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NASHVILLE

Understanding the Russian Leasing Litigation and its Ramifications

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How familiar are you with the legal issues associated with Aviation reinsurance ?

- A. No familiarity at all
- B. Limited exposure
- C. Some awareness of developing issues related to Russian invasion or Ukraine and Middle East activity
- D. Very familiar due to recent claim activity



Poll

Summary of key events

24/2/22 -	Russia invades Ukraine
25/2/22 -	EU prohibits leasing of aircraft to Russian entities or for use in Russia to take effect on 28/3/22
26/2/22 -	First meeting of Federal Air Transport Agency and certain Russian airlines (communicates regime intent to avoid returning leased aircraft to protect aviation sector)
27/2/22 -	AerCap requests return of aircraft because of default
-	Prosecutor General announces treason charges for those providing assistance to a foreign state if aimed against Russian security interests.
28/2/22 -	Meeting at Transport Ministry with airlines
1/3/22 -	UK sanctions take effect
2/3/22 -	FATA requests all leasing details for foreign-owned aircraft
3/3/22 -	FATA asks for details of cancellations of AWC
-	DAE inform their contingency insurers (through Aon) that they are in the course of repossessing aircraft
4/3/22 -	FATA recommends airlines apply for registration of aircraft
5/3/22 -	FATA advises against flying aircraft out of Russia
-	Putin says that Russian airlines will continue flying
8/3/22 -	Presidential Decree 100 imposes ban on export of aircraft from Russia until 31/12/22
9/3/22 -	Government Resolutions 311 and 312 implementing PD 100 coming into force on <u>10 March 2022</u>

HULL ALL RISKS INSURANCE

1.1. Cover

This Section One covers:

- (a) Contingent Hull, being Aircraft not in the care, custody or control of the Insured or their agents and not within the coverage afforded by paragraph 1.1.(b) of this Section One,
- (b) Possessed Hull, being Aircraft;
 - i) awaiting commencement of a Lease Agreement or
 - ii) returned on expiry/termination of a Lease Agreement or
 - iii) repossessed (or in the course of repossession) from a Lease Agreement or
 - iv) which are in the care, custody or control of the Insured or their agents

in which the Insured has a financial interest (as per the Schedule of Aircraft herein) against all risks of physical loss or damage howsoever occasioned, sustained during the Insurance period, except as hereinafter excluded.

The coverage afforded by paragraph 1.1. (a) of this Section One also applies to Engines in which the Insured has a financial interest whilst attached to an aircraft in which the Insured does not have a financial interest against all risks of physical loss or damage howsoever occasioned, sustained during the Insurance period, except as hereinafter excluded.

Contingent v. Possessed

CONTINGENT COVER – AERCAP (UK)

This Section Covers:

- (a) Aircraft, as per Schedule
- (b) Spares and Equipment

Which are:

- (1) the subject of a lease,
- (2) not in the care, custody or control of the Insured (or their agents),
- (3) in respect of which physical damage coverage is required to be provided under the Principal Insurance,
- (4) against all risks of physical damage and loss,
- (5) sustained during the period of insurance

CONTINGENT COVER (AERCAP) (CONT.)

[But ONLY] in the event:

- 1.(i) the Insured is not indemnified in whole or in part under the Principal Insurance, or
(ii) the Principal Insurance fails to respond to any claim within 90 days after the Insured has made a written claim, or
2. of the lack or insufficiency of required insurance due to an error or accidental omission

Principal Insurance = the insurance required to be effected by the Operator under the Lease

AVN 67B

It is noted that the Contract Party(ies) have an interest in respect of the Equipment under the Contract(s).

Hull & Aircraft Spares

In respect of any claim on Equipment that becomes payable on the basis of a Total Loss, settlement...shall be made to...the Contract Party(ies).

Under Legal Liability Insurance

...the Insurance shall operate in all respects as if a separate Policy had been issued covering each Party insured hereunder.

Severability Clause, such that acts or omissions of one insured does not void cover for other insureds.

Were the lease provisions and AVN 67B sufficient to create or negate a composite policy?

CONTINGENCY RULING

UK

1. No market practice or understanding as to scope of Contingent cover (to exclude conversion by lessee).
2. Existence of NRI not an indicator of scope of Contingent Cover.
3. Premium rates not a helpful indicator of scope of cover.
4. Both lease provision and AVN 67B (and 67C) intended to provide lessor with a composite policy for its own interests.
5. Inserting the words “or operator” in the second paragraph of AVN 48B (such that there is no cover if the aircraft was outside the control of the owner or operator by virtue of a war peril) did not convey that contingent cover was only available if the aircraft was outside the operator’s control.
6. Meaning of words “that are not indemnified in whole or in part” = paid, either in its entirety or that part of claim not paid.

