk exposure for cap-and-trade programmes in UK and EU. Airlines should think of carbon price hedging for CORSIA in a similar way.

*We launched the world's first **physically delivered futures contract for CORSIA-eligible units** — ICE CP1 — in October 2023 to be the best proxy for managing exposure to carbon price risk and to simplify CORSIA compliance by clearly defining the following:*

- *What the buyer receives (CORSIA-eligible emissions units)*
- *Where they come from (ICE-designated registries like ACR, Gold Standard, Verra, and ART TREES in the near future)*
- *When delivery occurs (at contract expiry)*
- *At what price — with all transactions centrally cleared to eliminate counterparty risk*

In carbon, there can be a nuance between carbon allowance markets where each unit is 100% fungible - and where the futures market is also used to take delivery and retire the asset - compared to a carbon credit which may represent different atmospheric outcomes. Airlines may take different approaches as to whether to use the futures contract to take delivery for retirement or not. If that's the case our auction service is designed for those participants who want specific projects and atmospheric outcomes. We don't see this differently to other market outcomes, where participants who have bespoke requirements transact outside of the exchange - normally the price risk ends up being managed through the exchange at some point.

With a track record of two decades operating the world's largest environmental marketplace we also have a role to help demystify environmental markets through stakeholder engagement, events, and of course our "CORSIA Chronicles" podcast.

4. Airlines are understandably focused on cost and compliance — but are you seeing signs that CORSIA is becoming part of a broader sustainability strategy, or is it still viewed as a regulatory tick-box?

CORSIA is effectively a climate-club. It's a financial mechanism for a whole sector to start paying for some of their emissions. By putting a price on carbon, it incentivizes lower-cost abatement opportunities, operational efficiency and renewable fuel adoption.

How a single airline operator approaches CORSIA largely depends on where compliance sits within the organization. If it's managed by Treasury or Finance, there's a focus on cost effectiveness at a systems level. Sustainability teams may have more bespoke requirements and want to match investments more to where the organization operates. However, like most markets, a portfolio-based approach evolves as good practice for risk management: using a mix of units to meet compliance needs while aligning with brand values, passenger expectations and route-specific considerations. Also, as a hard to abate sector, some airlines are exploring deploying capital in carbon removals to provide the demand signal for an asset they may need to rely on in the long term.

Nasdaq

The Global Transportation Finance Team Participated in NASDAQ Closing Bell Ceremony in Recognition of Marine Money Deal of the Year Award

The Global Transportation Finance team participated in the NASDAQ Closing Bell Ceremony in New York, celebrating its recognition in the Marine Money Deal of the Year Awards. Shareholder John Imhof Jr. and Associate John Geager represented the firm, which was honored for the Marine Money Securitization Deal of the Year, highlighting the team's leadership in maritime finance transactions.

The LEGAL 500 UNITED STATES

Global Transportation Finance Team Distinguished in *Legal 500* in 2025

The Global Transportation Finance team was recognized in the *Legal 500 United States* 2025 for transportation finance. The firm has now earned "Top-Tier Firm" (Tier 1) rankings in Aviation and Air Travel – Finance and Rail and Road – Finance for 14 consecutive years. The group was also recognized as Tier 2 in Shipping – Finance. Geoffrey Kass was named to the Hall of Fame for Aviation Finance, while Michael Draz, Cameron Gee, Raviv Surpin, Jeffrey Veber, Justine Chilvers, Joel Thielen, Clay Thomas, John Imhof Jr. and John Geager received individual recognition across the aviation, maritime, and rail practices. Read the full announcement here.

5. Finally, let's talk integrity. Much has been said about the quality of offsets approved under CORSIA. How do you see the market balancing scale, cost, and credibility — and what lessons might aviation offer to other sectors entering the voluntary or compliance offset space?

In question 3 we talked in detail about the role of the Exchange in managing price and counterparty risk, but we also play a significand role for both quality and integrity.

But importantly they are not the same — although in the carbon credit market debate they are often used interchangeably.

Integrity is adherence to rules, standards, and truth — regardless of intent or outcome. It's not about how good something is (quality), but whether it operates transparently, consistently, and within the agreed framework.

Integrity in markets means the system behaves as it claims to —prices reflect real information, rules are enforced, and no one gets an unfair advantage. Transparent public regulated markets democratise price discovery, reduce adverse selection and reduce the risk of actors behaving inappropriately. "Fair and orderly" is at the heart of regulated financial markets.

Quality refers to the performance and environmental impact of a carbon credit, but it is subjective, and markets are excellent at translating subjective views into objective price signals. The role of the market is also to allocate capital efficiently and to find the most cost-effective solutions - cheapest to deliver is a design feature not a bug.

Importantly price and quality don't always correlate; price also depends on supply and demand, but the beauty of the market is - if the price doesn't reflect your view of value - then you can buy or sell it.

As demand for CEEUs ramps up during Phase 1 and 2, and supply remains constrained, we expect the market to price "quality" into the curve. What's considered "cheap" or "credible" today may shift as the market evolves and as new types of credits (e.g., removals) enter the system.

CORSIA is the first global compliance program for an entire sector built around the use of credits that meet both CORSIA Eligibility Criteria and have corresponding adjustments. This allows entities to use carbon units not just for compliance, but as a way to send signals to stakeholders - by supporting specific geographies, project types, or co-benefits. This unique selling point for the program, paired with oversight, is something other sectors - especially those exploring Article 6 units could learn from.

Billions of tons of carbon savings are needed to decarbonize and CORSIA and CP1 futures have the potential to be the proxy to manage exposure to carbon price risk and be catalytic in producing those carbon savings.

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Global Transportation Finance Team Recognized in *Chambers USA* in 2025

The Global Transportation Finance team has been recognized in the 2025 *Chambers USA* rankings for its excellence in transportation finance. The firm achieved a Band 1 ranking Transportation: Aviation: Finance (Nationwide) and a Band 3 in Transportation: Shipping/Maritime: Finance (Nationwide). Notably, Shareholder Jeff Veber was recognized in Band 1, Geoff Kass and Adam Beringer in Band 2 and Cameron Gee in Band 4. Read the full announcement here.

Chambers
TOP RANKED
USA
2025

Global Transportation Finance Team Recognized in Ishka's 2024 Deal of the Year Awards

The Global Transportation Finance team was recognized in Ishka's 2024 Deal of the Year Awards. The Altavair/Qatar Airways term loan was honored as Best MEA Deal, and the VivaAerobus portfolio term loan received Best Commercial Bank Deal. Shareholders Cameron Gee and Justine Chilvers, along with Associate John Geager, led the legal teams on these transactions. Read the full announcement here.

