



CMHF SPOTLIGHT

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Potential Implications For
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Aviation Coverage Dispute: Potential Implications For The Marine Insurance Market

Aercap Ireland Ltd -v- AIG Europe S.A. & others (Russian Aircraft Lessor Policy Claims) [2025] EWHC 1430 (Comm)

❖ Factual Background

- Aercap, the world's largest lessor of commercial aircraft, had leased 147 aircrafts and 16 engines to airlines operating in Russia at the time of Russia's invasion of Ukraine (24th Feb 2022). Following the invasion, Aercap issued default and termination notices under the leases because the lessees were affected by international sanctions against Russia.
- On 26th Feb 2022, a meeting was held by Russian Federal Air Transport Agency and certain Russian airlines, from which it became clear that there had been a decision by the Russian government to support airlines not to return the leased aircraft. On 10th Mar 2022, Russian government passed Resolution No.311 (GR311) and No.312 prohibiting export of various items including commercial aircraft.
- Aercap, being the lessor, then sought to claim under their insurance policies for the loss of the aircraft and engines. Pursuant to the aircraft leases, the aircraft and engines were insured in respect of Hull All Risks and War Risks, and the War Risks insurance extended to Political Peril and Government Perils.
- The key issue is whether Hull All Risks or War Risks insurance covered the claim which was valued at over USD4.5 billion. In essence, Hull All Risks insurers argued that the resolutions prohibiting the aircraft from being exported was a government act and fell within the War Risks cover, but War Risks insurers contended that the airlines independently chose to retain the aircraft to save their business, meaning a commercial decision by Russian airlines and therefore Hull All Risks policy was triggered.
- This article focuses only on aspects of the court decision that are more generally relevant to marine insurance.

Aviation Coverage Dispute: Potential Implications For The Marine Insurance Market (Cont'd)

❖ Issue 1: Whether there is a government peril or political peril ?

The Court first considered the relevant War Risks perils. Under the War Risks policy, the Political Peril provision covered:

“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.”

The Government Perils provision stated:

“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 Court held that there is government peril under the War Risks policy by incorporation of Government Perils provision. With a practical approach, the Court found that:

- “Restraint” and “detention” should include 3 key elements, i.e.: i) an act by the government; ii) resulting in some form of compulsion, and iii) the effect of which was to restrain or detain the insured assets.
- As to insurers’ argument that Government Perils required a formal government order for restraint, the Court held that an “order” of the government did not need to be legally or constitutionally valid, as the clause stated “civil, military or de facto” governments, which could often exercise power without formal mechanisms in place. The terms such as “restraint” and “detention” referred to what actually happened, not necessarily derive from a formal order of government.

❖ Issue 1: Whether there is a government peril or political peril?(Cont'd)

- It was held that the Political Peril clause was not intended to cover acts of government itself, as the use of “political” alongside “terrorist” indicated that the clause targeted actions that were in some way hostile to the government, not the acts of the government itself.
- War Risks insurers contended that restraint or detention only existed if the airlines wanted to return the aircraft but were prevented from doing so. The Court rejected this argument and held that “restraint” and “detention” referred to types of government act affecting the insured asset and the focus should be what actually happened to the property; if the conduct occurred, it would qualify regardless of the airlines’ intentions.

❖ Issue 2: Could Lessor demonstrate permanent deprivation of the aircraft? If so, when?

The relevant insuring clauses were triggered by “physical loss or damage” sustained to the aircraft during the period of insurance. Lessor argued that it was sufficient for them to show, on balance of probabilities, that recovery of the aircraft was a “mere chance”. War Risks insurers contended that the appropriate test was whether there was no realistic prospect of recovery at any time within the commercial lifetime of the aircraft, and this threshold had not been met.

The Court agreed with the Lessor that they only needed to establish that deprivation of possession was, on the balance of probabilities (interpreted as being “more probable than not”), permanent. It rejected the test submitted by War Risks insurers as that derives from the Constructive Total Loss in Marine Insurance Act 1906, and should be distinguished in this aviation case. Applying this test of balance of probabilities, the Court held that the Lessor suffered permanent loss of possession of the aircraft upon the implementation of GR 311 on 10th March 2022.