Does not mean that a partial payment voids the contingent cover.

US Courts Address "Course of Repossession"

Case	Determination
BBAM	" ... 'in the course of repossession' must refer to a situation where the lessor has taken some <i>physical act to initiate repossession</i> of the aircraft, such as where it is in the process of being transferred back to the lessor, even if the lessor does not yet have physical possession. For example, the lessor may engage a third party to seize the aircraft at a foreign airport and fly it back to its home port."
Castlelake	"'Repossession' requires acts to take physical possession Tracking the Aircraft, arranging for safe locations in the event of their future return, hiring legal counsel, and demanding return of the Aircraft do not equate to being 'in the course of repossession' given the plain meanings of the operative words and the context in which they are used."

Why it matters: Contingent hull coverage is a backstop policy that applies only if the insured is not indemnified in whole or in part by the operator's policy.



Contingent v. Possessed

IN THE COURSE OF REPOSSESSION

UK LAW

To pay for the physical loss of or damage howsoever sustained occurring during the Period of Insurance to Aircraft in the care, custody or control of the Insured or for which they are responsible (including whilst in the course of repossession).

The Insured may transfer Aircraft between various Sections of this Insurance as required.

- Leases terminated between 3-4 March 2022. DAE argued that at that stage it was in the course of repossessing the aircraft.
- Notice served by Aon transferring the aircraft to possessed sectioned of policy on 3 March 2022.

Repossession required an overt act with a direct causal link to an actual or imminent physical repossession of the aircraft.

The Court highlighted the need for the lessor to have become responsible for the aircraft as regards third parties.

Aircraft could only be transferred between coverages if they were objectively in the course of repossession.

WAR, HI-JACKING AND OTHER PERILS EXCLUSION CLAUSE (AVIATION)

This Policy does not cover claims caused by

- (a) War, invasion, acts of foreign enemies, hostilities (whether war be declared or not), civil war, rebellion, revolution, insurrection, martial law, military or usurped power or attempts at usurpation of power.
- (b) Any hostile detonation of any weapon of war employing atomic or nuclear fission and/or fusion or other like reaction or radioactive force or matter.
- (c) Strikes, riots, civil commotions or labour disturbances.
- (d) 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) Any malicious act or act of sabotage.
- (f) 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.
- (g) Hi-jacking or any unlawful seizure or wrongful exercise of control of the Aircraft or crew in Flight (including any attempt at such seizure or control) made by any person or persons on board the Aircraft acting without the consent of the Insured.

Furthermore this Policy does not cover claims arising whilst the Aircraft is outside the control of the Insured by reason of any of the above perils. The Aircraft shall be deemed to have been restored to the control of the Insured on the safe return of the Aircraft to the Insured at an airfield not excluded by the geographical limits of this Policy, and entirely suitable for the operation of the Aircraft (such safe return shall require that the Aircraft be parked with engines shut down and under no duress).

AVN 48B 1.10.96



AVN 48B

US Approach

- Carlyle (Florida law): The "efficient cause—the one that set the other in motion—is the cause to which the loss is attributable." Concluded "no reasonable juror can find that Carlye's loss was caused by anything other than one or more of the [war risk] perils."
- Castlelake (Minnesota law): Considered "overriding" cause. Because record had conflicting evidence that presented multiple causal factors, summary judgment that Section Three applied was improper.
- BBAM (California law): The "efficient proximate cause doctrine" applies when loss is caused by a combination of covered and excluded risks. No coverage if covered risk is "only a remote cause" or excluded risk is "the efficient proximate, or predominate cause." Russian invasion was "the only distinct event that caused any alleged loss here" because all other following actions "flowed directly from that central event "



Causation

- Castl lake sought coverage from All Risk Insurers and War Risk insurers. Among the issues the insurers argued over the causal trigger:
 - All Risk Insurers: It was undisputed that Russia invaded Ukraine on February 26, 2022 and the invasion was an act for political purposes triggering (a) and (b) and Russian government orders barring return of the planes constitute confiscation under (f).
 - War Risk Insurers: Strongly argued against the invasion constituting war and contested the causation standard in the excluded perils.
- The Court’s finding:
 - “Russia’s invasion of Ukraine, or Russia’s **war** in Ukraine, or Russia’s hostile acts” – “were the efficient proximate cause of the loss of the aircraft.”

