

Aviation / war risks update (Summer 2023)

07 August 2023

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As previously reported [here](#), a joint trial of five similar sets of proceedings in which claims are being brought against multiple insurers for the alleged 'loss' of aircraft that have not been returned to lessors following the imposition of sanctions against Russia is currently moving through the Commercial Court.

There is significant overlap of the issues in the claims and, although the pleadings are substantial (some Defendants are submitting their own pleadings while others are choosing to group together as 'War Risks Insurers' and 'All Risks Insurers'), the arguments can broadly be summarised as follows:

Claimants

The Claimants allege that they have sustained physical loss of the aircraft by deprivation of physical possession. They say that recovery is uncertain or unlikely and this amounts to irretrievable deprivation. They rely on, inter alia, the following.

- The lessee's failure to return the aircraft.
- The lessee's continued use of the aircraft contrary to the revocation of the certificates of airworthiness.
- The purported re-registration in Russia.
- The inability to carry out approved maintenance work and the lack of spare parts available in Russia.

War Risks Insurers

The War Risks Insurers deny there has been a War Risks peril that proximately caused the loss. Although some of the Claimants rely on statements that have been made by President Putin and the Russian Government, Insurers argue that this does not amount to an 'act' by 'one or more persons' for 'political or terrorist purpose' and the support of the Government for the acts of others is not an 'order'. They argue that the proximate cause of the loss is the lessee's decision not to return the aircraft and the Claimants are put to proof as to whether they have taken all reasonable steps to recover the aircraft and whether they may still be recovered.

All Risks Insurers

The All Risks Insurers consider that any claim would fall within the War Risks section. They deny that the aircraft have been physically lost or damaged and have at all times remained in the possession of the lessees. They argue that mere service of a demand for the return of an aircraft does not form part of 'the course of repossession' and it can only be so where physical steps are being taken to repossess it.

The claims are scheduled to be heard in October 2024 if they are not able to be resolved before then.

With such large sums at stake, and so many insurance entities involved in the proceedings, it is hard to conceive the implications for the insurance market if the Claimants were to succeed in full. Lloyd's recently increased its reserves for all losses related to the Russia-

Ukraine war to £1.4bn, up from £1.1bn in the middle of 2022. To put that in context, those sums would only cover one-third of one of the five consolidated claims currently being litigated.

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Key contacts

Colin Peck

Partner

colin.peck@brownejacobson.com

+44 (0)20 7337 1016

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