❖ Issue 3: Proximate cause of loss

The War Risks insurers claimed that there are two independent and concurrent causes, i.e. i) the airlines' refusal to return the aircraft and ii) the Russian government's export ban via the GR311.

The Court held that the proximate cause of the loss was the action taken by the Russian government which made it impossible for Aercap to recover their property legally. The other suggested cause, namely, airlines' own decision to retain the aircraft, was not a cause of equal efficacy or efficiency with the Government measures. There was also no evidence to suggest that the airlines made decision to keep the aircraft prior to the enforcement of GR311. Therefore, the proximate cause of the loss was a War Risks peril and the claim fell under War Risks cover.

❖ Issue 4: Grip of the peril and loss of property

It was noteworthy that War Risks insurers tendered respective Notices of Review of Geographic Limits ("Notices") during 1st – 3rd March 2022, which has the effect that (in most of the Notices, from midnight 7 days after the notice was issued) either the cover would be cancelled entirely if the notice were not accepted by the insured, or if they were accepted cover would be amended to exclude the countries specified in the notices from that date. Therefore, insurers had terminated cover in Russia at certain hours during 8th – 10th March 2022, prior to enforcement time of GR 311 when the Court found the loss occurred.

The War Risks Insurers argued that the aircraft were lost after the termination of cover for Russia, therefore there was no cover for such loss. The lessor argued that the loss flowed from a peril that was operative within the insurance period, hence they were entitled to cover notwithstanding that the total loss occurred after cover expiry.

❖ Issue 4: Grip of the peril and loss of property (Cont'd)

The Court held in favor of lessor by referring to the “grip of peril” (or “death blow”) concept that originated from marine insurance, and clarified that:

“if an insured is, within the policy period, deprived of possession of the relevant property by the operation of a peril insured against and, in circumstances which the insured cannot reasonably prevent, that deprivation of possession develops after the end of the policy period into a permanent deprivation by way of a sequence of events following in the ordinary course from the peril insured against which has operated during the policy period, then the insured is entitled to an indemnity under the policy.”

The Court found that the government measures causing restraint and detention were already in place from 5th March 2022 when the Russian aviation authority advised airlines not to return the leased aircraft, and the loss of the aircraft on 10th March 2022 arose in sequence of the events that followed in the ordinary course of the restraint and detention. It was held that the aircraft were in the grip of the peril from 5th March 2022 before the time the relevant policies were terminated, and the lessor were entitled to cover.

As a side note for information, in making this decision, the Court made several important findings, including:

- The policy covering “loss occurring during” does not overcome the application of the “grip of peril” principle;
- The “grip of peril” principle naturally applies to deprivation of possession scenarios;
- There is no difference between (i) a loss where physical damage during the period of insurance later develops into a total loss after expiry and (ii) a loss where a deprivation during the period later becomes permanent after expiry, as a matter of construction.

❖ Issue 5: Impact of sanction

War Risks insurers argued that the payment of Aercap's claim was prohibited or at least complicated by the sanctions imposed by the EU, UK and US. The Court clarified that neither EU nor US sanctions prevented payments to non-Russian entity based outside Russia.

- US sanctions: the insurers cited General Prohibition 10 of the Export Administration Regulations, alleging that it barred coverage due to US-origin components in the aircraft. The Court refuted this, stating that the regulations focus on physical export or transfer, not insurance provision to lessors with detained aircraft. Therefore, there was no breach of sanction by paying indemnity to Aercap which is a non-Russian company.
- EU sanctions: the insurers referred to EU Regulation No.833/2014, which prohibits insurance “*to any person, entity or body in Russia or for use in Russia*”, and argued this regulation included aircraft within Russian territory. The Court also rejected, asserting that Western-based lessors could insure their own losses despite their aircraft being stuck in Russia.

❖ Comments

This decision, although for aviation sector, still provides useful guidance to shipping industry on how English Court interprets coverage disputes and causation under war risks policies. It also highlights that the Court does not adopt wide interpretation of sanctions regimes so to allow such regimes to be misused as a way of avoiding insurers' contractual obligations. Ship operators are recommended to review their war policies to see whether the key terms reflect the currently heightened exposures that can arise when trading in areas with geopolitical tension.

