

Leased Aircraft Stranded in Russia: A Survey of the Pending Insurance Claim Litigation in Different Jurisdictions

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KEY POINTS

- Insurance companies are bracing themselves for years of legal disputes over liability for total losses claimed by lessors to aircraft stranded in Russia as a result of sanctions over Russia's invasion of Ukraine and their aftermath.

- AerCap brought litigation in an English court in the summer of 2022 demanding US\$3.5 billion from two global insurance companies to recover the value of aircraft and engines remaining in Russia.

- The AerCap lawsuit was followed by several lawsuits in the United Kingdom, Ireland and the United States (Florida, New York and Minnesota) filed by aircraft leasing companies suing the insurers over the loss of hundreds of aircraft remaining in Russia.

- AerCap's case and other cases are being closely watched as it is anticipated that more leasing companies will submit similar claims in the future.

Overview

Following Russia's invasion of Ukraine on 24 February 2022 and subsequent introduction of sanctions by the EU and the UK prohibiting any leasing activities in the aviation industry to any person in Russia or for use in Russia, aircraft lessors issued notices terminating the leasing of aircraft (and spare engines) to airlines in Russia and requiring that the airlines return the assets. In most cases the lessees have failed to return the aircraft. Later, the Irish Aviation Authority and the Bermuda Civil Aviation Authority (most such aircraft being registered in Ireland or Bermuda) suspended the certificates of airworthiness of such aircraft. Then following a change in the law of Russia, many such aircraft were without consent of the lessor reregistered by the lessees in Russia. Lessors as a result filed insurance claims under their insurance policies for total loss of the aircraft. The insurers have denied the claims and lessors have started to bring lawsuits against their insurers. The insurers argue that the aircraft and engines have not been destroyed, and the lessors have not shown they will be permanently deprived of possession of the equipment. Relatively little time has passed since the situation began, the political situation could change, and the lessors have not shown they have taken all reasonable steps to repossess the aircraft – particularly given

the statements by some lessees that they would return aircraft if they could receive any necessary government authorizations. Though if aircraft are returned, their records status could render them unmarketable.

This Aviation Advisory presents an in-depth look at the arguments made by the leasing companies known to have brought lawsuits various jurisdictions.

- Please see Appendix 1 for a discussion of the cases brought in the United Kingdom.
- Please see Appendix 2 for a discussion of the cases brought in Ireland.
- Please see Appendix 3 for a discussion of the cases brought in Florida, New York and Minnesota.

Conclusion

Potential litigants, litigation funders and claims traders have asked about the likelihood of success on the merits of the litigation. Litigation over total loss claims for aircraft still in Russia is just getting underway, arguments on both sides remain to be fully developed, and the courts have yet to rule on the merits. But because of the commonality in the fact patterns and insurance provisions, as issues get decided in various cases, the outcome of all cases will become more predictable. This may lead cases to settle, to avoid protracted litigation, and to crystallize losses which insurers may feel they can socialize in the way of higher premiums industry-wide. A change in the political situation is the wildcard. It could deteriorate, strengthening the lessors' claim that the aircraft are irretrievably lost. It could improve, possibly leading toward renormalization of the aircraft leasing market in Russia, including aircraft redeliveries.

Katten thanks UK trainees Nicole Akinyemi and Hayley Rabet for their contributions to this advisory.

CONTACTS

For more information, please contact your Katten attorney or any of the following members of the firm's [Aviation](#) group:



Stewart B. Herman
+1.212.940.8527
stewart.herman@katten.com



Timothy J. Lynes
+1.202.625.3686
timothy.lynes@katten.com



Timothy J. Kirby
+1.212.940.6494
tim.kirby@katten.com



Chris Harrison
+44 (0) 20 7776 7623
christopher.harrison@katten.co.uk



Joe Payne
+44 (0) 20 7776 7638
joe.payne@katten.co.uk



Charlotte Sallabank
+44 (0) 20 7776 7630
charlotte.sallabank@katten.co.uk



Katya Harrison
+44 (0) 20 7770 5242
ekaterina.harrison@katten.co.uk



Brett J. Seifarth
+1.202.625.3615
brett.seifarth@katten.com



Michael Walsh
+44 (0) 20 7770 5243
michael.walsh@katten.co.uk

APPENDIX 1 – CASES FILED IN THE UNITED KINGDOM

Part 1. AERCAP VS CERTAIN INSURERS

On 9 June 2022, AerCap Ireland Ltd (**AerCap** or **the Claimant**) filed a claim form in the High Court of Justice of England and Wales where AerCap presented its case against two major insurers (**the first defendant** and **second defendant** respectively). The form was later amended on 17 June 2022 to clarify the name of the second defendant.