Understanding the U.S. Trade Representative's Port-Entry Fees on China-Linked Vessels

On April 17, 2025, the Office of the United States Trade Representative (the "USTR") published its Section 301 Action on China's Targeting of the Maritime, Logistics, and Shipbuilding Sectors for Dominance (the "Action").[1] The Action is the culmination of the USTR's year-long investigation, begun under the Biden Administration, and its resulting determination pursuant to Sections 301(b) and 304(a) of the U.S. Trade Act of 1974, as amended (the "Act"),[2] that China's targeting of the maritime, logistics, and shipbuilding sectors for dominance is unreasonable and burdens or restricts U.S. commerce, and thus is actionable under Section 301(b) of the Act.[3] That determination led the USTR to publish its proposed action on February 21, 2025 (the "Proposed Action"),[4] and after two days of public hearings and hundreds of written comments,[5] to publish the Action.

The Proposed Action and subsequent public comments were the subject of an article written by the authors that appeared in the April 2025 edition of this Newsletter. A copy of the article may be found by following this link.

With the U.S. port-entry service fees imposed by the Action to begin on October 14, 2025, ship operators and owners are scrambling to understand the Action and its implications, which in many respects remain unclear.

The USTR's Section 301 Action on China's Targeting of the Maritime, Logistics, and Shipbuilding Sectors for Dominance

The USTR's Action appears to differ significantly from its Proposed Action, perhaps as a result of Executive Order 14269 on "Restoring America's Maritime Dominance" ("Executive Order 14269"), which was signed by President Trump on April 9, 2025,[6] and the nearly 600 comments received on the Proposed Action. The Action includes four individual Annexes, the formal language of which governs the terms of the Action in the event of a conflict between the Annexes and the other text of the Action,[7] and was published along with a notice of further proposed action calling for additional tariffs on certain China-related ship-to-shore cranes and cargo-handling equipment as directed by President Trump in Executive Order 14269.[8]

Annex I: Service Fee on Chinese Vessel Operators and Vessel Owners of China

Subject to certain exceptions and special rules, Annex I imposes a phased-in fee on Chinese vessel operators operating vessels entering U.S. ports and places, and on operators of vessels owned by "vessel owners of China" entering U.S. ports and places, from outside the Customs territory. The fee is based on the net tonnage of the vessel entering a U.S. port or place and began at US$0 per net ton of the arriving vessel effective April 17, 2025, will increase to US$50 per net ton effective October 14, 2025, and will increase effective April 17 of each year thereafter until April 17, 2028, when it will increase to US$140 per net ton.[9]

The fee can be "charged up to five times per year, per vessel,"[10] and is payable "on or before the entry of a vessel at the first U.S. port or place from outside the Customs territory on a particular string . . . ."[11]

The term "vessel owner of China" is defined broadly in Annex I to include, among others, any entity "owned by, or controlled by, a citizen or citizens of [the People's Republic of China ("PRC")], Hong Kong, or Macau," or "owned by, controlled by, or subject to the jurisdiction or direction of the PRC, Hong Kong, or Macau . . . ."[12] The term "Chinese vessel operators" is not defined, but is probably intended as a reference to "vessel operator of China," which is defined as any vessel operator, as defined in the Action, that that meets one or more of the same conditions set out in the definition of "vessel owner of China."[13]

The service fee imposed by Annex I differs from the service fee on Chinese maritime transport operators proposed by the Proposed Action, which would not have been phased-in, would have applied only to vessels operated by then-undefined "vessel operators of China" and not to operators of vessels owned by "vessel owners of China," would have imposed a significantly higher fee of up to US$1 million or US$1,000 per net ton of capacity for each entrance of a vessel of that operator into a U.S. port, and would not have capped at five the number of times per year that an operator could be charged for the same vessel entering a U.S. port.[14] In choosing to make the fee payable only once for each rotation or string of U.S. ports called if a vessel makes multiple U.S. entries before transiting to a foreign destination,[15] the USTR may have been responding to the concerns of U.S. port operators that had commented that rather than creating an incentive

Recent Speaking Engagements

May 28, 2025

Anthony Renzi Jr. Moderated Investment Panel at Capital Link – Oslo

Anthony Renzi Jr. served as moderator for the "Multi Sector – Where to Invest" panel at the upcoming Capital Link – Oslo forum. This timely conversation explored key market trends, cross-sector investment strategies and long-term outlooks that matter most to institutional and private investors.

May 6, 2025

David Hernandez Spoke at the 2025 NBAA Business Aviation Taxes Seminar

Global Transportation Finance team Shareholder David Hernandez spoke at the 2025 NBAA Business Aviation Taxes Seminar. He participated in the panel titled "Tax and Regulatory Complexities of Aircraft Ownership Structures," alongside Sue Folkringa of Aviation CPAs. The session addressed key considerations in structuring aircraft ownership, including entity selection, tax implications and regulatory compliance, offering valuable insights for professionals involved in the acquisition, sale or operation of business aircraft.

April 28, 2025

Brian Wendt, Kevin MacLeod, Edward Gross and Cody McDavis Presented at Equipment Leasing and Finance Association (ELFA) 2025 Legal Forum

The Global Transportation Finance team participated in the Equipment Leasing and Finance Association's 2025 Legal Forum. Shareholder Brian Wendt joined the "Air, Rail, Marine Roundtable" to discuss financing trends across transportation sectors. Eddie Gross spoke on "Advanced UCC" covering recent amendments, bundled transactions, PMSIs, and liquidated damages. Kevin MacLeod addressed securitization strategies in "So You Want to Securitize?" including structuring, UCC/PPSA considerations, true sale, and bankruptcy remoteness. Associate Cody McDavis participated in "Advanced Technology in Equipment Finance" highlighting new technologies enhancing leasing across transportation sectors.

to use more U.S. ships, the Proposed Action would have led to operators consolidating shipments to the U.S., visiting fewer and larger ports, and thereby increasing congestion at larger U.S. ports and threatening the survival of smaller regional U.S. ports.[16]

Critical aspects of Annex I remain to be clarified, and the USTR and U.S. Customs and Border Protection ("CBP"), which is responsible for collecting the fees, are understood to be working on possible action that would clarify some if not all of the ambiguities in Annex I. For example, Annex I appears to impose a fee on the operators of a vessel entering a U.S. port or place if the vessel is owned by a vessel owner of China and suggests that an entity must be a "vessel owner" before it can be a "vessel owner of China." The term "vessel owner" is defined in Annex I as "the entity which is identified as the owner of the vessel and whose name would appear on the Vessel Entrance or Clearance Statement (CBP Form 1300) or its electronic equivalent."[17] Block 8 of CBP Form 1300 available as a .pdf from the CBP website must be completed with the name and country of the owner, but the Form does not indicate whether the owner must be the vessel's registered owner or demise owner.[18] The most likely conclusion is that Block 8 is to be completed with the name and country of the registered owner. How will this affect the substantial number of owners with vessels that are subject to Chinese leases and call on the United States?[19] It is also not clear how vessel owners that are organized in a jurisdiction other than the PRC, Hong Kong, or Macau, but which are nevertheless vessel owners of China by virtue of being owned or controlled by a citizen or citizens of those jurisdictions, are to report that they are vessel owners of China within the meaning of Annex I. The USTR may clarify these issues and CBP and the USTR are understood to be working on a revised version of CBP Form 1300 that will facilitate compliance with Annex I.