In A Nutshell: The Inter-Club New York Produce Exchange Agreement

❖ What is the Inter-Club New York Produce Exchange Agreement?

The Inter-Club New York Produce Exchange Agreement (“ICA”) is an agreement drawn up by the International Group Protection & Indemnity Associations (“IG P&I Clubs”) in 1970 to provide a simple mechanism for apportioning cargo claims between Owners and Charterers arising under the NYPE form and Asbatime form charterparties. This is to avoid the lengthy and costly litigation on matters of liability and apportionment.

❖ Is the ICA legally binding and does it apply to all charterparties?

ICA does not have the legal force mandating the incorporation into charterparties, but it is recommended by most IG P&I Clubs to do so.

For the 1993 and 2015 versions of the NYPE form, there is a Clause 27 expressly incorporating the ICA. The effect of incorporation makes the terms of ICA applicable directly to both Owners and Charterers.

The older NYPE forms like 1946, ICA is not expressly incorporated, but can use following recommended wording to incorporate ICA:

“Cargo claims as between Owners and the Charterers shall be governed by, secured, apportioned and settled fully in accordance with the provision of the Inter-Club New York Produce Exchange Agreement 2011 (as amended July 2025), or any subsequent modification or replacement thereof. This clause shall take precedence over any other clause or clauses in this charterparty purporting to incorporate any other version of the Inter-Club New York Produce Exchange Agreement into this charterparty.”

In A Nutshell: The Inter-Club New York Produce Exchange Agreement (Cont'd)

❖ How is liability apportioned under ICA?

The apportionment of liability depends on the circumstances of how the claims arose:

Section	Circumstances	Apportionment of liability
8(a)	Claims arising out of unseaworthiness and/or error or fault in navigation or management of the vessel	100% Owners
	Where Owners prove that the unseaworthiness was caused by the loading, stowage, lashing, discharge or other handling of the cargo	100% Charterers
8(b)	Claims arising out of loading, stowage, lashing, discharge, storage or other handling of cargo	100% Charterers
	Where the words “and responsibility” are added to clause 8 or if there is a similar amendment to make the master responsible for cargo handling	50% Owners 50% Charterers
	Where charterers prove that failure to carry out cargo operations was caused by unseaworthiness of the vessel	100% Owners

In A Nutshell: The Inter-Club New York Produce Exchange Agreement (Cont'd)

❖ How is liability apportioned under ICA? (Cont'd)

Section	Circumstances	Apportionment of liability
8(c)	Claims arising out of shortage and /or over carriage	50% Owners 50% Charterers
	Where there is clear and irrefutable evidence that claim arose out of pilferage or act or neglect by one or another (including their servants or sub-contractors)	100% by liable party
8(d)	All other cargo claims whatsoever including claims for delay to cargo	50% Owners 50% Charterers
	Where there is clear and irrefutable evidence that claim arose out of pilferage or act or neglect by one or another (including their servants or sub-contractors)	100% by liable party

- Under clause 8(b), while Charterers are normally 100% responsible for all cargo operation responsibilities, the addition of word “and responsibility” or any similar wording to make the master responsible for cargo handling would change the apportionment to 50/50. However, a clause calling for a partial transfer of responsibility for stowage (e.g. stating “the stevedore although appointed and paid by Charterers or their agents, to remain under the direction of the Master who will be responsible for proper stowage and seaworthiness...”, is insufficient to change the apportionment to 50/50.

❖ How is liability apportioned under ICA? (Cont'd)

- Under clause 8(c) and (d), please note that the words “act or neglect of one party” do not require any culpability or wrongdoing. For example, if soybean cargo was damaged because Charterers instructed the vessel to wait off the discharge port for a period of 4 months since Charterers were not paid, Owners were entitled to make a claim under clause 8(d) as the damage to the cargo was caused by Charterers’ act of instructing the vessel to wait, which by itself is not a breach of charterparty.

❖ Conditions to recovery

- The original claim must be made under a contract of carriage.
- The cargo responsibility clauses in the charterparty must not be materially amended.
- The original claim has to be properly settled, compromised and paid.

