

<b>Aircastle Ltd. v Chubb Eur. Group S.E.</b>
2026 NY Slip Op 26080
May 13, 2026
Supreme Court, New York County
Joel M. Cohen, J.
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Aircastle Limited, AIRCASTLE (IRELAND) LIMITED, CONSTITUTION AIRCRAFT LEASING (IRELAND) 3 LIMITED, CONSTITUTION AIRCRAFT LEASING (IRELAND) 5 LIMITED,  
Plaintiffs,

v

Chubb European Group S.E., CHUBB EUROPEAN GROUP PLC, LLOYD'S SYNDICATE KLN 0510, LLOYD'S SYNDICATE CVS 1919, LLOYD'S SYNDICATE XLC 2003, LLOYD'S SYNDICATE FDY 0435, LLOYD'S SYNDICATE AFB2623, LLOYD'S SYNDICATE 0623, LLOYD'S SYNDICATE CSL 1084, LIBERTY MUTUAL INSURANCE CO LTD, LIBERTY MUTUAL INSURANCE EUROPE LTD, HDI GLOBAL SPECIALTY SE, CONVEX INSURANCE UK LIMITED, GLOBAL AEROSPACE UNDERWRITING MNGRS, GREAT LAKES INSURANCE SE, BERKSHIRE HATHAWAY SPECIALTY INS, HCC INTERNATIONAL INSURANCE CO PLC, MAPFRE ESPANA, COMPANIA DE SEGUROS Y REASEGUROS, S.A., MITSUI SUMITOMO INSURANCE CO (EUROPE) LIMITED, SWISS RE INTERNATIONAL SE, LEXINGTON INSURANCE COMPANY, AXIS SPECIALTY EUROPE SE, LLOYD'S SYNDICATE AUW 0609, LLOYD'S SYNDICATE LIB 4472, LLOYD'S SYNDICATE TAL 1183, LLOYD'S CONSORTIUM LANCASHIRE INSURANCE COMPANY LTD, LLOYD'S SYNDICATE CCL 3010, LLOYD'S SYNDICATE MMX 2010, LLOYD'S SYNDICATE AUL 1274, LLOYD'S