Annex II: Service Fee on Vessel Operators of Chinese-Built Vessels

Subject to certain exceptions and special rules, Annex II imposes a phased-in fee on a vessel operator that is not a "vessel operator of China" but is operating a Chinese-built vessel arriving at a U.S. port or point from outside the Customs territory on a particular string.[20] The fee is the higher of two fees based on the net tonnage of the arriving vessel and the number of containers discharged from the arriving vessel.[21] The fee calculated on the basis of the net tonnage of a vessel began at US$0 per net ton effective April 17, 2025, will increase to US$18 per net ton effective October 14, 2025, and will increase effective April 17 of each year thereafter until April 17, 2028, when it will increase to US$33 per net ton.[22] The fee calculated on the basis of the number of containers discharged from a vessel began at US$0 per container effective April 17, 2025, will increase to US$120 per container effective October 14, 2025, and will increase effective April 17 of each year thereafter until April 17, 2028, when it will increase to US$250 per container.[23]

Much like the fee on Chinese vessel operators operating vessels entering U.S. ports and places, and on operators of vessels owned by "vessel owners of China" entering U.S. ports and places, the fee charged on operators of Chinese-built vessels entering U.S. ports and points can be "charged up to five times per year, per vessel,"[24] and is payable upon the entry of a vessel "to a U.S. port or point from outside the Customs territory on a particular string . . . ."[25]

A Chinese-built vessel is "a vessel that was built in the People's Republic of China, consistent with the definition of place of build in CBP and U.S. Coast Guard (USCG) regulations and would be so identified on the Vessel Entrance or Clearance Statement (CBP Form 1300) or its electronic equivalent."[26] The term "container" means "a container as defined in 19 CFR 10.41a, which references the definitions used in the *Customs Convention on Containers*."[27]

Unlike the fee on Chinese operators and operators of Chinese-owned vessels, the fee on Chinese-built vessels is subject to remission: The fee on a particular vessel can be suspended for a period not to exceed three years if the vessel owner orders and takes delivery of a U.S.-built vessel of equivalent or greater net tonnage.[28] Owners will be eligible for this remission upon order of, and until delivery of, a U.S.-built vessel.[29] An equivalent non-U.S. built vessel means a vessel with a net tonnage capacity of equal to or less than the U.S.-built vessel ordered.[30] If a prospective vessel owner does not take delivery of the U.S.-built vessel ordered within three years, the fees will become due immediately.[31] The term "U.S.-built vessel" is defined in some detail in the Action.[32]

The fee on operators of Chinese-built vessels is also targeted, meaning it does not apply to certain cargos and vessels. Most significantly, the fee does not apply to U.S. government cargo, U.S.-owned or U.S.-flagged vessels enrolled in the Voluntary Intermodal Sealift Agreement, the Maritime Security Program, the Tanker Security Program, or the Cable Security Program, or U.S.-owned vessels where the U.S. entity owning the vessel is controlled by U.S. persons and is at least 75% beneficially owned by U.S. persons.[33] The fee also does not apply to vessels with a capacity of equal to or less than: 4,000 Twenty-Foot Equivalent Units (a unit of measurement for the size of a container), 55,000 deadweight tons, or an individual bulk capacity of 80,000 deadweight tons, or to specialized or special purpose-built vessels for the transport of chemical substances

DEAL CORNER

Global Transportation Finance Team Represented PK AirFinance in Aircraft Portfolio Acquisition and Financing

The Global Transportation team represented PK AirFinance in IAT Leasing's acquisition and financing of a portfolio of nine Boeing and Airbus aircraft leased to eight airlines. The team was led by Shareholder Jeffrey Veber and included Shareholder Justine Chilvers and Associates Ryan Murray and Robert Anderson.

Global Transportation Finance Team Represented Initial Purchasers in $729 Million Aviation Loan ABS

The Global Transportation Finance team represented the initial purchasers in connection with a $729 million aviation loan ABS by PK AirFinance, a leading aviation lending platform and affiliate of Apollo ("PKAIR 2025-1"). PK ALIFT Loan Funding 6 LP (the "Issuer") issued four classes of notes with $635 million aggregate principal amount and borrowed $94 million pursuant to a secured loan facility. The proceeds of the notes and the loan are being used by the Issuer to acquire the rights to the economics of a portfolio of 114 senior secured aviation-related loans through the acquisition of 100 percent of a series of limited partnership interests of a loan origination vehicle managed by PK AirFinance. RBC Capital Markets and Redding Ridge acted as co-structuring agents. PKAIR 2025-1 represents PK's largest ABS transaction to date and marks the third issuance in the PK ALIFT program, having issued approximately $2 billion of cumulative aviation loan ABS transactions during the past year. Shareholder Jeffrey Veber led the team that also included Shareholders Kevin MacLeod and Clay Thomas with Associates Jill Musa, Sarah Branch and Ryan Murray.

in bulk liquid forms.[34] Other targeted exemptions also apply.[35]

The service fee imposed by Annex II differs from the service fee on maritime transport operators with fleets comprised of Chinese-built vessels or prospective orders for Chinese-built vessels proposed by the Proposed Action, which would not have been phased-in, would have imposed a significantly higher fee of US$1.5 million or an amount based on the percentage of Chinese-built vessels in the operator's fleet, would have charged an additional fee if the operator had one or more vessels on order or to be delivered from Chinese shipyards, and would not have capped at five the number of times per year that an operator could be charged for the same vessel entering a U.S. port or point.[36] Unlike the proposed fee on maritime transport operators with fleets comprised of Chinese-built vessels or prospective orders for Chinese-built vessels in the Proposed Action, the fee imposed by Annex II is targeted and has exceptions, and is not based on the number of Chinese-built vessels in an operator's fleet or the percentage of vessels ordered or to be delivered by Chinese shipyards.