As to whether a claim is “properly settled”, the threshold is low: a claim is not properly settled if the Owner or a Club settles a claim which is so weak that no reasonable Owner or Club would take it sufficiently seriously to negotiate any settlement involving payment.

In light of above, when dealing with ICA claims, it is recommended that:

- Ask counterparty for any relevant information to help defend the cargo claim.
- Take advice from Club / local lawyers on merits of the cargo claim and enter into an agreement according to legal advice.
- Allow the counterparty to comment on the settlement prior to entering into any settlement.

❖ Are custom fines recoverable under ICA ?

Section 3 of the ICA provides that the cargo claim also includes customs dues or fines in respect of cargo loss, damage, shortage, overcarriage or delay. The Section 4 provides that the apportionment under this ICA shall only be applied to cargo claims made under a contract of carriage. It is therefore arguable that the fines are only recoverable under ICA where the fines are levied against and borne by the cargo interests, and the cargo interests then claim the fines against carrier under the contract of carriage. In other words, if the fines are levied against carrier by customs authorities, such fines do not form part of the cargo claim and may not be recoverable under the ICA.

Since the strict construction of the ICA is that customs fines imposed directly on an owner or charterer or its agent (instead of an indemnity claim brought by cargo interests) probably do not fall under the ICA, there is no entitlement to ICA security between an owner and charterer for customs fines unless either has provided security to cargo interests.

❖ When must security be furnished under the ICA ?

ICA provides reciprocal exchange of securities once security has been issued by owners / charterers to the cargo claimants, i.e. a party is only obliged to put up security after such security has been lodged by its counter party to the cargo interests.

Once a party issues security to cargo claimants, he is entitled to make a demand for security for the same quantum from his counter party, regardless of any right apportionment under ICA or under the contract of carriage.

In A Nutshell: The Inter-Club New York Produce Exchange Agreement (Cont'd)

❖ When must security be furnished under the ICA ? (Cont'd)

The owners / charterers should caution when drafting charterparty clauses relating to incorporation of ICA. In London Arbitration 18/18, the charterparty provided for claims to be “apportioned / settled as specified by the Inter-Club New York Produce Exchange Agreement...”. The tribunal held that as a matter of strict construction, only the parts of ICA in relation to the apportionment and settlement of claims were incorporated, and other parts including the security provision was not incorporated. Hence, in that case, charterer was not contractually obliged to put up counter security as per ICA.

❖ ICA 2011 as amended July 2025

The IG P&I Clubs have recently amended the ICA 2011 version, and this 2025 Agreement will take effect from 14th July 2025. It will apply to charterparties entered after 14th July 2025, or the charterparty which contains wording such as “ICA 1996 or any amendments thereto”.

The key amendment is Section 3(c) regarding costs reasonably incurred in defence or in settlement of claim. In the previous versions, it was uncertain whether costs incurred in successfully defending cargo claim can be recoverable under ICA, as once there is no cargo claim after successful defence, technically there is no liability incurred and the costs cannot be passed down under ICA. 2025 Agreement amended Section 3(c) by inserting the wording “even if the claim is successfully defended, withdrawn or otherwise not pursued”, so to ascertain that the costs reasonably incurred in quenching the original cargo claim can be passed down the charter chain.

Another key amendment is in Section 4(c) by adding “Settled includes but is not limited to, claims adjudicated by any court or tribunal, or those resolved through an amicable settlement between the parties.” The intention is to make clear “settled” is not limited to amicable settlement between parties, but also encompasses a court judgment or arbitration award.



Market Snapshot

Global Disruption Shaping The Way Owners Think About Risk, Timing And Capital

- Shipping intelligence resources observed the geopolitical turmoil, ranging from regional conflicts to trade wars, has redefined the shipping market this year, curbing investment in some sectors while accelerating strategic orders in others.
- The changes in US trade policy hit vehicle carrier markets hard, resulting in a 44% drop in charter rates for standard 6,500-ceu vessels and a complete halt in newbuilding orders during the first half year of 2025.
- LPG sector has also be impacted, where the newly imposed tariff between the US and China weighed on investor confidence and helped push sale-and-purchase volumes down by 25% year on year.
- Containership orders surged 288% in the first 6 months of 2025 compared to the same period last year, as Owners tend to secure tonnage amid the ongoing rerouting around the Cape of Good Hope and congestion at European ports.
- Softer earnings and regulatory uncertainty led to cooling sentiment in tanker sector, with the newbuilding orders plunging 74% and sale-and-purchase volumes down by 31% year on year.