SYNDICATE ARG 2121, LLOYD'S SYNDICATE MRS 457, LLOYD'S SYNDICATE APL 1969, HDI GLOBAL SPECIALTY SE-UK, INTERNATIONAL INSURANCE COMPANY OF HANNOVER LIMITED, LLOYD'S SYNDICATE AML 2001, LLOYD'S CONSORTIUM HIVE AERO LIMITED, LLOYD'S SYNDICATE AAL 2012, LLOYD'S SYNDICATE DUP 1729, CHUBB GLOBAL MARKETS AVIATION A2807, GLOBAL AEROSPACE UNDERWRITING MANAGERS LIMITED, FARADAY FDY 435, SWISS RE INTERNATIONAL SE UK BRANCH 4066/01/3, STARR SYNDICATE CVS 1919, LLOYD'S 510/1880, AXIS SPECIALTY EUROPE SE A9505, GREAT LAKES INSURANCE SE G5101, FIDELIS UNDERWRITING LIMITED F0012, CHAUCER CSL 1084, CONVEX INSURANCE UK LIMITED C9800, BEAZLEY AFB 2623, AFB 623, CHUBB GLOBAL MARKETS CGM A2807, TALBOT TAL 1183, HDI GLOBAL SPECIALTY - UK H4905, IQU SYNDICATE 1856, HARTFORD HIG 1221, HIVE AERO 9787, AXA XL INSURANCE XLC 2003, AXA XL INSURANCE C7509, MS AMLIN AML 2001, SWISS RE INTERNATIONAL SE UK BRANCH, BEAZLEY FURLONGE LIMITED FOR AND ON BEHALF OF THE 2020 AND 2022 UNDERWRITING MEMBERS OF SYNDICATE 623 AND SYNDICATE 2623 AT LLOYD'S, CHAUCER CORPORATE CAPITAL (NO. 3) LTD. (UK) 100% AS THE SOLE CORPORATE MEMBER OF SYNDICATE 1084 AT LLOYD'S FOR THE 2020 AND 2022 YEARS OF ACCOUNTS, LIBERTY MUTUAL INSURANCE EUROPE SE, ATRIUM UNDERWRITERS LIMITED FOR AND ON BEHALF OF THE 2020 UNDERWRITING MEMBERS OF SYNDICATE 609 AT LLOYD'S, IQUW CORPORATE MEMBER LIMITED AS SOLE CORPORATE MEMBER OF SYNDICATE 1856 AT LLOYD'S FOR THE 2022 YEAR OF ACCOUNT, LANCASHIRE SYNDICATES LIMITED FOR AND ON BEHALF OF LLOYD'S CONSORTIUM 9381 AND ITS PARTICIPATING 2020 UNDERWRITING MEMBERS OF SYNDICATE 3010, SYNDICATE 2010, SYNDICATE 1274, SYNDICATE 2121, SYNDICATE 457, AND SYNDICATE 1969 AT LLOYD'S, LIBERTY CORPORATE CAPITAL LIMITED AS THE SOLE CORPORATE MEMBER OF SYNDICATE 4472 AT LLOYD'S FOR THE 2020 YEAR OF ACCOUNT, ARCH MANAGING AGENCY LIMITED FOR AND ON BEHALF OF THE 2020 AND 2022 UNDERWRITING MEMBERS OF SYNDICATE 2012 AT LLOYD'S, CHORD REINSURANCE LIMITED FOR AND ON BEHALF OF LLOYD'S CONSORTIUM 9638 AND ITS PARTICIPATING 2022 UNDERWRITING MEMBERS OF SYNDICATE 4242 AND SYNDICATE 2689 AT LLOYD'S, DALE MANAGING AGENCY LIMITED FOR AND ON

BEHALF OF THE 2020 AND 2022 UNDERWRITING MEMBERS OF SYNDICATE 1729 AT LLOYD'S, MS AMLIN CORPORATE MEMBER LIMITED AS THE SOLE CORPORATE MEMBER OF SYNDICATE 2001 AT LLOYD'S FOR THE 2020 AND 2022 YEARS OF ACCOUNTS, NAVIGATORS UNDERWRITING AGENCY LIMITED (T/A THE HARTFORD) FOR AND ON BEHALF OF THE 2022 UNDERWRITING MEMBERS OF SYNDICATE 1221 AT LLOYD'S, LLOYD'S SYNDICATE 1183 SUBSCRIBING TO POLICY NUMBER XXXXX, LLOYD'S SYNDICATE 1183 SUBSCRIBING TO POLICY NUMBER XXXXX, KLN 510/TMK 1880, TOKIO MARINE KILN SYNDICATES LIMITED ON ITS OWN BEHALF AND ON BEHALF OF ALL UNDERWRITING MEMBERS OF LLOYD'S SYNDICATE 510, TOKIO MARINE KILN SYNDICATES LIMITED ON ITS OWN BEHALF AND ON BEHALF OF ALL UNDERWRITING MEMBERS OF LLOYD'S SYNDICATE 1880, AMERICAN INTERNATIONAL GROUP UK LIMITED, BERKSHIRE HATHAWAY INTERNATIONAL INSURANCE LIMITED, BERKSHIRE HATHAWAY SPECIALTY INSURANCE COMPANY, BERKSHIRE HATHAWAY EUROPEAN INSURANCE DESIGNATED ACTIVITY COMPANY, HCC INTERNATIONAL INSURANCE COMPANY PLC, HOUSTON CASUALTY COMPANY, CONVEX INSURANCE COMPANY UK LIMITED, LLOYD'S SYNDICATE 435, LLOYD'S SYNDICATE 1919, Defendants.

