

LESSORS SUCCEED IN RUSSIAN AVIATION INSURANCE CLAIMS

Today, following a 12 week "mega trial", the English Commercial Court handed down its landmark judgment on claims brought by aircraft lessors against the insurance market in respect of over \$4 billion worth of aircraft stranded in Russia following Russia's invasion of Ukraine. Clifford Chance acted for three (out of six) aircraft lessors, who led the primary case contending for a "war risks" peril, in one of the largest insurance trials ever before the English Court.

The judgment has global significance in the aviation sector and beyond as the first full ruling on the underlying issues, given equivalent proceedings commenced by other lessors in Ireland and multiple US jurisdictions. In a time of increased geopolitical tension, this decision is an important one for all policyholders of political risk insurance.

ISSUES DETERMINED

The Court was asked to determine by reference to the factual circumstances, the boundaries of the lessors' war/political risks cover and whether it responded to the ongoing detention of the vast majority of the fleet leased to Russian airlines at the time of the invasion. In doing so, the Court had to consider a number of issues for the first time:

- The construction and scope of the lessors' "possessed cover" and whether the owners of the aircraft had taken sufficient steps to be "in the course of repossession" of their assets, or whether their "contingent cover" should respond, given that the Russian law governed insurance of the asset operators (here the Russian airlines) had failed to pay out.
- Whether the aircraft were lost by reason of a "war risks" peril (e.g., confiscation, nationalisation, restraint, detention, etc by the Russian government) or an "all risks" peril (i.e., a commercial decision by the Russian airlines to not return the aircraft).
- The correct test for "loss" and applying that test to determine when if at all, following the invasion, a loss occurred - in particular was there a loss, or were the aircraft in "the grip of the peril", before insurers' notices cancelling the lessors' "war risk" cover for aircraft in Russia took effect.

Key issues

- The English Commercial Court has today handed down its decision in the Russian aviation insurance claims.
- The lessors were successful against War Risk insurers.
- This landmark decision represents a significant victory for the insured lessors and provides clarification on a number of important insurance principles.

- Whether EU or US sanctions prevented insurers from providing cover and/or paying under the insurance.
- Whether the lessors had to give credit to insurers for maintenance reserves and security deposits held or recovered in relation to the aircraft.

THE COURT'S DECISION

Mr Justice Butcher's decision on the above issues was as follows:

- The "contingent cover" was triggered, as the Claimants had satisfied the relevant contingency in their policies. For instance, DAE demonstrated an "inability to recover" under the insurance taken out by the Russian airlines (on which the Claimants were named additional insureds), despite taking reasonable steps to do so and where no recovery was anticipated in the immediate future. In rejecting Insurers' various arguments, Butcher J held that a construction of the policies that advances the purpose of the cover, rather than hinders it, should be preferred.
- The "possessed cover" was not triggered. Butcher J held that for aircraft to be in the "course of repossession" as referred to in the possessed cover terms, overt acts with a direct link to an actual or imminent physical repossession of the aircraft were required. Repossession in Russia was not at any material time a possibility.
- Consistent with the Clifford Chance lessors' primary case, the aircraft were lost by reason of a War Risks peril. In this case, it was a detention or restraint by reason of Russian Government Resolution 311 ("**GR 311**") which imposed an export ban on aircraft.
- The aircraft were lost on 10 March 2022 by reason of GR 311, albeit they were in the grip of earlier political perils (operative restraint or detention) with effect from 26 February and 5 March 2022 as a result of prior communications from the Russian Ministry of Transport and Federal Air Transport Agency (FATA) respectively. To the extent that insurers' notices cancelling "war risk" cover took effect before 10 March 2022, there was nevertheless cover under the policies on the basis of the application of the "grip of the peril" principle.
- The test for actual loss in the case of deprivation of possession is whether, on a balance of probabilities, the deprivation is permanent.
- US and EU sanctions do not apply to any of the claims or impact the obligation on insurers to indemnify the Claimants. No Defendant relied on UK sanctions.
- All the Claimants were entitled to apply any maintenance reserves and security deposits held against amounts outstanding under the leases (including lost future lease rentals), before applying them to insured losses.

The court directed that a consequential hearing be held in September 2025 to determine remaining questions on quantum, interest, and costs.

KEY TAKEAWAY

This important decision represents not only a significant victory for the insured lessors but more generally provides important clarification for all insureds, on a number of fundamental principles, including causation, loss, and the interpretation of insurance policies generally. The case and the decision also provide a valuable lens through which political risk policyholders should now view their cover.

Key points from the judgment

- The contingent cover responds to the lessors' claims.
- A construction of the policy that advances the purpose of the cover, rather than hinders it, should be preferred.
- The aircraft were lost by reason of a "war risks" peril, namely a detention or restraint, at the hands of the Russian government, rather than the conduct of the Russian airlines.
- US and EU sanctions did not prevent the insurers from providing cover and making payment under the policies.
- Maintenance reserves, security deposits, and letters of credit could be set off against amounts owing under the leases, before being applied to the insured loss.

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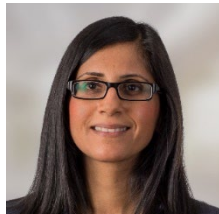
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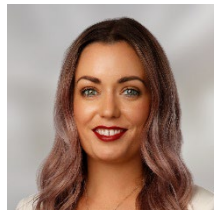
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