1. BRIEF DETAILS OF CLAIM

- 1.1 The Claimant (on its own behalf and on behalf of the other insureds under the subject insurance policy (together referred to as the **Insureds**) claims an indemnity, alternatively damages, under Section One of an aviation insurance policy issued by the first defendant and the other insurers who subscribed to that section of the policy, in respect of a number of aircraft and engines that were on lease to lessees in Russia, which are claimed to have been physically lost as a result of the Insureds being (wrongfully) deprived of their physical possession in circumstances where their recovery is uncertain and/or unlikely and/or (if contrary to the Insureds' position the fact that recovery is uncertain and/or unlikely is insufficient to entitle them to recover under the policy) which amount to irretrievable deprivation.
- 1.2 Alternatively, if (contrary to the Insureds' position) the Insureds' claims are excluded from Section One of the policy by reason of the application of the exclusion in respect of war and allied perils, then the Insureds are entitled to an indemnity, alternatively damages, in respect of those claims under Section Three of the policy from the Second defendant and the other insurers who subscribed to Section Three of the policy.
- 1.3 Furthermore the Claimant claims:
 - (a) A declaration that the Insureds are entitled to coverage under Section One or alternatively under Section Three of the policy in respect of the loss of the aircraft and engines that are the subject of this claim;
 - (b) Compound interest at common law (to be measured by reference to the Insureds' cost of borrowing) alternatively simple interest pursuant to s.35A of the Senior Courts Act 1981 on any sum found to be due to them at such rate and for such period as the Court shall think fit;
 - (c) Costs; and
 - (d) Such further or other relief as the Court deems appropriate.

2. PARTICULARS OF CLAIM

The particulars of the claim could be summarised as follows:

2.1 *The Parties and the Policy*

- (a) AerCap is claiming on its behalf and on behalf of the Insureds. The Insureds were provided with (among other things): aircraft hull, spares and equipment all risks insurance (*Section One*) and aircraft hull, spares and equipment war and allied perils insurance (*Section Three*) for the period 1 November 2021 to 31 October 2022 on the terms and conditions set out in the policy (**the Policy**).
- (b) The first defendant is sued on its own behalf and on behalf of the other insurers subscribing to Section One of the Policy (together the **Section One Insurers**). The second defendant is sued

on its own behalf and on behalf of the other insurers subscribing to Section Three of the Policy (together the **Section Three Insurers**).

2.2 *The Aircraft and Engines*

- (a) As of 25 February 2022, the Insured owned 141 aircraft and 29 aircraft engines covered under the Policy which were on lease or sublease to various Russian airlines (**the Lessees**).
- (b) Following Russia's invasion of Ukraine on 24 February 2022 and subsequent introduction of sanctions by the EU and the UK prohibiting any leasing activities in the aviation industry to any person in Russia or for use in Russia, the Insureds issued notices terminating the leasing of the aircraft and engines and requiring the Lessees to return the assets but the Lessees failed to return or redeliver significant number of the aircraft and aircraft engines (116 aircraft and 23 engines listed in Schedule 1 to the particulars of claim; **the Aircraft and Engines**).
- (c) The Irish Aviation Authority and the Bermuda Civil Aviation Authority later suspended the certificates of airworthiness of aircraft that were leased to Russian operators or operating in the Russian Federation (on 7 March 2022 and on 12 March 2022 respectively).
- (d) As an anti-sanction measure, Russian laws were amended on 14 March 2022 to allow the leased aircraft to be reregistered in Russia in the name of the lessee. The Insureds stated they believe that the vast majority (if not all) of the Aircraft have been subsequently reregistered by their respective Lessees.

2.3 *The Claim Under the Policy*

- (a) The Insureds believe that that they have been wrongfully deprived of physical possession of the Aircraft and Engines; and each of them (a) has been the subject of physical loss for the purposes of the Policy and (b) is a total loss.
- (b) Section One indemnity: the Insureds claim to be entitled to an indemnity under Section One of the Policy in respect of each of the Aircraft and Engines pursuant to coverage 1 (i.e., "*the Insureds not having been indemnified under the (Russian) Principal Insurance policies in respect of the loss*") and/or coverage 2 (i.e., "*the Aircraft and Engines having been lost while in the course of repossession from a lease agreement*") estimated in the amount of US\$3,478,958,856; the Section One Insurers have not paid the sum claimed or any part of it to the Insureds when asked.
- (c) Section Three indemnity: if found that the Insureds' claims are excluded from Section One of the Policy by reason of the application of the exclusion in respect of war and allied perils, then the Insureds claim to be entitled to an indemnity in respect of those claims under Section Three of the Policy which shall cover the loss suffered by the Insureds (as set out above and subject to a cap); the Section Three Insurers have not paid any sum to the Insureds.
- (d) To sum up, the Insureds are claiming:
 - (i) US\$3,478,958,856, alternatively damages in the same amount, alternatively such other amount as the court may find to be due, from the Section One Insurers.
 - (ii) Alternatively, US\$1,200,000,000 alternatively damages in the same amount, alternatively such other amount as the court may find to be due, from the Section Three Insurers.
 - (iii) A declaration that the Insureds are entitled to coverage, interest, costs, further or other relief.