Annex II also requires clarification. While Annex II requires a vessel operator to pay a fee on Chinese-built vessels, Annex II also appears to require that the vessel owner must pay all fees for which that entity is liable as determined by CBP.[37] Does the targeted coverage exemption for Chinese-built vessels with "an individual bulk capacity of 80,000 deadweight tons"[38] include only dry bulk carriers or does it include other kinds of vessels? Preliminary indications are that this exemption is meant to apply to all types of vessels and not just dry bulk carriers. A deadweight ton typically refers not only to the weight of cargo that a vessel can carry but also includes the weight of everything else that may be carried onboard a vessel including bunkers (fuel), ballast, crew and water. Does the reference to a "capacity of 80,000 deadweight tons" include the capacity of the vessel to carry more than just cargo? Indications are that the term does include more than just cargo. Paragraph (vi) of the targeted coverage exemptions excludes "specialized or special purpose-built vessels for the transport of chemical substances in bulk liquid forms . . . ."[39] This exemption appears to apply only to carriers of chemical substances, and not to carriers of other products like palm oil, but this too may be clarified.

Annex III: Service Fee on Vessel Operators of Foreign-Built Vehicle Carriers

Annex III imposes a phased-in fee on or before the entry of a non-U.S. built vehicle carrier vessel at the first U.S. port or place from outside the Customs territory.[40] The fee began at US$0 on the entering non-U.S. built vessel as of April 17, 2025, and will increase to US$150 per Car Equivalent Unit (CEU, a unit of measurement for the size of a vehicle) of capacity of the entering non-U.S.-built vessel effective as of October 14, 2025.[41] On June 6, 2025, the USTR proposed changing the fee effective as of October 14, 2025, from US$150 per CEU capacity of the entering non-U.S. built vessel to US$14 per net ton of the arriving non-U.S. built vehicle carrier vessel.[42]

This fee is also subject to remission and can be suspended by ordering U.S.-built vessels much like the remission available to operators of Chinese-built vessels, except that an equivalent non-U.S. built vessel means a vessel with a CEU capacity of equal to or less than the U.S.-built vessel ordered.[43]

The fee imposed by Annex III has no special exemptions, although the modifications proposed on June 6 would create several targeted coverage exemptions, including for "U.S.-owned or U.S.-flagged vessels enrolled in the U.S. Maritime Security Program[,] vessel[s] owned by the U.S. Government and operated directly by the Government or for the Government by an agent or contractor, including . . . privately owned U.S.-flag vessel[s] under bareboat charter to the Government[, and] U.S. government cargo."[44]

Nothing in Annex III provides that the fee imposed on operators of non-U.S. built vessels will be limited to five times per year, per vessel, and while the Annex provides that the fee is payable on or before the entry of a non-U.S. built vehicle carrier at the first U.S. port of place from outside the Customs territory,[45] there is nothing else in the Annex that would suggest that the fee will be collected only once on a particular string of U.S. calls.

Annex IV: Restriction on Certain Maritime Transport Services

Annex IV requires that, notwithstanding any other provision of law, an increasing annual percentage of LNG exported from the United States on vessels be restricted to vessels that are U.S.-flagged, U.S.-operated and U.S.-built. The restrictions commence on April 17, 2028, from which time 1% of LNG exported by vessel from

Global Transportation Finance Team Represented Aero Capital Solutions in Capital Raise for Investment Vehicle Set to Deploy $3.5 Billion in Aircraft Leasing

The Global Transportation Finance team served as legal counsel to Aero Capital Solutions, Inc. ("ACS") in connection with capital raising activities for its fourth, and largest, aviation investment vehicle. Vedder Price's Investment Services group advised ACS in connection with fund formation activities, through which the investment vehicle secured total aggregate equity commitments of $936 million from a diverse group of institutional investors, registered investment advisers, and family offices. In addition, Vedder Price's Global Transportation Finance team advised ACS in connection with two cutting-edge warehouse debt facilities specifically tailored to ACS's midlife aircraft investment strategy, which were arranged by Deutsche Bank and Atlas SP. The investment vehicle is expected to deploy $3.5 billion into midlife aircraft leasing investments. Global Transportation Finance team Shareholder Adam Beringer led the team that also included Mark Ditto, Jillian Musa, Jeff Landers, Ciara Davenport, Troy Guglielmo and Arman Amirkhanian and Investment Services Shareholder Cody Vitello and Associates Laure Sguario and Devin Eager and Tax Shareholder Matt Larvick .

Global Transportation Finance Team Represented Constellation Oil Services in Connection with Multi-Year Drilling Assignment with Petrobas

Vedder Price's Global Transportation Finance team represented Aero Capital Solutions, Inc. ("ACS") in capital raising for its fourth and largest aviation investment vehicle. The Investment Services group advised ACS on fund formation, securing $936 million in equity commitments from institutional investors, registered investment advisers, and family offices. The Global Transportation Finance team also assisted with two tailored warehouse debt facilities arranged by Deutsche Bank and Atlas SP to support ACS's midlife aircraft investment strategy. The vehicle is expected to deploy $3.5 billion into midlife aircraft leasing investments. Shareholder Adam Beringer led the team, which included Mark Ditto, Jillian Musa, Jeff Landers, Ciara Davenport, Troy Guglielmo and Arman Amirkhanian, alongside Investment Services Shareholder Cody Vitello and Associates Laure Sguario, Devin Eager and Tax Shareholder Matt Larvick.

the United States must be exported on U.S.-flagged and -operated vessels.[46] Commencing on April 17, 2029, 1% of LNG exported by vessel must be exported on U.S.-built, -flagged and -operated vessels.[47] This percentage then increases by 1% or 2% every one, two, or three years until April 17, 2047, on which date the percentage increases and subsequently remains at 15%.[48] The percentages are determined based on the prior calendar year's total LNG, expressed in cubic feet, that was exported by maritime transport as reported by the U.S. Department of Energy.[49]

Annex IV also provides for remission on orders of U.S.-built vessels similar to the remissions available to operators of Chinese-built vessels pursuant to Annex II and the operators of non-U.S. built vehicle carriers pursuant to Annex III. Annex IV provides additional details on which vessels qualify as U.S.-built for this purpose.[50]

The Action does not detail how or against whom the requirements of Annex IV would be enforced, except to note that if the terms of Annex IV are not met, then the USTR may direct the suspension of LNG export licenses until the terms are met.[51] The Action also does not specify which exporters would have their export licenses suspended if the aggregate of all exports on all carriers fail to meet the requirements of Annex IV. The proposed modifications to Annex IV would delete provisions permitting the USTR to direct the suspension of LNG export licenses for failure to comply with the requirements of Annex IV but do not address how or against whom the requirements of Annex IV would be enforced.[52]

