

Analysis

Insurers Set For Mega-Trial Over 'Lost' Planes Stuck In Russia

By [Joanne Faulkner](#) · [Listen to article](#)

Law360, London (October 1, 2024, 6:17 PM BST) -- A multibillion-dollar trial between the biggest aircraft lessors in the world and their insurers over hundreds of planes stranded in Russia kicks off in London on Wednesday in a case that could have wide ramifications for the insurance and reinsurance sector.



One of the biggest battles during the 12-week trial will be over whether the aircraft can be declared "lost" for the purposes of the insurance policies. (iStock.com/AVZimovskoy)

High Court Judge Christopher Butcher is set to determine whether the aircraft held in Russia when the country was hit with sanctions after the invasion of Ukraine in February 2022 can be declared "lost" or if at some stage they could, in theory, be returned.

"The court's conclusion on this point will be useful guidance for other situations where an undamaged asset has been wrongly retained and there remains a possibility that the assets will be returned," Chris Neilson, a partner at [Mishcon de Reya LLP](#), said.

[AerCap Holdings NV](#), the world's biggest commercial aviation leasing company, and others are seeking payouts from insurers such as [AIG](#) and Lloyd's of London. The aircraft owners claim they have been forced to terminate their leases and have been left out of pocket while many of their planes remain in the country and are being flown by Russian airlines.

The leasing companies say they purchased valid contingent insurance and possessed policies to cover their fleet that should kick in if their own insurers refuse to pay out.

Parallel proceedings over operator policies are also advancing and should begin in November.

One of the biggest battles during the 12-week trial will be over whether the aircraft can be declared "lost" for the purposes of the insurance policies, and whether the actions of the Kremlin were central to the decision by airlines not to return the planes.

The insurers say it is too soon to declare a total loss, which would require the lessors to prove they have been irretrievably deprived of possession of the aircraft, because there is a realistic prospect the aircraft can be returned. The planes continue to be flown by Russian airlines, and can be tracked online.

However, AerCap is also set to plead a slightly lower test of wrongful deprivation where recovery is unlikely or uncertain.

If the lessors are successful, it could have significant ramifications for the insurance and reinsurance industry, with the aviation sector alone potentially facing the biggest loss in its history. It could also have wider implications for other markets affected by ongoing conflicts in various regions around the world, including shipping.

Linda Jacques, a [Lester Aldridge LLP](#) partner, said the insurance policies under examination are "generic" with clauses that could apply to various scenarios. The general policy language and the substantial sums at play — with estimates reaching \$10 billion — means that the insurance and reinsurance market in London will be closely watching the case.

War Risk v. All Risk

A central point of the trial is likely to be whether the conflict between Russia and Ukraine can be resolved. This could determine whether the alleged loss of the aircraft has triggered war-risk insurance policies, which have payout limits, or uncapped all-risk ones.

"These are complex, hard-fought claims where the stakes are high, and the long-lasting impact could be seismic," Garbhan Shanks, a partner at [Fladgate LLP](#), said. "One definite focus point of the trial will be the attempted hospital pass between 'war' risk insurers on the one side and the 'all risk' insurers on the other. Neither side will want to be left writing the checks — and that's because the exposure is enormous."

War risk insurers are arguing that the cause of the loss is the commercial decision of the airlines to wrongfully retain the aircraft and continue to use them for their own commercial purposes. All-risk insurers, on the other hand, say the aircraft were seized for political purposes, and that the actions of the Putin regime amount to the confiscation, restraint, detention or appropriation of the planes.

Jacques predicts that the court is likely to side with the aviation companies, because a ruling against them could leave "a massive hole in the market for war-risk and all risk."

"The risk must fit into one of those clauses, otherwise the whole thing doesn't make sense," Jacques said.

The trial will include expert evidence on Russian politics — from witnesses who will testify on the operation of power in the Russia of Vladimir Putin.

Some insurers also claim that the leasing agreements were voluntarily ended or that Western sanctions prevent insurers from providing cover.

Lawyers for Fidelis Insurance Group are expected to argue that an export permit could have been sought — even after the planes had been re-registered. This would have allowed them to be flown out of Russia.

The biggest claim was filed by AerCap, which sued AIG, along with Lloyd's Insurance Co. and Fidelis [for](#)

[\\$3.5 billion in 2022](#)— although that sum has been reduced through settlements. Its claim has been combined with a handful of other aircraft owners that have policies expressly governed by English law for the trial.

There are between 30 and 40 leasing companies that have aircraft stuck in Russia, with [dozens of claims](#) making their way through the English courts.

The case has drawn parallels with the wave of COVID-19 business interruption cases that insurers faced after the pandemic. Thousands of public places claimed their insurance after they were forced to close their doors, which led to legal wrangling over whether coverage for "prevention of access" and "infectious disease" should be triggered.

Lessors and insurers are also embroiled in litigation in Ireland, where the majority of the world's airline lessors are based, and the U.S. A trial of claims valued at approximately €2.5 billion (\$2.8 billion), which is set to last many months, kicked off in June in Dublin.

There are also trials scheduled in California and Florida which are due to start next year. In one decision in San Francisco, a judge refused to grant a summary judgment application from a group of nine insurers, finding that the seizure of aircraft in Russia constitutes a physical loss within the meaning of its policy.

Lawyers familiar with the matter say that what happens in other jurisdictions is not legally binding, but they can be influential and persuasive.

Some of the same aircraft lessors, including AerCap, are also involved in the reinsurance litigation claims in England, which are due to be heard in November. These concern aircraft that were insured with Russian firms, which reinsured the risk with big Western players, including operators on the Lloyd's of London insurance market.

Some of the reinsurers argued that the claim should be heard in Moscow, and disclosed slips which contained clauses stipulating that any disputes should take place in Russia. However, that jurisdiction challenge [was rejected](#) in March by High Court Judge Andrew Henshaw, who said it was unlikely that the claimants would get a fair trial.

"The insurance market may act sensibly in applying the English law findings to the operator policies," Neilson of Mishcon said. "However, given the sums at stake and each insurer's different exposure, insurers may push for a different conclusion under Russian law."

--Editing by Joe Millis.

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