



Trapped Aircraft in Russia – ‘Mega Trial’ set for October 2024

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A series of claims by aircraft owners against their insurers is set for a 12-day ‘mega trial’ commencing on 2 October 2024.

Some notable names include:

- AerCap Ireland Limited;
- AIG Europe S.A.;
- Lloyd’s Insurance Company S.A.;
- Chubb; and
- Fidelis.

What happened?

Following UK and EU sanctions imposed on Russia after its invasion of Ukraine, aircraft lessors were prohibited from continuing to lease aircraft and aircraft parts to Russian entities (corporate or private) beyond 28 March 2022. Lessors were therefore obliged to terminate their lease agreements with Russian airline lessees.

In retaliation, Moscow prohibited the lessees from returning the aircraft. An estimate of more than 400 aircraft remain under Russian control, amounting to a combined value of nearly US \$10 billion. For those unreturned aircraft, the respective aviation authorities have revoked their certificates of airworthiness. Moscow subsequently issued a legislative decree which allowed Russian authorities to issue their own certificates, and it is now believed that some of the aircraft have been re-registered in Russia.

In turn, registered owners and lessors called upon their insurance providers to compensate them for the loss.

Insurers have, for the most part, rejected the lessors' claims, resulting in a stream of claims filed in the UK Commercial Court.

An example:

Aercap Ireland Limited ("Aercap") is the most prominent filed claim relating to 140 aircraft and 29 aircraft engines, equating to a claim for US \$3.5 billion. This claim was originally against AIG Europe S.A. and Lloyd's Insurance Company S.A.; however, it is now clear that other defendants have been joined to the proceedings. These include Fidelis, Swiss Re and Chubb.

At a Case Management Conference held earlier this year, Mr Justice Butcher ordered that Aercap's claim and four other cases already underway will be heard concurrently in a 12-week trial beginning on 2 October 2024. Those cases are:

- KDAC Aircraft Trading 2 Limited v Chubb and Others;
- Falcon 2019-1 Aircraft 3 Limited v Various Insurers;
- Dubai Aerospace Enterprise and Others v Fidelis and Others; and
- Merx Aviation v Chubb and Others.

Main issues/arguments

Looking at the Aercap trial, the insurers provided cover under Section 1 ('All Risks') and Section 3 ('War Risks') of the lessors' Aircraft Hull, Spares and Equipment Policy.

- Section 1 ('All Risks') provides cover for **physical loss or damage** to the aircraft, howsoever sustained during the period of insurance, unless excluded by the war, hijacking and other perils exclusion clause. This cover applies when the aircraft is leased from the registered owner to third parties and whilst the aircraft is in the course of repossession by the insured.
- Section 3 ('War Risks') similarly applies where the aircraft has been leased and whilst in the course of repossession and provides cover for loss or damage to aircraft against claims excluded by Section 1 as caused by the following War Risk Perils:
 - *"(c) Any act of one or more persons, whether or not agents of a sovereign power, for political or terrorist purposes and whether the loss or damage resulting therefrom is accidental or intentional.*

...

- *(e) Confiscation, nationalisation, seizure, restraint, detention, appropriation, requisition for title or use by or under the order of any government (whether civil, military or de facto) or public or local authority."*

Lessors claim they have suffered physical loss of the aircraft by deprivation of physical possession due to the lessee's failure to return the aircraft, the re-registration and continued use in Russia and the lessor's inability to conduct maintenance.

The defence put forward by the insurers includes the following:

- There has not been a physical loss of the planes yet, as they remain in the lessees' control. Constructive total loss requires damage greater than 75% of the aircraft's value and therefore does not apply to deprivation of possession;
- The UK and EU sanctions prevent the insurers from providing cover; and
- The lessors need to demonstrate they have taken all reasonable steps to recover the aircraft and whether they may still be recovered.

Comment

The 'mega trial' is likely to impact the insurance market significantly.

- If the insurers are unsuccessful, the market may need to re-examine their approach to covering war risks and can be expected to tighten exclusions.
- Alternatively, if the lessors are unsuccessful, they will likely look to other means to recover their losses as may be available within the lease agreements, such as looking to guarantors to cover the loss.

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