



Russian Aircraft Insurance LP Claims – Judgment handed down

11 June 2025

Following a 50 day trial in the Commercial Court in the Russian Aircraft Lessor Policy Claims, on 11 June 2025, Mr Justice Butcher handed down judgment, ruling in favour of the Claimant lessors against the Defendant war risk insurers. The trial started in October 2024 and ended in February 2025. It involved a large number of parties and lawyers (around 70 Counsel). The case is one of the largest in value before the Commercial Court. It is also the first major case relating to aviation insurance since those spawned by the first Gulf War.

In the course of his judgment, the Judge addressed hotly contested issues such as peril (war risks or all risks), the disputed “grip of the peril” doctrine and the effect of sanctions.

Background

At the start of the war in Ukraine in February 2022, there were at least 400 commercial airliners in Russia (mostly Boeings and Airbuses) leased by Western owners/lessors to Russian Airlines. Under EU and UK sanctions, imposed almost immediately after the invasion, the lessors were required to terminate the leases, threatening the local Russian domestic airline network connecting the country. The lessors issued default and termination notices under their leases to the airline lessees. Most of those aircraft have not returned and continue to be operated without the permission of the owners and without the support of the manufacturers.

The Claimants, including AerCap, DAE, Falcon, Merx and Genesis, claimed under insurance policies taken out by them as owners/lessors in respect of their interests in the aircraft, dubbed as “*Lessor Policies*” or “*LPs*”. They are to be distinguished from the policies taken out by the airlines lessees themselves, dubbed the “*Operator Policies*” or “*OPs*”. The OPs have been the subject of several hearings before Henshaw J and Picken J in the Commercial Court including an unsuccessful challenge, by the insurers, to the English Court’s jurisdiction. The OP claimants include many of the same claimants as the LP claims. Many of the defendant insurers are also common to both sets of claims.

The Claimants claimed under ‘Contingent Cover’ and ‘Possessed Cover’ in the LP insurances against both War Risk and All Risk insurers.

Issues

In summary, the main issues were:

1. Were the aircraft a total loss within the policy periods and when?
2. If lost after the relevant dates of policy expiry, is the ‘grip of the peril’ doctrine applicable and were the aircraft in the grip of the peril within the relevant policy period?
3. Were the claims covered under the Contingent Cover or, if not, under the Possessed Cover?
4. To what extent, under the LP Contingent Cover, were the Claimants required to pursue their claims under the OP insurances.
5. Was the loss caused by a War Risk or All Risk peril?
6. Was payment under the policies rendered unlawful by sanctions?
7. In what amounts were the Claimants entitled to be indemnified?

In the Genesis claim, there was an additional issue of whether TMK Syndicate 501 (“TMK”), the leader of Genesis’ War Risk slip, had leader authority to validly bind the following market (the other War Risk Defendants to the Genesis claim) to Endorsement 6, which sought to cancel Genesis’s coverage for Russia by midnight on 2 March 2022. This was by far the earliest date of cancellation. The next cancellation relevant to the Claimants expired by midnight on 8 March 2022.

Findings

In outline, Butcher J found and held that:

8. The aircraft were in the “grip of a peril” by 5 March 2022 and lost by 10 March 2022.
9. The proximate cause of their loss was the coming into force of GR 311. GR 311 was a ‘restraint’ or ‘detention’ within the Government Perils of the WR cover of each of the Claimants.
10. The loss of the Aircraft was not proximately caused by an AR Peril.
11. Each Claimant was entitled to recover in respect of its lost Aircraft under the Contingent Cover but not Possessed Cover.
12. Genesis’s claim succeeded against all its War Risk Defendants save for the slip leader, TMK.
13. The Claimants were, subject to some deductions, entitled to the agreed value in the policies for the aircraft.

Key Reasoning

Although the judgment spans to over 240 pages and runs to over 840 paragraphs, it is notably concise and focused, especially given the length of the trial and huge volumes of materials presented to the judge (including written opening and closing submissions that were longer than *War and Peace*, followed by weeks of oral submissions). There are key points of interest:

14. Butcher J’s adopted the guidance ***LCA Marrickville Pty Limited v Swiss Re International SE*** [2022] FCAFC 17, in the Federal Court of Australia, per Derrington and Colvin JJ at [15]: “The ease with which an insured may establish matters relevant to its claim for indemnity may influence questions of construction ... a construction which advances the purpose of the cover is to be preferred to one that hinders it” as a factor in construing the policies. This was particularly relevant to dispose of arguments by insurers that the policies required the claimants to take onerous steps in pursuing claims under the OPs before they could claim under the Lessor Policies.
15. Butcher J rejected an argument championed by the WR insurer Fidelis that there was a market understanding or practice to the effect that Contingent Cover was designed to mirror the cover which required to be effected by the lessee pursuant to the lease.
16. Butcher J endorsed the “grip of the peril” or “death below” doctrine or principle and its application in aviation context. Butcher J also held the policies, including those with LOD wording, and the Notices of Review/Cancellation did not oust the doctrine of the grip of the peril. He relied on the explanation of the doctrine in the recent Court of Appeal decision in ***Sky UK Limited v Riverstone Managing Agency Ltd*** [2024] EWCA Civ 1567.
17. He held that the loss occurred on 10 March 2022 and was a war risk loss. Russian Government Resolution 311 (“GR 311”) was the proximate cause of the loss. It was: (i) enacted at a time when a quick end to the war had ceased to be a possibility. It was, therefore, an enactment at a time when sanctions, and counter-sanction measures, would be in place for the foreseeable future; and (ii) it was a ban on the export, and thus the return of the aircraft. It was intended to be a prohibition on returns, and it was effective in the sense that no returns occurred after its publication, save in those few cases in which permission was given; and (iii) GR 311 was the culmination of a series of steps taken by the Russian government to retain Western leased aircraft for use by Russian airlines in Russia. GR 311 added to the existing restraints and FATA Message of 5 March 2022. Those measures were interim but GR 311 represented that official, and legally binding, policy; (iv) under authoritarian regime such as Russia, obedience to an enactment such as GR 311 can be expected.
18. The judge said “my conclusion as to the proximate cause of the loss is, to my mind, consistent with what was said contemporaneously by two men who were very well placed to know what was the real cause of Western Leased Aircraft remaining in Russia, and how decisions are taken in Russia: President Putin and Minister Savelyev.”