3. DEFENSE OF SECTION ONE INSURERS AND REPLY TO THE DEFENSE

The first defendant served its defense on 5 September 2022 and the claimant submitted the reply on 26 October 2022. The main arguments from both submissions are summarised as follows:

3.1 *The Parties and the Policy*

- (a) The first defendant clarified that it has a 15 percent line on AerCap's all-risk policy and a 7.5 percent line on its contingent war policy, noting that many insurers on the all-risk policy are also listed on the contingent war coverage.

3.2 *The Aircraft and Engines*

- (a) The first defendant admitted that some lessees have purported to register Aircraft leased from the claimant or those it represents in the State Register of Civil Aircraft of the Russian Federation but denied that this was accurately described as "reregistration" in circumstances where the Aircraft continue to be registered in their original state of registration. In its reply, the claimant contended that the Aircraft have been reregistered without the Insureds' permission and with the attendant consequences under Russian law that entails their continued use. The claimant also stated that 101 out of the 116 Aircraft the subject of this claim (i.e. approximately 87 percent) have been reregistered on the State Register of Civil Aircraft of the Russian Federation as at around 10 October 2022.

3.3 *The Claim Under the Policy*

- (a) In its submission, the first defendant denies that any of the Aircraft and Engines (i) have been the subject of physical loss within the meaning of the Policy or (ii) is a total loss. The Claimant in its reply stated that the applicable legal test was a matter for argument that the Claimant would make in due course (some arguments were presented on "without prejudice" basis).
- (b) The first defendant explains that in the absence of any claim that any of the Aircraft or Engines have been destroyed, a total physical loss could only occur if the Claimant proves that, as at the date of the issuance of the claim form, there had been irretrievable deprivation of possession of the Aircraft and Engines. The Claimant denied in its reply that the test of "irretrievable deprivation," used in marine insurance, should be applied to determine an actual total loss; in the Claimant's view, the applicable test is the non-marine test, i.e., whether the Insureds have been (wrongfully) deprived of physical possession in circumstances where recovery is 'uncertain.' According to the Claimant's submission, if the marine test needs to be applied then the Insureds should still be entitled to recover claims "on the basis of a constructive total loss."
- (c) The reasons given by the first defendant to support the notion that such irretrievable deprivation (and, insofar as relevant, uncertainty or unlikelihood of recovery of the Aircraft and Engines) has not occurred could be summarised as follows:
 - (i) As to the date and since the issuance of the claim form no reasonable period has passed to establish that deprivation of possession has been sufficiently permanent and amounted to irretrievable deprivation; the Claimant denied in its reply that such period was needed to pass given the nature and circumstances of deprivation.
 - (ii) Insofar the Aircraft have been purportedly reregistered in Russia they have been so registered in the name of their original owner/lessor which is inconsistent with any deprivation of possession being irretrievable; the Claimant denied this argument in its reply.

- (iii) The Aircraft and Engines may yet be recovered if the political situation changes; the Claimant in its reply states that these claims are “*embarrassing for want of particularity*” and amount to “*mere hopeful speculation.*”
 - (iv) The Insureds need to prove that all reasonable steps have been taken to recover the Aircraft and Engines; some Lessees have stated their willingness to comply with the lessor’s request to return the relevant Aircraft and/or Engines subject to receipt of all necessary permissions. The Claimant stated in its reply that the Insureds had taken all reasonable steps to recover the Aircraft and Engines as well as that none of the lessees have been or are willing unconditionally to return (whether in the Eurasian Economic Union or at all) the Aircraft and Engines in their possession, despite their obligations to do so and despite having been able to do so.
- (d) The first defendant also contended that Coverage 1 provides cover for assets that are “the subject of a Lease Agreement” and, provided the notices of termination were valid, the Aircraft and Engines ceased to be the subject of a Lease Agreement immediately upon the notices of termination becoming effective and the claimed total physical loss could only occur at a time when there was no longer such Coverage 1. The Claimant in its reply denied that the Lease Agreements which the Aircraft & Engines were the subject of have been terminated; to the contrary, according to the Claimant, the parties to the Lease Agreements remain bound by those agreements. Further, in the Claimant’s view, on a proper construction of Coverage 1 (i) an Aircraft or Engine does not cease to be the subject of a Lease Agreement merely because the agreement has been terminated and (ii) it is not a requirement or condition of cover that the lease agreement in respect of the Aircraft or Engine has not been terminated.
- (e) As to Coverage 2, the first defendant claims not to be liable insofar as there are claims which are payable under the Principal Insurances or the reinsurances, including AVN 67B or such version of AVN 67 as each of the Principal Insurances or the reinsurances incorporated. The Claimant in its reply admitted that if and to the extent that the Insureds’ claims are payable under the Principal Insurances or reinsurances containing a cut-through clause then there is no cover under Coverage 2 (without prejudice to cover under Coverage 1). The Claimant also explains in its reply that Coverage 1 and Coverage 2 must be construed together, and that the obvious meaning and commercial purpose of Coverage 1 is to provide the Insureds cover for Aircraft and Engines that have been leased and are outside the care, custody and control of the Insureds, until such time as they are returned to the care, custody or control of the Insureds (or coverage for the Insured under the Principal Insurance ceases), at which point Coverage 2 applies.