The Proposed Action would have imposed similar requirements on export of all U.S. goods, not just U.S. LNG.[53]

Other Considerations: Fees Not Cumulative, Order of Application and Modifications

The fees and requirements set forth in the Annexes are not cumulative. A vessel is either subject to one of the three fees directed under Annex I, II, or III, or a vessel is subject to the requirements of Annex IV.[54] The Action provides that the fees and requirements it imposes are assessed in the following order: A vessel that is specially designed for the international maritime transport of LNG is subject to Annex IV and is not subject to the fee in Annex I, II, or III.[55] A vessel properly identified as a "Vehicle Carrier" on U.S. Customs and Border Protection Form 1300 will be subject to Annex III. A vessel that meets the conditions of Annex I, e.g., a vessel operated by a Chinese entity or owned by a Chinese entity, will be subject to the fee imposed under Annex I. A vessel may be subject to Annex II when Annexes I and III do not apply.[56]

The Action also noted that the USTR intends to continue to consider actions as to Chinese digital logistics platforms such as the National Transportation and Logistics Public Information Platform (LOGINK) and fees on Chinese-built offshore vessels.[57] The USTR also noted a willingness to consider further modifications to the Action, in connection with which it would consider "the progress of policies under Executive Order 14269 . . . including coordination with allies and partners . . . ."[58]

Proposed Tariffs on China-Linked STS Cranes and Other Cargo-Handling Equipment

In response to a directive in Executive Order 14269, the USTR used the Action to propose duties of up to 100% on ship-to-shore ("STS") cranes manufactured, assembled, or made using components of Chinese origin, or manufactured anywhere in the world by a company owned, controlled, or substantially influenced by a Chinese national, and additional duties of up to 100% on certain other cargo handling equipment as specified in the Action.[59] The USTR stated that "over-reliance on Chinese production of ship-to-shore cranes and other maritime components and equipment . . . may create opportunities for China to manipulate the supply of critical components or materials essential to U.S. maritime infrastructure."[60]

Conclusion

The Action represents an improvement over the Proposed Action, both in terms of scope and clarity, but ambiguities remain. Ship operators, ship owners and LNG exporters may expect additional modifications, clarifications, or guidance to the Action from the USTR and CBP, but the timing and extent of these modifications, clarifications, or guidance remain uncertain. Absent some diplomatic agreement, the service fees on Chinese operators of vessels and the operators of Chinese-owned and -built vessels seem here to stay for the foreseeable future and have already become part of the economic and legal landscape of international maritime transportation to and from the United States.[61]

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37TH MARINE MONEY WEEK

We hosted our annual Vedder Price dinner during the 37th Marine Money Week in New York City, one of the leading global gatherings for ship finance. The dinner has become a valued tradition, bringing together clients, colleagues, and industry leaders for conversations, connections, and collaboration. Thank you to our clients and friends who joined us and helped make the evening a success.








Shipping Insurance 101 with Molly McCafferty

Molly McCafferty is Senior Vice-President, Co-Global Claims Director for Shipowners Claims Bureau, Inc (SCB), Managers of the American P&I Club. She previously acted as General Counsel for Guardian Navigation Inc., a bulk owner/operator and pool manager. Molly has over twenty-five years of experience in the maritime industry handling charter party disputes (both as Owner and Charterer), marine casualties, cargo (wet and dry) and bodily injury claims, insurance coverage and other maritime disputes. Molly is also a practicing arbitrator and mediator.

Marine Insurance in Ship Finance Transactions: What Lenders and Owners Need to Know

Marine insurance coverage plays a pivotal role in ship finance transactions, ensuring operational continuity, protecting revenue flow, and securing the value of the financed asset. As vessels navigate through geopolitically volatile regions and operate under increasingly complex regulatory frameworks, both lenders and owners must pay close attention to how risk is managed through insurance.

We had the pleasure of speaking with Molly McCafferty, Senior Vice President at the American P&I Club, about the current insurance landscape. With more than 25 years in the marine insurance space, Molly offers valuable insights into what stakeholders should prioritize when structuring risk around ship ownership and finance. This article is Part II of our conversation with Molly.

Core Coverages Every Stakeholder Should Know About or Be Aware Of

Marine insurance is multi-faceted, with various types of coverage tailored to address the diverse risks associated with vessel operation and ownership.

1. ***Hull and Machinery (H&M)***
   H&M insurance covers physical damage to the vessel and equipment. H&M typically excludes wear, tear and maintenance, intentional damage, war risks, cyber-attacks, radioactive contamination, and maritime regulatory breaches.

2. ***Protection and Indemnity (P&I)***
   P&I insurance is a mutual insurance cover protecting against third-party liabilities, including cargo loss, collision, pollution, personal injury (including crew, passengers and surveyors), and third party property claims (including docks, bridges and fenders). P&I Clubs operate as not-for-profit entities pooling risk among members amongst the twelve International Group ("IG") Clubs. The American P&I Club is the only U.S.-based member of the twelve IG Clubs which collectively pool risk on a not-for-profit basis.

3. ***War Risk***
   War risk policies are activated by geopolitical conditions and cover enhanced risks like piracy, rebellion, hijacking, and terrorism. These are often separately underwritten, and coverage is dictated by regions designated as high-risk—currently including conflict zones such as the Red Sea, Gulf of Aden, and Black Sea, which are designated "hot spots".

4. ***Freight, Demurrage & Defense (FD&D)***
   FD&D insurance covers legal and investigative costs tied to commercial disputes not typically addressed under H&M or P&I. This includes issues like contractual disputes under charter parties, bills of lading or ship management agreements and other operational issues.

5. ***Loss of Earnings/Loss of Hire***
   Loss of hire insurance compensates for revenue lost when a vessel is out of service due to an insured event. Although this coverage can be costly, it's essential for operators in sectors where continuous operation is critical to profitability.

6. ***Mortgagee's Interest Insurance (MII) and Mortgagee's Additional Perils Coverage (MAP)***
   MII and MAP are both lender-focused insurances. MII protects a lender/mortgagee when the owner's H&M policy does not cover the loss due to the shipowner's breach. MAP, meanwhile, supplements inadequate P&I coverage. These policies are negotiated by and for the benefit of the lender/mortgagee, not the borrower/shipowner, and are a crucial risk-transfer tool in modern ship finance structures.

7. ***Misdirected Arrow Coverage***
   This coverage protects co-assureds when a claim is made against the wrong party. Misdirected Arrow covers a co-assured as if it were named as the member (and covered directly) and is often purchased to protect financial owners and lessors of ships from liability if erroneously named in a claim.