Tankers Could Be Next In Line For Rate 'Breakout' As Oil Flows

- Shipping analysts predicted that the crude tanker rates would rebound after the traditional summer lull due to the continued strength of oil demand.
- According to market data, the freight rates of crude oil tankers typically bottom in August before rising into the fourth quarter. Modern Eco VLCCs were assessed at USD35,600 per day by Clarksons in mid-July, which was up by 13% over the past month.
- The current market shows the oil demand continues to outstrip oil supply, with inventory levels already at 5-year lows. Brent crude price showed a rising trend by mid-July, and the OPEC+ planned to add 1.1 million barrels per day of production in August and September.
- With fresh supply from OPEC and the Atlantic basin building, oil flows are expected to rise and tanker rates could be next in line for a breakout.

Robbery Incidents In Singapore Straits Will Continue Rising

- The latest data showed 11 piracy incidents recorded from 1st to 7th July, and from January to June, incidents quadrupled to 80 from 21 in the corresponding period of 2024.
- Analysts said the increasing tendency of piracy incidents may be attributed to the local socio-economic situation and the low probability of getting caught.
- This year's incidents shared similar characteristics. Firstly, almost all incidents occurred in the eastbound lane of the Singapore Strait, known as the Phillip Channel, because vessels have to take a sharp left turn into the Singapore Strait, and the turn has to be navigated with very slow speed, giving pirates the opportunity to board the vessel.
- Secondly, the incidents were mostly opportunistic thefts, and the perpetrators were non-confrontational and adopted "hit-and-run" approach.
- About 52% of raids target bulkers, 24% tankers and 11% container ships.

Deadly Return Of Houthis Sees War Risk Rates Hiking

- The sinking of the 63,300-dwt bulker "Magic Sea" on 7th July and the fatal attack on the 36,800-dwt "Eternity C" on the same day announced the sudden return to action by Houthis after a pause of nearly eight months in Red Sea.
- The Houthis justified the attack on "Magic Sea" as it belonged to a company that had violated the ban on entering the ports of occupied Palestine; and "Eternity C" was attacked due to its affiliation with vessels that had called at Israeli ports.
- War Risks additional premium rates for single transits through the Red Sea had been stable at around 0.2% to 0.3% of hull value for the last few months; however, the rates for non-Israeli-linked vessels had risen sharply since the 7th July and could rise to around 1%.
- For some Israeli-linked vessels, sources said some War Risks insurers even pulled back their offer of additional premium.

Asia Pulls Back On LNG As Europe Steps Up Imports

- Market analysts observed that Asia's appetite for LNG seemed cooling in 2025, with major buyer like China and India pulling back on imports. Imports for July was down by 6.3% compared to 2024.
- China's LNG imports in July decreased over 16% from last year and the total annual demand off by 21%, due to pricier spot cargoes and stronger domestic production. India logged a drop of over 2 million tons compared to 2024.
- Europe increased imports and the ramped up purchases by nearly 25% as the region worked to rebuild reserves and reduce reliance on Russian gas. This surge had helped to balance out weaker Asian demand and keep the spot rates resilient.
- In mid-July, the North Asian spot LNG price averaged at USD12.33 per mmBtu, a level which was tough for emerging Asian economies to swallow.
- Europe's strong appetite and Asia's retreat in LNG will reshape the LNG tanker market in way of the routing and freights.

TotalEnergies And CMA CGM Form Landmark Joint Venture For LNG Bunkering In Rotterdam

- TotalEnergies and CMA CGM Group announced the formation of a 50/50 joint venture to develop and operate an LNG bunkering facility in Port of Rotterdam.
- The partnership will deploy a new 20,000 cubic meter LNG bunker vessel in Rotterdam by the end of 2028, and the vessel will provide complete logistics services in the Amsterdam-Rotterdam-Antwerp region.
- According to the agreement, TotalEnergies will supply CMA CGM with up to 360,000 tonnes of LNG annually from 2028 to 2040, supporting the shipping company's goal of Net Zero by 2050. CMA CGM's dual-fuel fleet is projected to grow to 123 vessels by 2029.
- The joint venture will leverage TotalEnergies' existing infrastructure in the region, including the 18,600 cubic meter bunker vessel "Gas Agility" which has been operating since 2020.