3.4 AVN 48B – Exclusions

- (a) The first defendant also outlined its arguments as to why exclusion clause 6(b) of Section One of the Policy (the War, Hi-Jacking and Other Perils Exclusion Clause (Aviation) AVN 48B set out in Attachment No. 1 to the Policy) applies in that any claims for losses have been caused by:
- (i) Acts of one or more persons done for political purposes, whether or not agents of a sovereign power, including in particular (a) acts of the lessees, and/or (b) acts of the President and/or government and/or public authorities of the Russian Federation (**exception 1**); and/or
 - (ii) Confiscation and/or seizure and/or restraint and/or detention and/or appropriation by or under the orders of the government (whether civil, military or de facto) of the Russian Federation or other public or local authority (**exception 2**).

These arguments are denied by the Claimant in its response because, according to the claimant's submission, the Insureds' claims were caused by the acts of the Lessees (wrongfully) retaining possession of the aircraft and engines leased to them – and continuing to use and/or retain them for their own commercial purposes and/or consistently with their own economic interests, without paying any rent – contrary to their obligations to return them to the Insureds.

- (b) As to exception 1, the first defendant contends that, subject to limited political and/or informal constraints, reflecting the need to cultivate and/or maintain support from Russian elites and Russian society as a whole, President Putin exercises power without constitutional or legal or meaningful practical restraint. In this context, it is alleged that the acts of the Lessees in retaining possession, failing to redeliver the Aircraft and Engines and/or operating them without carrying out all approved maintenance work and/or carrying out maintenance work without using approved spare parts and/or using them as a source of spare parts were acts done for political purposes. The Claimant denies that the losses that are the subject of the Insureds' claims were caused by acts of one or more persons done for political purposes, it also contends that the facts and matters were pleaded by the first defendant in this regard *"so generally, vaguely and/or without adequate particulars that they are embarrassing, and cannot sensibly be responded to by the Insureds."*
- (c) As to exception 2, the first defendant contends that order and actions of the Russian government in response to sanctions should be considered to amount to confiscation, seizure, restraint, detention and/or appropriation of the Aircraft and Engines by (i) the government (civil, military or de facto) and/or other public authorities and/or (ii) by the Lessees under orders (express and/or implied and/or tacit) of the government (civil, military or de facto) and/or other public authorities that the Aircraft and Engines must not be returned but must be retained in Russia, where they should continue to be operated and maintained and/or, if necessary, be used as a source of spare parts. Overall, these arguments are also denied by the claimant in its reply; the claimant notes that some submissions by the first defendant *"are embarrassing for want of proper particulars and/or specificity, and are in many instances so vague that they cannot be understood or pleaded to."*

3.5 Applicable Sanctions

- (a) The first defendant also argues that in any case it is not liable for the claims citing clause AVN 111 (reproduced in paragraph one of Endorsement No. 7 to the Policy) due to extensive sanctions from the EU and the UK. The claimant denies these arguments in its reply.
- (b) The first defendant also states that it does not currently know which of the Aircraft and Engines are subject to the US Export Administration Regulations (**EARs**) and any payment by the first defendant or the Section One Insurers to the claimant in respect of such Aircraft and Engines may potentially violate the General Prohibition 10 of the EAR; the Claimant clarified in its reply that only three of the Aircraft and Engines have been specifically identified to date by the US Commerce Department's Bureau of Industry and Security as being in likely violation of US export controls and denied that the true meaning or effect of General Prohibition 10 (of the EARs), which contains no reference to the provision of insurance, was to prevent the Section One Insurers from paying the sums due to the Insureds under the Policy.
- (c) For these reasons, pursuant to Endorsement No. 7 to the Policy (and/or general law) the first defendant contends that it and other Section One Insurers shall have no liability to the Claimant and/or the Insureds in respect of their claim. The Claimant in its reply states that neither the EU Regulation, nor the UK Regulation, nor the EARs make the provision of coverage by the Section One Insurers to the Insureds under the Policy in respect of the sums claimed by the Insureds unlawful. The Claimant therefore denies that Endorsement No.7 to the Policy is applicable.