Castlake Decision

Castlake, L.P. v. Lancashire Syd. Ltd. et al., 2026 WL 412122 (February 10, 2026 Minn. Ct. App)

CAUSATION

UK LAW

- Must be the proximate i.e. effective cause of the loss judged from the perspective of a business person. Not the first or last cause in time.
- Where there are two concurrent proximate causes, neither of which are excluded but one of which is insured, insurers are generally liable.
- Where there are two proximate interdependent causes of loss, one of which is covered and one of which is excluded, the exclusion generally applies.
- Where there are two proximate causes of loss each of which operates independently of the other and both of which would have caused the same loss and one cause is excluded, the exclusion generally apply. This represents an extension of English law.

WHAT CONSTITUTES A LOSS?

UK LAW

Marine Insurance Act 1906

56(1) A loss may be either total or partial

56(2) A total loss may either be an actual total loss or a constructive total loss

56(3) Unless a different intention appears from the terms of the policy, an insurance against total loss includes a constructive, as well as an actual, total loss

57(1) Where the subject matter is destroyed ... or where the assured is irretrievably deprived thereof, there is an actual total loss

60(2) In particular, there is a constructive total loss –

(i) Where the assured is deprived of the possession of his ship or goods by a peril insured against and (a) it is unlikely that he can recover the ship or goods, as the case may be, or (b) the cost of recovering the ship or goods ... would exceed their value when recovered.

MIA introduced a test of unlikelihood of recovering versus the uncertainty of recovery under the Common law. Lessors argued for the Common Law test; War insurers for the MIA test. All-Risks insurers accepted that the aircraft were lost.

CONCLUSION ON LOSS

UK LAW

1. References to a CTL in various sections of the policy did not convey an intention to incorporate the MIA test for proving a loss, namely, deprivation of possession.
2. Test was whether, as at the date of loss, the deprivation of possession is, on the balance of probabilities, permanent.
3. Permanent in this context means the commercial lifespan of the aircraft.
4. The fact that lessors had exercised the benefit of ownership by selling their aircraft to NSK did not negate the fact that they had been deprived of possession.

PERIL – CONSTRUCTION

UK LAW

- Political Peril -** the act of one or more persons, whether or not agents of a sovereign power, for political or terrorist purposes whether or not the loss or damage therefrom is accidental or intentional.
- Government Perils -** 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.

The issues:

1. Are the two provisions mutually exclusive? **No**
2. Can acts of government fall within the political peril? **No. Agents of sovereign power referred to a foreign government.**
3. Is a political act one done for terrorist purposes: **No. It is one done against government policy in an illegal way**
4. Is the order of a government required for the peril to fall within the Peril? **No**
5. Restraint required **(1) an action by a government or authority, (2) some element of compunction, (3) restraining or detaining the insured property. It does not matter that the person in control of the property did not object to the restraint. The question is whether the insured property was subject to restraint**

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in which the Insured has a financial interest (as per the Schedule of Aircraft herein) against **all risks of physical loss or damage** howsoever occasioned, sustained during the Insurance period, except as hereinafter excluded.

- Exclusion for "loss of use."



Loss

US Courts Address "Physical Loss or Damage to Aircraft"

Case	Determination
Air Lease	Section Three war risks coverage "covers loss or damage that is not covered by [all risks coverage] sections because it was caused by a war risk as defined, regardless of whether the loss or damage was physical . It follows that Section Three covers a broader range of loss or damage—loss or damage that may not qualify as 'physical'—so long as the loss or damage is excluded from [all risks coverage] because of its cause."
BBAM	"Physical loss" includes loss of physical possession and seizure of property Here, Plaintiffs arguably were 'deprived of property without any damage to it' [due to the Russian government's export restrictions]. Likewise, 'physical loss or damage' ... reasonably may be read to refer to a governmental seizure of the Aircraft."
Carlyle	" ... even the narrow term 'physical loss' covers dispossession and physical deprivations , without a need to show actual <i>damage</i> ."
Castlelake	" ... because no insured physically possesses the Aircraft —despite demanding that the Aircraft be returned—they have experienced a physical loss." Physical alteration not required for coverage to attach.
Zephyrus	"The aircraft continues to operate in Russia. Plaintiffs argues they lost use and possession of the aircraft following the outbreak of hostilities between Russia and Ukraine Plaintiffs do not allege the aircraft suffered any physical damage. Instead, they argue they suffered an insurable loss because they have been permanently deprived of the aircraft Plaintiffs do not allege a tangible change to their property."



US Approach

- Insurers may give notice to review "geographical limits" effective 7 days after issuance.
- After the invasion, insurers excluded Russia, Ukraine, and Belarus, with effect after the February 24, 2022 invasion but before the March 10, 2022 Russian resolutions banning export of aircraft.
- Open issue in US cases.
- Carlyle: Addressing whether there was a "physical loss" (but not specifically the date of loss), determined "Plaintiffs ... have not had physical custody, visibility, or control over the aircraft since February 24, 2022."
- Castlelake: Insured asserted March 1, 2022 date of loss (notices of termination of lease and grounding to the lessees) but court did not address that issue.