Notices to Review and Endorsement 6 in the Genesis Claim

The insurance market will no doubt take note that Butcher J upheld the effect of cancellation notices/notices of review served by the War Risk market in seeking to exclude Russia from cover at short notice. However, given the date of loss and grip of the peril findings by Butcher J, the cancellation notices did not prevent the Claimants' claims save in one (partial) respect as Genesis below.

Unique to the Genesis claim was whether Genesis's War Risk cover was validly amended to exclude Russia from midnight on 2 March 2022 for all War Risks subscribers. This turned on whether TMK, the War Risk slip leader, had authority under the slip to sign Endorsement 6 for the rest of the War Risk market. As the Judge ominously said, when identifying its significance: *"If it was, then not only was there no subsisting cover as at the date when the Judge found that the Genesis aircraft was lost, but there would have been no cover as at the date, 5 March 2022, when I have found that found that there was an operative restraint or detention for the purposes of 'grip of the peril' principles."*

Ultimately, Butcher J accepted Genesis's submissions that it was not open to War Risks insurers to advance a case of leader authority when signing Endorsement 6 and that, even it had been open, it was wrong on the material available to the Court. As a result, whilst Genesis was prevented from claiming against TMK for its share on the War Risk slip, Genesis entitled to claim against all other following War Risk Defendants for their shares.

Finally, Butcher J also accepted Genesis' argument that the Defendants were wrong in principle to say that the aircraft could not have been in the grip of a peril or lost *before the formal termination of the lease by the lessor*. War Risk insurers argued that this was especially relevant to Genesis, because the notice of termination of leasing was given on 16 March 2022 (i.e. the day after the expiry of Genesis's LP insurances on 15 March 2022), and accordingly there could have been no loss or operative peril before that date. Butcher J held *"Mr Reeve KC [Counsel for Genesis] was correct to say that, under the terms of the relevant lease, the lessor had an immediate right to take possession of the aircraft from the date of default, and that the first event of default occurred on 1 March 2022, when Genesis served a grounding notice on the basis of the invalidation of reinsurances required under the lease."* Formal termination of the lease is not necessary.

Matthew Reeve KC and Joseph England acted for Genesis, instructed by McGuireWoods.

Robert-Jan Temmink KC and Tom Nixon acted for the successful Claimant, Merx Leasing, instructed by Morgan Lewis.



Robert-Jan Temmink KC

"Robert is an absolute Rolls-Royce of a silk for the modern era." (Chambers UK, 2025)

Robert has a wide-ranging and international practice in commercial and chancery law. He is known for being a talented and intellectually-agile advocate equally at home in fraud and financial services cases as in aviation and shipping matters. He has a strong practice in construction, energy and infrastructure disputes and is often asked to advise and act in complex insolvency and cross-border actions.

[>See Robert's full profile here](#)

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Matthew Reeve KC

"Matthew has an enormous capacity to hunt down every angle on a matter, including many that most people would never think of. He is persistent and tenacious, with a real talent for reminding people of the context in which an argument is happening." (Legal 500, 2025)

Matthew is a highly experienced barrister with a wide-ranging commercial practice, including Shipping, Aviation, Insurance and Reinsurance, Travel, Shipbuilding, Energy, Shipbuilding, financial Professional Negligence and Sports Law. He is consistently one of the highest ranked in Aviation and Shipping. He is listed by Chambers as the leading (first rank) in Aviation and in Tier 2 for both Shipping and Travel. He was shortlisted for "Shipping Junior of the Year" at the Legal 500 UK Awards 2019, for "Shipping, Commodities and Aviation Junior of the Year 2022" and "Shipping, commodities and aviation Silk of the year" at the Legal 500 Bar Awards 2024.

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Joseph England

"Joseph sees straight to the heart of an issue and explains complex aspects of law in black and white terms." (Chambers UK, 2025)

Joe is ranked in the latest edition of Chambers & Partners and Legal 500 as a leading junior in six categories: Civil Fraud, Insurance, Aviation, International Arbitration, Energy and Insolvency. Recent feedback includes: *"Joseph is fantastic. Barristers at the Commercial Bar have a high work ethic but Joseph takes this to a different level. He turns work around fast, and unfailingly, to a very high standard...he regularly takes on and beats senior silks"; "a dangerous adversary, constantly looking for weaknesses in his opponent's position and clients love him."* He qualified as a solicitor at Allen & Overy LLP before transferring to the Bar. He spent the first year of his practice as the Judicial Assistant to Lord Sumption & Lord Wilson in the Supreme Court. Joe soon returned to the Supreme Court as Counsel in **Bank of Cyprus UK Limited v Menelaou** [2015] UKSC 66.

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Tom Nixon

"Tom is an excellent lawyer, he picks up on detail and his drafting is near flawless." (Chambers UK, 2024)

Tom has developed a practice that matches the breadth of Chambers' practice areas, including international commercial arbitration and litigation, shipping, fraud, conflicts of laws, commodities, aviation, commercial chancery and company work. He has experience litigating claims of all sizes, undertaking complex trials both as sole counsel and as part of a larger team, and at every level of appeal.

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