4. DEFENSE OF SECTION THREE INSURERS AND REPLY TO THE DEFENSE

The second defendant (Section Three Insurers) served its defense on 5 September 2022 and the Claimant submitted the reply on 26 October 2022. The main arguments from both submissions are summarised as follows:

4.1 *The Parties and the Policy*

- (a) The second defendant clarified that it was the lead underwriter under the Policy in respect of Section Three; Atrium Underwriters Ltd and Liberty Managing Agency Limited are service providers to the second defendant under the Policy and both of whom have conducted these proceedings on behalf of the second defendant (collectively **the War Risk Insurers**). The Claimant in its reply stated that it had no knowledge of the arrangements (if any) which the Second defendant had in place with Atrium Underwriters Ltd or Liberty Managing Agency Limited, or their authority (if any) to act for the second defendant in respect of these proceedings.

4.2 *The Claim Under the Policy*

- (a) The second defendant explains that Section Three of the Policy provides cover only in respect of total losses and requires the claimant to identify an in-scope peril to prove that each of the 116 Aircraft and 23 Engines in respect of which an indemnity is sought has become a total loss within the period of insurance under the Policy as a result of that peril. In its response the Claimant contended that if (contrary to the primary position) the Insureds' claims are excluded from Section One of the Policy by reason of the application of the exclusion in respect of war and allied perils, then the cause of the Insureds' loss was the acts of one or more persons done for political purposes and/or confiscation and/or seizure and/or restraint and/or detention and/or appropriation; in that eventuality, the Insureds are entitled to, and claim, an indemnity under Section Three of the Policy.
- (b) The Claimant also denied the second defendant's position that on its proper construction Section Three only provides cover in respect of total, and not partial, losses.
- (c) The Policy is subject to a Sanctions and Embargo Clause AVN 111 and it is contended that the War Risk Insurers provided no coverage and have no liability whatsoever for any losses which occurred after introduction of sanctions. In its response the claimant contends that on their proper construction either the EU or UK Regulations prohibit or prevent the defendants from providing cover under the Policy to the Insureds, who are not Russian, in circumstances where (i) the Insureds have demanded the return of the Aircraft and Engines in the Lessees' possession from Russia and (ii) those Aircraft and Engines remain in Russia against the will of the Insureds.
- (d) It is also noted that any claim under Section Three is subject to the annual aggregate limit of US\$1.2 billion.

Part 2. DUBAI AEROSPACE VS 11 INSURERS

Dubai Aerospace Enterprises Ltd (DAE) has filed a High Court claim against a well-known insurer in the major insurance markets for the aircraft that were taken by Russia in response to Western sanctions on the country. The claim form and the particulars of claim were filed on 24 November 2022.

1. BRIEF DETAILS OF CLAIM

- 1.1 The Claimants set out in Schedule 1 claim an indemnity and/or damages under a policy covering (among other things) aircraft hull and spares war and allied perils (the War Risks Policy) and/or a

policy covering (among other things) aircraft hull and spares all risks (the All Risks Policy) to which the defendants set out in Schedule 3 (the War Risks Insurers) and the defendants set out in Schedule 4 (the All Risks Insurers) respectively subscribed as underwriters.

- 1.2 The Claimants claim in respect of the loss of airframe and engines (and any parts, other equipment and documents furnished or associated therewith) (the Aircraft) which were on lease to various Russian airlines. The Aircraft are an actual total loss and/or a constructive total loss because:
 - (a) By no later than 23:59 on 8 March 2022 the Claimants were irretrievably deprived of the Aircraft, and/or
 - (b) It was by no later than 23:59 on 8 March 2022 and (if relevant) continues to be unlikely, or alternatively at least uncertain, that the Aircraft would be and (if relevant) will be recovered within a reasonable time or alternatively at all, and/or
 - (c) The Aircraft were in any event in the grip of a peril (or perils) by 23:59 on 8 March 2022, and subsequently thereto the operation of such peril(s) has proximately caused (i) the Claimants to be irretrievably deprived of the Aircraft and/or (ii) for it to become and continue to be unlikely, or alternatively at least uncertain, that the Aircraft will be recovered within a reasonable time or alternatively at all.
- 1.3 The said loss was occasioned by a peril or perils insured against under the War Risks Policy and/or the All Risks Policy.
- 1.4 The Claimants also claim costs and expenses incurred in connection with (i) the Aircraft and (ii) certain other aircraft.
- 1.5 Further, the Claimants claim interest (being compound interest at common law, alternatively simple interest pursuant to section 35A of the Senior Courts Act 1981) at such rates and for such periods as the Court thinks fit.