8. ***Fleet Policies and Specialized Coverage***
   Fleet policies consolidate insurance, covering multiple ships owned by the same entity under a single contract, reducing administrative and premium costs. Specialized coverage for specific risks is often needed for certain vessel types such as passenger liability or luxury amenities for cruise ships, pollution liability for tankers, or structural exposure or environmental hazards for offshore rigs.

Insurance Documentation and Risk Structuring in Ship Finance Transactions: Securing the Lender's Position

Given that a vessel typically serves as collateral in a financing arrangement, lenders almost always require collateral assignments of all relevant insurance policies to secure rights to proceeds in the event of a loss or liability. These assignments must be "perfected". A properly perfected assignment ensures that in the event of a loss or liability, the lender has a secured and enforceable claim to any payouts, which ranks ahead of the owner's/borrower's claim.

To ensure enforceability and priority over proceeds, lenders should consider the following key documentation:

1. ***A collateral assignment of all key insurance policies;***

2. ***Loss payable clauses stating that insurance proceeds will be paid to the lender/mortgagee as a named "loss payee";***

3. ***Notices to insurers;***

4. ***Acknowledgments from insurers confirming the terms of the collateral assignment and agreeing to pay the mortgagee in the event of loss;***

5. ***Undertakings by brokers regarding premium payments under the insurance policy and notifications of any policy changes; and***

6. ***Endorsements that can be used to amend policies to reflect lender protections, such as naming the mortgagee as an additional insured or loss payee or to make other changes to ensure the lender's interests are covered.***

Insurance Considerations in Ship Sale and Purchase and Charters: Avoiding Gaps

During vessel sales, insurance must remain in place continuously until the transfer of ownership is formally completed. Any incidents occurring between the signing of the sale agreement and the vessel's delivery must be covered. This transfer of risk typically occurs at the moment of executing the Protocol of Delivery and Acceptance which marks the transfer of risk from seller to buyer.

In chartering arrangements, responsibilities for insurance vary by charter type. Under a bareboat charter, the charterer assumes operational control and is typically responsible for insuring the vessel since the charterer assumes full control of the vessel, though the terms of the charterparty would dictate. In contrast, under a time charter the owner retains operational liability and, therefore, maintains the insurance cover, like H&M and P&I, with the shipowner. Charterers under a time charter may still arrange cargo insurance or cover for operational risks.

Insurance as Strategic Risk Allocation

Since shipping is a high-risk, capital-intensive industry, insurance is not a back office consideration in a ship finance transaction. For both lenders and owners, marine insurance is integral to a financing strategy as it is critical to safeguarding the asset, operational continuity, and lender security. Whether through classic forms of insurance like H&M and P&I policies or more sophisticated lender-focused instruments like MII, MAP and FD&D, effective risk and insurance management is indispensable for all maritime stakeholders, including both financiers and shipowners.

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English Court of Appeal dismisses appeal concerning the doctrine of undisclosed principal

Summary

In a recent judgment concerning the law of agency and specifically the doctrine of undisclosed principal, the Court of Appeal upheld an earlier decision by the Commercial Court that the English courts do not have jurisdiction to deal with claims brought by a disponent shipowner against three New Zealand timber companies under two letters of indemnity (the "**LOIs**").

Background

The three respondents were New Zealand companies which exported New Zealand timber (the "**Exporters**"). The Exporters' agent for the sale and marketing of logs was a company called TPT Forests ("**Forests**"), which had entered into Log Marketing and Sales Agency Agreements (the "**Agency Agreements**") with each Exporter for this purpose. Under the Agency Agreements, Forests also acted as the Exporters' agent in chartering vessels for the carriage of logs overseas.

In 2004 the TPT Group, of which Forests is part, decided to establish a new company, TPT Shipping ("**Shipping**"). Shipping was formed for the purpose of managing the inherent risks of chartering vessels, thereby ringfencing the other companies within the TPT Group (including Forests and, as was later determined, the Exporters) from such risks.

Forests entered into a Shipping Services Agreement with Shipping in 2012, pursuant to which Forests would deal with Shipping solely in its capacity as agent for the Exporters, and Shipping would accept instructions from Forests in respect of the handling and shipment of products on behalf of the Exporters.

Shipping issued the LOIs which are the subject of the present case to the appellant shipowner, Berge Bulk, in its own name, to enable cargo to be delivered at the relevant discharge ports without production of the bills of lading. These LOIs were governed by English law and provided for the jurisdiction of the English courts.

Disputes arose following the discharge of two shipments involving voyage charters between Berge Bulk as owner and Shipping as charterer. This resulted in a series of claims leading down to the LOIs, following which Shipping entered into administration and later liquidation.

Berge Bulk (together with another disponent shipowner from whom Shipping had chartered a vessel) brought a claim against Shipping, Forests and the Exporters under the LOIs. The claim form was served on the Exporters in New Zealand pursuant to CPR 6.33(2B) on the alleged basis that the Exporters were the undisclosed principals to the LOIs (which provide for the jurisdiction of the English courts) which had not been paid by Shipping.

Forests and the Exporters challenged the jurisdiction of the English courts to determine the claim, arguing that there was no good arguable case that they were the undisclosed principals of Shipping.

The judgment at first instance

In dealing with the claim against Forests, the Court applied the test of a "good arguable case" for jurisdiction under CPR 6.33(2B) and found that there was no good arguable case that Forests was an undisclosed principal to either the charterparties or the LOIs.

In respect of the claim against the Exporters the Court held, by reference to the terms of the Agency Agreements, that Shipping had acted as principal and not as agent for the Exporters when entering into the charterparties. The Court also determined that the LOIs were issued by Shipping on its own behalf, and that there was no evidence to suggest that the Exporters had authorised the issuance of the LOIs other than through the agency of Forests.

It followed that the English courts had no jurisdiction to hear the claim against the Exporters. In reaching its judgment, the Court also found that upon the establishment of Shipping, the TPT Group had indeed been structured in such a way as to ensure that the inherent risks in chartering vessels were borne solely by Shipping.

Berge Bulk appealed this decision.

The appeal

Berge Bulk's appeal was unanimously dismissed by the Court of Appeal.
In delivering the Court's judgment, Males LJ confirmed that the applicable test for jurisdiction under CPR 6.33(2B) was that of the "good arguable case" and made the following points:

- Shipping had been established to ringfence both Forests and the Exporters from the risks inherent in chartering vessels. This was inconsistent with any intention for Shipping to act as the Exporters' agent in entering into the charterparties.