Japan Commits USD550 Billion To U.S. Industries Including Strategic Shipbuilding Investment

- U.S. and Japan reached a trade deal of a USD550 billion package for U.S.- bound investment and loans focusing on key industries including shipbuilding. This agreement came as U.S. sought to build strategic industrial capacity outside China.
- The funds will be spent at President Trump's discretion, with investments targeting energy, semiconductors, critical minerals, pharmaceuticals and shipbuilding sectors.
- The trade deal, as announced on 23rd July, also lowers tariffs on Japanese auto imports and spares Japan from new levies on other goods that had been threatened by Trump administration in April.
- The deal follows Hanwha Shipping's recent order for an LNG carrier from Hanwha Philly Shipyard - the first U.S.-ordered, export-market-viable LNG carrier in nearly 50 years.
- While the agreement represents one of the most significant deals secured by U.S. government since announcing the global tariffs earlier this year, the specific details about implementation timelines and project allocations remain unclear.

Singapore Aims To Issue Methanol Bunkering Licenses In 4th Quarter

- The Singapore authorities opened application of methanol bunkering licenses in March this year. By July, the Maritime & Port Authority of Singapore (MPA) had received applications from 13 companies for methanol bunkering licenses.
- MPA aimed to issue the first batch of methanol bunker supplier licenses in 4th quarter this year, the license will allow the suppliers to supply methanol as a marine fuel in Port of Singapore from 1st January 2026 to 31st December 2030.
- MPA is currently evaluating the applications, and it is not yet announced that how many licences they plan to issue.
- A multi-agency chemical spill exercise has been conducted in July, which simulated a methanol spill from a collision involving a methanol-carrying tanker. The exercise included coordinated efforts for spill containment and the evacuation of injured crew, and was observed by IMO Secretary-General.
- Conducted off Singapore's southern coast, the exercise involved 11 vessels and over 150 personnel from more than 10 governments agencies and industry partners.

Dry Bulk Market: Slow Demand To Hurt Freight Rates Throughout 2025

- Market sources estimated that the dry bulk demand was expected to remain soft throughout 2025 primarily due to the softening demand for iron ore and coal.
- Iron ore accounts for over 70% of Capesize segment's cargo volumes, hence the Capesize tonnage demand closely tracks iron ore flows. For 2025, Chinese iron ore imports are projected to decline by 3%, while global imports are expected to contract by 2%.
- Coal trade faces similar condition. Global seaborne coal volumes is projected to drop by 6% in 2025, with Chinese imports decreasing by 11%
- However, market sources are optimistic with the bauxite trade, as the global bauxite seaborne volumes are estimated to grow by 19% year on year in 2025, mainly driven by China's expansion of its electric vehicle and renewable energy sectors.
- A key but uncertain factor is the development of U.S. trade policy, as any potential increase of tariffs in steel and aluminum could cause new challenges to dry bulker seaborne demand.

Container Rates Continue Weekly Slide As Tariff Impact Fades

- Market data recorded consecutively weekly decline since mid-June and July. The downturn came after a significant surge in rates that began in May, one month after the announcement of higher U.S. tariffs in April.
- The container rates climbed steadily from May to early June, until the market indicated the tariff's initial impact has not been sustained.
- Transpacific routes showed 4% - 6% decline in mid-July. Despite the decline, the current rates remain elevated compared to pre-tariff levels.
- Analysts expected the downward trend would continue, citing weak demand as a primary factor. It was anticipated that a further weakening in the supply-demand balance during the second half of 2025, which will likely drive spot rates lower.
- Market uncertainty still remains high, with potential additional tariff by Trump administration and capacity changes related to the introduction of U.S. penalties targeting Chinese vessels.

Happy Reading, See You In August!

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