Part 3. IRISH LEASING COMPANY VS CERTAIN INSURERS

In December 2022, an Irish leasing company filed a claim form in the High Court of Justice of England and Wales against all risk and war risk underwriters over an aircraft stranded in Russia.

APPENDIX 2 – CASES FILED IN IRELAND

Part 4. SMBC AVIATION CAPITAL VS A MAJOR INSURER

SMBC Aviation Capital, the Irish company with the second-largest exposure to the fallout from the war, has filed a claim against an insurer in the major insurance markets in the Irish High Court on 28 November 2022. [According to the press](#), the filing did not include details on the size of the claim by SMBC. It was not possible so far to obtain copies of the court filings.

According to [an article](#) in the *Irish Times* on 29 November 2022:

- The company booked an impairment charge of US\$1.6 billion (€1.5 billion) earlier this year over its inability to recover 34 aircraft leased to Russian airlines following the outbreak of the war. In its 2022 annual report, SMBC said the lost aircraft was “one of the most difficult moments for aviation.”
- High Court records show that SMBC and two associated companies Global Aviation Equipment Leasing Ireland and Wilmington Trust SP Services (Dublin) Limited as owner trustee have issued legal proceedings as plaintiffs against the defendant insurance company.
- A spokesman for SMBC confirmed that it had commenced litigation in the Irish courts “against the insurers of aircraft lost in Russia.” “Appropriate insurance is in place, and we expect to be paid in accordance with our insurance policies,” he said.

Part 5. MAJOR AIRCRAFT LEASING COMPANY VS 18 INSURERS

A major Ireland-based leasing company that is a subsidiary of a Chinese bank filed a claim in the Irish High Court against 18 insurers on 15 November 2022 over aircraft remaining in Russia. It was not possible so far to obtain copies of the court filings.

According to [the Reuters article](#) published on 16 November 2022:

- The lessor still has nine aircraft in Russia after Moscow blocked some 400 aircraft from departing following Western sanctions over Russia’s February invasion of Ukraine.
- The 18 insurers named in the proceedings include well-known insurers in the major international insurance markets.
- The filing did not include details on the size of the claim by the lessor, which had a total portfolio of 384 aircraft at the end of June 2022.
- The lessor recognised a 747 million yuan (US\$105.4 million) asset write-down in August but unlike most other lessors, it did not write down the full value of its Russian aircraft as it saw a “high probability” of repossessing them in the foreseeable future.
- It said at the time that it was still actively communicating with Russian airlines to find effective ways to repossess the aircraft but that in a worst case scenario it may need to fully write down their value if it cannot get them back.

Part 6. MAJOR LEASING COMPANY VS 16 INSURERS

Another major leasing company that is a subsidiary of a Chinese bank has begun legal action against 16 insurers, according to the Irish High Court filing on 3 November 2022. It was not possible so far to obtain copies of the court filings.

According to [an article](#) in the *Irish Times* on 15 November 2022:

- The leasing company wrote down the value of its assets by US\$804 million (€774 million) in August relating to 17 aircraft it owns that have been stuck in Russia since the war began.
- The company said then that it was unlikely to be able to recover the aircraft “in the foreseeable future, if ever” and that it had filed insurance claims to recover losses and would vigorously pursue them.
- High Court records in Dublin show that the leasing company and its affiliates have taken legal proceedings against 16 insurance companies which include well-known insurers operating in the major insurance markets.

Part 7. MAJOR LEASING COMPANY VS 15 INSURERS

Another major leasing company is taking legal action against 15 insurers in the Irish High court, a filing showed on 3 November 2022. It was not possible so far to obtain copies of the court filings.

According to [an article](#) in the *Irish Times* on 3 November 2022:

- High Court listings show that one of the leasing company’s aircraft-owning subsidiaries has begun legal action against a well-known insurer operating in a major insurance market.
- The company did not confirm that the proceedings related to the aircraft lost to Russia, but it is understood that this is case. The action is against a syndicate of insurers.
- The company has filed a plenary summons with the High Court, the first formal step in taking legal action.
- The document does not say how much the company is seeking from its insurers, but outlines the aircraft and equipment involved in the case.
- The company terminated leases with Russian airlines to comply with EU sanctions against the Russia following its invasion of Ukraine.
- The leasing company had supplied 14 aircraft to Russian carriers but was able to recover four of them shortly after the war began.
- The leasing company believed the Russian airlines continued using the aircraft after the company terminated the leases and the airlines had stopped paying rent. The company’s former chief executive subsequently said that the company regarded the planes as “stolen.”