Date of Loss

DATE OF LOSS

UK LAW

- Sanctions discussion began in January 2022. AerCap indicated to Irish Government that state-owned airlines would not return aircraft if sanctions imposed.
- By 26 February 2022, Aeroflot was told not to return aircraft to Western lessors by government officials. Other state-owned operators were told to await the Government's decision. Private airlines had not been told what to do but were told to await further announcements
- On 28 February, at a further meeting between Russian airlines and the Transport Ministry, it was made clear that Russian airlines should return their foreign aircraft. It was not, however, an order to do so.
- Between 2 – 4 March 2022, FATA sought details of all leased aircraft and which of these were the subject of lease termination.
- On 8 March 2022, Presidential Decree 100 imposed an effective ban on the export of aircraft from Russia. This decree became law on 10 March 2022 by Government Regulations 311 and 312 (subject to exemptions with authority)

DATE OF LOSS (RULING)

UK LAW

- In early days, it looked as if a Russian victory might be swift and while the sanctions may have remained in place, one would have waited to see what happened with the aircraft. One could not say at that stage that it was more likely than not that there would be permanent deprivation.
- By 8 March 2022, the prospect of a swift victory had evaporated.
- By 10 March 2022, it could be said that recovery of the aircraft was on the balance of probabilities unlikely such that deprivation was to be considered permanent.

Date of Loss: 10 March 2022

No need to apply wait and see. Any reasonable period would have ended. Even though the lessors have entered settlements, it does not mean they have not suffered loss.

NOTICE OF REVIEW/GRIP OF PERIL

UK LAW

With the exception of AerCap, War insurers had the right to review geographical policy limits and amend the scope of cover. A notice would be issued effective 7 days later. If the Notice was accepted cover was duly limited. If not accepted by the Insured, the policy would be cancelled.

Notices did not have to list aircraft individually if it was clear which aircraft were being identified.

Most notices expired after 10 March 2022. Some expired on 8 March 2022 cancelling cover.

Lessors argued the legal concept of “Grip of Peril” or “Death Blow” to assert that their losses still fell within the insurance.

Where grievous damage is inflicted in the policy period but the loss, actual or constructive, occurs once cover has expired, the loss would still be covered. “Grip of Peril” is the doctrine applicable to deprivation cases.

However, does the doctrine apply to a Losses Occurring During Policy?

Grip of Peril applied where an Insured is deprived of possession within the Policy Period by operation of a peril insured against and, where in circumstances that the insured cannot reasonably prevent, the deprivation becomes permanent after the Policy Period through a sequence of events following the ordinary course of the peril.



Effect of Trade Sanctions

OTHER FINDINGS

UK LAW

The sanctions regimes did not prevent payment to lessors. US sanctions never covered insurance. UK had an established exception procedure. EU sanctions did not cover non-Russian lessors on a proper construction.

Russian Insurance Settlements:

- were bona fide and did not prejudice Insurers' interests even though subrogation rights were lost.
- Lessors were not obliged to seek pursue claims under the operator policies instead of entering settlements.

Quantum – credit to be given for settlements.

no subrogation for maintenance reserves.

\$300m Event Limit (War) – only applies where detention or restraint is by government of registration. Notwithstanding some oversight functions being outsourced, Ireland remained country of registration.

COSTS

UK LAW

Costs follow the outcome of the case.

- Lessors lost against All Risks insurers. Must reimburse costs on a standard basis.
- Lessors won against War insurers. The War insurers must reimburse their costs on a standard basis.
- Impact on reinsurance towers for cedants using AR tower to alleviate WR limits.

APPEAL

UK

War Insurers:

- Was there an insured loss?
- What is the meaning of “recovered” and “recoverable” in the contingent policies?
- Does Grip of Peril apply to deprivation?

- Forms in General: Facultative, Quota Share, and XOL.
- Risks: Hull (All Risk and War), Liability, and Contingent.
- Reinsurance Issues:
 - Aggregation (Event, Originating Cause, Hours/Radius provisions & other variations)
 - Notice
 - Sanctions & Territorial Limitations
 - Choice of Law
 - Ex Gratia/Follow Obligations
 - Proving loss



Types of Reinsurance & Issues

Underwriting

- Contingent coverage applies "in the event the Insured is not indemnified in whole or in part under the Principal Policy."
- Dispute over meaning of "indemnified" (coverage exists or insured received payment or compensation under the policies).



Ramifications