- The insulation of Forests and the Exporters was put into effect in the Agency Agreements, which clearly distinguished between circumstances where the ship charter would be between Forests and the shipping company on behalf of the Exporters, and when Forests would have access to vessels chartered by Shipping. The latter would not involve an agency relationship.

- Berge Bulk's argument that the Shipping Services Agreement (which states that Shipping "shall provide the Services for and on behalf of" the Exporters (emphasis added)) conclusively establishes Shipping's agency carries little weight. This language can also indicate any other relationship where one party acts for the benefit of another. Had the intention been for Shipping to act as the Exporters' agent, the failure to state this was a "surprising omission".

- Although it was the Exporters and not Shipping who had an economic interest in the charterparties, this did not necessarily mean that Shipping had acted as the Exporters' agent. This situation was equally consistent with an arrangement under which Shipping would contract as principal on the basis that it would in effect be indemnified by the Exporters.

- That Shipping had entered into the charterparties as principal was in itself a strong reason to find that Shipping had also issued the LOIs as principal and not as the Exporters' agent.

- Regardless, an agency relationship depends upon each party giving consent to such relationship, and the existence of this consent would need to be shown objectively through the parties' words and actions. The Court found that neither Shipping nor the Exporters gave such consent.

Berge Bulk also submitted that (i) Forests had ostensible authority to authorise the issue of LOIs on behalf of the Exporters, so that the Exporters were estopped from denying Forests' authority and (ii) as a consequence, Forests had acquired actual authority to authorise Shipping to issue the LOIs. Berge Bulk had not previously raised this argument and the Court did not consider it fair to permit it to be raised on appeal (noting that, in any event, it was a bad argument).

For these reasons, the Court found that the Exporters were not liable as undisclosed principals under the LOIs and therefore the English courts did not have jurisdiction to hear the claim against them.

Conclusion

The Court of Appeal's decision reaffirms the restrictions imposed when applying the doctrine of undisclosed principal and highlights the need for parties to be clear as to the capacity in which they are acting when undertaking their contractual duties.

The steps taken by the TPT Group to ringfence other group companies from particular risks through the establishment of Shipping is also an important reminder that the structure of a corporate group can play an important role in insulating entities within its group from certain liabilities.

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Success for aircraft lessors in Russian aircraft lessor policy claims

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 theiraircraft;
- 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,

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. Thejudge noted that this involved representatives of the lessors travelling to Russia to meet with airlines, sometimes atpersonal 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.

- 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,

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'sobligations 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.

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Endnotes

East Palestine Derailment Lawsuits Highlight the Limits of Lessor Liability

1. *Ohio ex rel. Yost v. Norfolk S. Ry. Co.,* No. 4:23-CV-00517, 2024 WL 964597, at *1 (N.D. Ohio Mar. 6, 2024).
2. *Id.*
3. *Id.*
4. 4*In re: East Palestine Train Derailment,* No. 4:23-cv-00242, Doc. 783 (N.D. Ohio 2025).
5. *In re: East Palestine Train Derailment,* No. 4:23-cv-00242, Doc. 430 (N.D. Ohio 2024).
6. *In re: East Palestine Train Derailment,* No. 4:23cv00242, Doc. 784 (N.D. Ohio Apr. 23, 2025).
7. *Id.*

Understanding the U.S. Trade Representative's Port-Entry Fees on China-Linked Vessels

