



The Heated Battle Over Trapped Aircrafts in Russia continues

In our previous article "[Trapped Aircraft in Russia](#) – ‘Mega Trial’ set for October 2024,” we explored the impact of UK, EU, and USA sanctions on Russia, in the aviation sector, following the invasion of Ukraine in February 2022.

The imposition of sanctions has caused an explosion in the litigation between aircraft lessors and their insurers which may have been unintended.

A 12-week trial is due to take place in the [Commercial Court](#) in London, on 2 October 2024, for the claims brought by some of the world’s biggest aircraft leasing firms against their insurers and reinsurers, after the insurers refused to pay out for an estimate of more than 400 unreturned aircrafts in Russia.

Further trials have also been scheduled to take place in Dublin in June this year with some others being heard in the United States.

Recent Updates

Compensation from Domestic Russian Insurers

It is a requirement under Russian law, that Russian air carriers must obtain primary insurance coverage, issued by domestic Russian insurers – which is then reinsured in London and/or other insurance markets across the world.

To date, it has been reported that some aviation leasing firms have secured more than USD 2.5 billion in compensation for more than 100 aircrafts from their Russian insurers, ahead of the legal battle in English Court in October:

- [Aercap](#) have recovered just under USD 1.3 billion in compensation for their losses – including settlement reached relating to 17 aircrafts leased to Aeroflot, with the Russian-state controlled Insurer [NSK](#), for a value of USD 645 million.
- Aeroflot Group have reached settlements with two groups of lessors, which led to the lessors “ceasing”

their claims under the Russian insurance policies and terminating their lease agreements with Aeroflot.

- Dublin-headquartered [SMBC Aviation Capital](#) received a settlement of USD 710 million in October 2023 for 16 aircrafts and their engines previously leased to [Aeroflot](#).

The impact these settlements under Russian insurance will have on the 'mega trial' in London later this year is unclear, as the values at stake remain extremely high for other claims in the market – it is estimated that around 300-400 non-Russian owned aircrafts remain unreturned, amounting to a collective value of around USD 7 billion.

Jurisdictional challenges

Back in July 2023, reinsurers sought to challenge the jurisdiction of English courts about the claims bought by lessors under various reinsurance policies. The Commercial Court heard their arguments earlier in February 2024:

- The reinsurers' main argument was that the reinsurance policies contained exclusive jurisdiction clauses in favour of the courts in Russia. They have also contested jurisdiction based on the location of the aircrafts and the companies providing the primary insurance coverage.
- Queries were raised by the leasing companies as to whether upon the enforcement of the jurisdiction clauses, there is a risk of unfair hearings and inconsistent judgments.

As of the date of this article, no decision has been made yet by the court, but it has been reported that Swiss Re and Chubb, amongst 35 other reinsurers, have now dropped their calls with [AIG](#), [AXA](#), some of the [Lloyds' syndicate](#) and others continuing the push for the transfer.

If the reinsurers are successful in this jurisdictional challenge, the lessors will likely look to an appeal (if allowed) and/or consider the principles underlying the enforcement of Russian judgments in England.

Non-Party Disclosure and the sanctions

In the latest reported case amidst the 'battle' between the insurers and the lessors in England, dated 29 January 2024, the Commercial Court clarified the meaning and effect of The Russia (Sanctions) (EU Exit) Regulations 2019, which were enforced alongside other UK, EU, and USA sanctions on Russia. Upon an application for non-party disclosure made by Aercap against a reinsurance broker, McGill.

The Court ordered the disclosure of relevant reinsurance documents and confirmed that:

- the disclosure of documents by a reinsurance broker to a non-Russian lessor (Aercap's application fell within the scope of CPR 31.17),
- pursuant to a court order for non-party disclosure (McGill's duty of confidentiality),
- would not constitute to a breach of Reg 28.29 or 29A of the Regulations as disclosure pursuant to a disclosure order is not a provision of services.

Mr Justice Butcher has further considered how these principles can be applied broadly and concluded that even in the absence of a court order:

- a broker in the position of McGill,
- providing the type of the documents sought in this application,
- to a lessor in the position of this Aercap,

would not amount to a breach of the Regulations.

This judgment has certainly provided further clarification for those in the London insurance and reinsurance market (whether in the aviation sector or other sectors), when being asked to produce copies of relevant documents on their files.

Comments

As the Russia-Ukraine conflict continues, the 'battle' between the aircraft leasing companies and insurers and reinsurers over roughly 400 aircrafts trapped in Russia remains heated, both inside and out of the courts.

It would be no surprise that in the absence of the lessors being able to recover their significant losses for the stranded airplanes, through further settlements with their insurers and reinsurers or other means, it is likely that the 'mega trial' will go ahead in October 2024 (pending the Commercial Court's decision on jurisdiction). It is anticipated that this decision will set an useful precedent for the insurance and reinsurance market amidst the ongoing conflicts in various regions around the world.

For further insights or assistance related to the Russia Sanction and Aviation, please get in touch with our

[Aviation](#) law specialists at online.enquiries@la-law.com.