Part 8. EUROPEAN REGIONAL LEASING COMPANY VS CERTAIN INSURERS

In December 2022, regional aircraft leasing company filed claims in the Irish High Court over one Embraer 190 aircraft and seven ATR 72-600 aircraft.

APPENDIX 3 – CASES FILED IN THE UNITED STATES

Part 9. AIRCASTLE VS 30 INSURERS

US-based leasing company Aircastle filed a claim against more than 30 insurers with the Supreme Court of the State of New York in late October over nine aircraft and other equipment stranded in Russia. Aircastle said earlier this year it had booked US\$252 million in impairment losses for the aircraft.

1. PLAINTIFF'S CLAIM

- 1.1 Soon after Russia invaded Ukraine on 24 February 2022, nine of Aircastle's insured aircraft as well as certain spares and equipment in which it has a financial interest suffered (a) physical loss or damage resulting from risks covered under the All-Risks coverages and/or (b) loss or damage covered resulting from perils covered under the War and Other Perils coverages. After Aircastle submitted claims under its Policies, the defendants improperly denied coverage or failed to confirm coverage within a reasonable time such that it constituted an effective denial.

2. DEMANDS

- 2.1 Aircastle demanded judgment against the defendants as follows:
 - (a) For a declaration that the defendants are obligated to provide coverage in full under the Policies for the aircraft and/or spares and equipment, and any costs and expenses incurred in the recovery of the insured assets;
 - (b) For Aircastle's losses or damages according to proof at trial;
 - (c) For Aircastle's direct, indirect, consequential, special and compensatory damages to be determined by the trier of fact at trial;
 - (d) For Aircastle's reasonable attorneys' fees and costs;
 - (e) For Aircastle's prejudgment and post-judgment interest according to law; and
 - (f) For any and all further relief to which Aircastle may be entitled that the Court deems just and proper.

Part 10. US LEASING COMPANY VS 30 INSURERS

1. FACTS

- 1.1 On 31 October 2022 a US-based private equity-affiliated leasing company filed a complaint against a group of insurance companies and re-insurers in Florida alleging that the insurers failed to pay out for losses stemming from the seizure of the claimant's aircraft in Russia following the start of the conflict in Ukraine.
- 1.2 The company alleged that 23 of the company's aircraft were not returned by Russia despite the requests they made for the return. The company claimed that it notified its insurers in March 2022 of the loss of the aircraft and that the insurers did not compensate the company for its losses. The company alleged that this is in breach of contract and demanded US\$700 million in compensatory damages and also sought punitive damages.

2. CLAIMANTS' ARGUMENT

- 2.1 The insurers contractually committed to pay for loss or damage sustained by the covered aircraft that were not in the “care, custody or control of the Insured and in respect of which of which physical damage coverage is required to be provided under the Principal Policy, in the event that the Insured is not indemnified in whole or in part under the Principal Policy.” Even though the company sustained a loss of the aircraft not in its control and this being covered under the policies, the insurers did not indemnify the company. From this, the company moved for the Court to enter a Declaratory Judgment declaring the policy provides coverage for the company’s losses. The company also sought compensatory damages for breach of contract on the same grounds.
- 2.2 The company requested another Declaratory Judgment from the court on the basis that the defendants are contractually committed to pay for loss or damage sustained by covered aircraft “(1) awaiting the commencement of a Lease . . . Agreement or closure of a sale, or (2) having been returned on the expiry or termination of a Lease . . . Agreement, or (3) . . . having been repossessed, . . . or which are in **the course of repossession** from a Lease . . . Agreement, or (4) in the care, custody or control of the Insured.” The company noted it has sustained the loss of 23 aircraft while those were in the course of repossession and after a lawful termination of the respective leasing. The company also sought compensatory damages for breach of contract on the same grounds.
- 2.3 The company requested a Declaratory Judgment and put forward a claim for breach of contract on the basis that the defendants were contractually committed to pay for loss or damage with respect to the contingent war coverage. The policy states the insurer will pay for loss/damage resulting from “war, invasion, acts of foreign enemies, hostilities (whether war be declared or not), civil war, rebellion, revolution, insurrection, martial law, or usurped power or attempts at usurpation of power” ... “confiscation, nationalisation, seizure, **restraint, detention**, appropriation, requisition for title or use by or **under the order of any Government** . . . or public or local authority and/or hi-jacking or similar unlawful seizure.” The company put forward that the military hostilities between Russia and Ukraine, and/or the unlawful restraint and detention of the insured aircraft under the order and direction of the Russian Government falls under the scope of this provision.
- 2.4 Finally, the company made a claim on the basis that the defendants were obligated to reasonably and promptly evaluate the claims in good faith and settle the claims in good faith but failed to do so. The company alleged that the defendants failed to timely and seriously evaluate the claims, as well as failed to implement standards for proper investigation, and unduly denied, or delayed assessment of, the company’s claims.