1. *See* Office of the U.S. Trade Representative, USTR Section 301 Action on China's Targeting of the Maritime, Logistics, and Shipbuilding Sectors for Dominance (Apr. 17, 2025) (https://ustr.gov/about/policy-offices/press-office/press-releases/2025/april/us-tr-section-301-action-chinas-targeting-maritime-logistics-and-shipbuilding-sectors-dominance); *see also* Notice of Action and Proposed Action in Section 301 Investigation of China's Targeting of the Maritime, Logistics, and Shipbuilding Sections for Dominance; Request for Comments, 90 Fed. Reg. 17114 (Off. U.S. Trade Rep., Apr. 23, 2025) ("Notice of Action").
2. 19 U.S.C. §§ 2411(b) and 2414(a).
3. *See* Notice of Action at 17115; *see also* Notice of Determination Pursuant to Section 301: China's Targeting of the Maritime, Logistics, and Shipbuilding Sectors for Dominance, 90 Fed. Reg. 8089 (Off. U.S. Trade Rep., Jan. 23, 2025) and Office of the United States Trade Representative, Section 301 Investigation: Report on China's Targeting of the Maritime, Logistics, and Shipbuilding Sectors for Dominance (Jan. 16, 2025) (https://ustr.gov/sites/default/files/enforcement/301Investigations/USTRReportChinaTargeting-Maritime.pdf) ("Investigation Report").
4. *See* Proposed Action in Section 301 Investigation of China's Targeting of the Maritime, Logistics, and Shipbuilding Sectors for Dominance, 90 Fed. Reg. 10843 (Off. U.S. Trade Rep., Feb. 27, 2025).
5. These comments are available for public review by visiting the USTR's docket portal at https://comments.ustr.gov/s/docket?docketNumber=USTR-2025-0002.
6. *See* Executive Order 14269, Restoring America's Maritime Dominance, 90 Fed. Reg. 15635 (Apr. 15, 2025).
7. *See* Notice of Action, 90 Fed. Reg. 17114, 17116 n.5 (Off. U.S. Trade Rep., Apr. 23, 2025).
8. *See id.* at 17116.
9. *See id.* at 17122.
10. *Id.*
11. *Id.*
12. *Id.* Paragraph (e) of Annex I provides that "[a] vessel owner of China means any entity: (1) whose country of citizenship is identified as the [PRC], Hong Kong, or Macau on the Vessel Entrance or Clearance Statement or its electronic equivalent; (2) whose headquarters, parent entity's headquarters, or parent entity's principal place of business is the PRC, Hong Kong, or Macau; (3) is [sic] owned by, or controlled by, a citizen or citizens of the PRC, Hong Kong, or Macau; (4) is [sic] owned by, controlled by, or subject to the jurisdiction or direction of the PRC, Hong Kong, or Macau[;] (5) is [sic] owned by, or controlled by, an entity listed as a Chinese Military Company pursuant to Section 1260H of the William M. ('Mac') Thornberry National Defense Authorization Act for Fiscal Year 2021 (Pub. L. 116-283); or (6) is [sic] an ocean common carrier, as defined in 46 U.S.C. 40102(7), that is, or whose operating assets are, directly or indirectly, owned or controlled by the government of the PRC or any of its political subdivisions, with ownership or control by a government being deemed to exist for a carrier if: (A) a majority of the interest in the carrier is owned or controlled in any manner by the government of the PRC, an agency of the government of the PRC, or a public or private person controlled by the government of the PRC; or (B) the government of the PRC or any of its political subdivisions has the right to appoint or disapprove the appointment of a majority of the directors, the chief operating officer, or the chief executive officer of the carrier." *Id.* An entity is owned by, controlled by, or subject to the jurisdiction or direction of the PRC, Hong Kong, or Macau for the purpose of subparagraph (4) above "where: (A) the entity is a national or resident of the PRC, Hong Kong, or Macau; (B) the entity is organized under the laws of or has its principal place of business in the PRC, Hong Kong, or Macau; (C) 25 percent or more of the entity's outstanding voting interest, board seats, or equity interest is held directly or indirectly by any combination of the governments of the PRC, Hong Kong, or Macau; [or] (D) 25 percent or more of the entity's outstanding voting interest, board seats, or equity interest is held directly or indirectly by any combination of the persons who fall within" clauses (A)-(C) above. *Id.*
13. *See* Notice of Action, 90 Fed. Reg. 17114, 17122 (Off. U.S. Trade Rep., Apr. 23, 2025).
14. *See* Proposed Action, 90 Fed. Reg. 10843, 10844 (Off. U.S. Trade Rep., Feb. 27, 2025); *cf.* Notice of Action at 17122.
15. *See* Notice of Action at 17122.
16. *See id*. at 17117; *see also* Letter to The Honorable Jamieson Greer, United States Trade Representative, from Cary Davis, President & CEO, American Association of Port Authorities, 1 (USTR-2025-0002-00111439-CAT7-6069-Public Document) (https://comments.ustr.gov/s/commentdetails?rid=XVCVHF3YYV).
17. Notice of Action, 90 Fed. Reg. 17114, 17122 (Off. U.S. Trade Rep., Apr. 23, 2025).
18. *See U.S. Department of Homeland Security, U.S. Customs and Border Protection,* CBP Form 1300 (05/25), Vessel Entrance or Clearance Statement (https://www.cbp.gov/sites/default/files/2025-06/cbp_form_1300.pdf).
19. Chinese leases are finance leases in which a Chinese-owned leasing company purchases a vessel from the owner or a shipyard and bareboat charters the vessel to a charterer that does not take title to the vessel but assumes legal responsibility for all of the incidents of ownership, including insuring, manning, supplying, repairing, fueling, maintaining, and operating the vessel. *See, e.g.,* 46 C.F.R. § 169.107.
20. *See* Notice of Action at 17122.
21. *See id*.
22. *See id*.
23. *See id.*
24. *Id*.
25. *Id.*
26. Notice of Action, 90 Fed. Reg. 17114, 17122 (Off. U.S. Trade Rep., Apr. 23, 2025).
27. *Id.*
28. *See id.* at 17122-23.
29. *See id.* at 17123.
30. *Id.*
31. *Id.*
32. *See* Notice of Action, 90 Fed. Reg. 17114, 17123 (Off. U.S. Trade Rep., Apr. 23, 2025).
33. *See id.*
34. *See id.*
35. *See id.* These exemptions apply to vessels arriving empty or in ballast; vessels entering a U.S. port in the continental United States from a voyage of less than 2,000 nautical miles from a foreign port or point; and vessels identified as "Lakers Vessels" on CBP Form 1300 or its electronic equivalent. *See id.*
36. *See id.; cf.* Proposed Action, 90 Fed. Reg. 10843, 10844-45 (Off. U.S. Trade Rep., Apr. 23, 2025).
37. *See* Notice of Action, 90 Fed. Reg. 17114, 17122 (Off. U.S. Trade Rep., Apr. 23, 2025) (Collections, supplemental payments and refunds paras. (a) and (c)).
38. *See id.* at 17123.
39. *See id.*
40. *See id.*
41. *See id.*
42. *See* Office of the United States Trade Representative, Notice of Proposed Modification of Action in Section 301 Investigation of China's Targeting the Maritime, Logistics, and Shipbuilding Sectors for Dominance (June 6, 2025) (https://ustr.gov/sites/default/files/files/Press/Releases/2025/301%20Ships%20FRN%20Proposed%20Mod%20Annex%20III%20IV.pdf); *see also* 90 Fed. Reg. 24856 (Off. U.S. Trade Rep., June 12, 2025) ("Notice of Proposed Modification").
43. *See* Notice of Action, 90 Fed. Reg. 17114, 17123 (Off. U.S. Trade Rep., Apr. 23, 2025).
44. Notice of Proposed Modification at 24859.
45. *See* Notice of Action at 17123.
46. *See id.* at 17124.
47. *See id.*
48. *See id.*
49. *See id.*
50. *See id.*
51. *See* Notice of Action, 90 Fed. Reg. 17114, 17124 (Off. U.S. Trade Rep., Apr. 23, 2025).
52. *See* Notice of Proposed Modification, 90 Fed. Reg. 24856, 24860 (Off. U.S. Trade Rep., June 12, 2025).
53. *See* Proposed Action, 90 Fed. Reg. 10843, 10845 (Off. U.S. Trade Rep., Feb. 27, 2025).
54. *See* Notice of Action at 17121.
55. *See id.* at 17121-22.
56. *See id.* at 17122.
57. *See id.* at 17121. LOGINK is a Chinese state-owned and -controlled logistics data management platform that experts estimate controlled data associated with at least half of global container volume in 2020. *See* Investigation Report at 17 (citing Gabriel Collins & Jack Bianchi, *China's LOGINK Logistics Platform and Its Strategic Potential for Economic, Political, and Military Power Projection,* Baker Institute (Apr. 25, 2023) (https://www.bakerinstitute.org/research/chinas-logink-logistics-platform-and-its-strategic-potential-economic-political-and)).
58. *See* Notice of Action at 17121.
59. *See id.* at 17116.
60. *Id*. at 17120.
61. *See, e.g.,* BIMCO, USTR Clause for Time Charter Parties 2025 (https://www.bimco.org/contractual-affairs/bimco-clauses/current-clauses/ustr-clause/), which is a clause prepared by BIMCO, the largest direct-entry membership organization in the shipping industry, for inclusion in time charter agreements to allocate certain responsibilities in respect of fees incurred pursuant to Annexes I and II between vessel owners and time charterers.

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The Vedder Price Global Transportation Finance team is one of the largest, most experienced and best recognized transportation finance practices in the world. Our professionals serve a broad base of clients across all transportation sectors, including the aviation, aerospace, railroad, general equipment and marine industries, and are positioned to serve both U.S.-based and international clients who execute deals worldwide.

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