Part 11. US LEASING COMPANY VS 15 INSURERS

An aircraft leasing company based in the United States brought a US\$147 million claim against Hive Underwriters and other insurers operating in the major insurance markets in a Florida court in August 2022 for failing to pay out on claims for four commercial aircraft and three engines leased to Russian airlines.

1. THE PLAINTIFF'S CASE

- 1.1 The company’s argument was based on breach of contract in respect of the Policy between the parties.
- 1.2 The specific breach relates to the Deprivation Clause which covered circumstances where the company was deprived of the use or possession of its insured assets. The Clause obligated the defendants to make every reasonable and repeated effort to remove the deprived assets from the country in which they were operating. The company was required to give notice and the defendants were required to

act within a three-month period from such a notice. If the three-month period lapsed and the company remained deprived of the use or possession of the insured assets, the defendants promised to pay the Agreed Value for the aircraft to the company.

- 1.3 The company notified the defendants on 2 March 2022 that it was unable to remove its assets due to Russia's invasion of Ukraine. The defendants did not comply with their obligation to assist with removing the deprived assets during the three-month period from the notice. This triggered the defendants' obligation to pay the company the Agreed Value.
- 1.4 The company argued that the defendants failed to take every reasonable and repeated effort to remove the deprived assets from Russia and Ukraine during the three-month period following the company's notice. It also argued that the defendants further breached the Policy by failing to pay the company the Agreed Value following the end of the three-month period.

2. DEFENDANTS' POSITION

- 2.1 The defendants argued there was a Sanction and Embargo Clause AVN 111 which stated if it became unlawful to provide coverage to an insured, the insurer has no liability to provide coverage. The defendants made general reference to the United Kingdom and European Union regulations that sanction persons or entities directly or indirectly providing insurance to a person connected with Russia or for use in Russia.
- 2.2 The defendants argued that there was an absence of contingency cover in the Policy for loss or damage and damages were instead recoverable under the applicable Principal Policy (which was not defined).
- 2.3 The defendants argued that the company failed to demonstrate that the operation of an insured peril causing loss of insured assets.
- 2.4 The defendants argued there was a general exclusions clause pursuant to the Policy which included an event of war (even if not declared) between the United States, the UK, France and Russia.
- 2.5 The defendants argued that the Policy's Geographical Limits were amended to exclude Ukraine and Russia, and therefore the company's claim fell outside the scope of the coverage.
- 2.6 Each of the defendant's arguments was questioned and rebutted in paragraphs 84, 86, 87, 89, 91 and 104 of the company's complaint.

Part 12. US LEASING COMPANY VS 25 INSURERS

An aircraft leasing company based in the United States (including aircraft-owning affiliates) brought a US\$147 million claim against insurers operating in the major insurance markets in the Supreme Court of the State of New York in December 2022 for failing to pay out on claims for four commercial aircraft on lease to a Russian airline.

1. THE PLAINTIFF'S CASE

- 1.1 The company's argument was based on alleged breaches by the insurers of insurance held by the leasing company as insured against physical loss or damage to the aircraft including as a result of war risks.
- 1.2 The company claimed the aircraft were lost as a result of Russia's invasion of Ukraine and the sanctions and other legal developments since then (described above in this Advisory), and that despite ongoing discussions, the insurers have refused to confirm or deny coverage to the company. Thus the company claims that the insurers have effectively breached the policy by denying coverage.

- 1.3 The company further alleges that the airline in question dismantled three of the four aircraft for parts. The company further describes an attempt at a consensual redelivery of the aircraft in Turkey (and their redeployment with a Turkish airline), which was thwarted because the Russian government would not issue the necessary flight permits. Following that, the company demanded return of the aircraft. The company notes that one aircraft was successfully redelivered in France (because it had previously been located in Turkey rather than Russia), but that such aircraft's records remain with the Russian airline.

Part 13. US LEASING COMPANY VS MULTIPLE INSURERS

On November 28, 2022, a US-based leasing company filed a complaint in Hennepin County, Minnesota, in relation to 18 aircraft seeking damages of \$367 million. The aircraft were on lease to six airlines. The plaintiff claimed it took all reasonable steps to repossess the aircraft in March 2022, and claims the insurers have not taken a position on whether or not the losses are covered.

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