Supreme Court, New York County

Decided on May 13, 2026

Index No. 654131/2022

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**[\*1]**

The following e-filed documents, listed by NYSCEF document number (Motion 018) 326, 327, 328, 329, 330, 397, 398, 399, 400, 401, 402, 403, 404, 405, 406, 407, 408, 409, 410, 411, 412, 413, 414, 415, 416, 417, 418, 419, 420, 421, 422, 423, 424, 425, 426, 427, 428, 429, 430, 431, 432, 433, 434, 435, 436, 437, 438, 439, 440, 441, 442, 443, 444, 445, 446, 447, 448, 449, 450, 451, 452, 453, 454, 455, 456, 457, 458, 459, 460, 461, 462, 463, 464, 465, 466, 467, 468, 469, 470, 471, 472, 473, 474, 475, 476, 477, 478, 479, 480, 481, 482, 483, 484, 485, 486, 487, 488, 489, 490, 491, 492, 493, 494, 495, 496, 497, 498, 499, 500, 501, 502, 503, 504, 505, 506, 507, 508, 509, 510, 511, 512, 513, 514, 515, 516, 517, 518, 519, 520, 521, 522, 523, 524, 525, 526, 527, 528, 529, 530, 531, 532, 533, 534, 535, 536, 537, 538, 539, 540, 541, 542, 543, 544, 545, 685, 686, 687, 688, 689, 690, 691, 692, 693, 694, 695, 696, 697, 698, 699, 700, 701, 702, 703, 704, 705, 706, 707, 708, 709, 710, 711, 712, 713, 714, 715, 716, 717, 718, 719, 720, 721, 722, 723, 724, 725, 726, 727, 728, 729, 730, 731, 732, 733, 734, 735, 736, 737, 738, 739, 740, 741, 742, 743, 744, 745, 746, 747, 748, 749, 750, 751, 752, 753, 754, 755, 756, 757, 758, 759, 760, 761, 762, 763, 764, 765, 766, 767, 768, 769, 770, 771, 772, 773, 774, 775, 776, 777, 778, 779, 780, 781, 782, 783, 784, 785, 786, 787, 788, 789, 790, 791, 792, 793, 794, 795, 796, 804, 964, [\*2]965, 966, 970, 971, 972, 973, 974, 975, 976, 977, 986, 988, 992, 1031, 1032, 1033, 1037, 1041, 1048 were read on this motion for SUMMARY JUDGMENT

The following e-filed documents, listed by NYSCEF document number (Motion 019) 396, 546, 547, 548, 549, 550, 551, 552, 553, 554, 555, 556, 557, 558, 559, 560, 561, 562, 563, 564, 565, 566, 567, 568, 569, 570, 571, 572, 573, 574, 575, 576, 577, 578, 579, 580, 581, 582, 583, 584, 585, 586, 587, 588, 589, 590, 591, 592, 593, 594, 595, 596, 597, 598, 599, 600, 601, 602, 603, 604, 605, 606, 607, 608, 609, 610, 611, 612, 613, 614, 615, 616, 617, 618, 619, 620, 621, 622, 623, 624, 625, 626, 627, 628, 629, 630, 631, 632, 633, 634, 635, 636, 637, 638, 639, 640, 641, 642, 643, 644, 645, 646, 647, 648, 649, 650, 651, 652, 653, 654, 655, 656, 657, 658, 659, 660, 661, 662, 663, 664, 665, 666, 667, 668, 669, 670, 671, 672, 673, 674, 675, 676, 677, 678, 679, 680, 681, 682, 683, 684, 806, 807, 809, 810, 811, 850, 851, 852, 853, 854, 855, 856, 857, 858, 859, 860, 861, 862, 863, 864, 865, 866, 867, 868, 869, 870, 871, 872, 873, 874, 875, 876, 877, 878, 879, 880, 881, 882, 883, 884, 885, 886, 887, 926, 927, 928, 929, 930, 931, 932, 933, 934, 935, 936, 937, 938, 939, 940, 941, 942, 943, 944, 945, 946, 947, 948, 949, 950, 951, 952, 953, 954, 955, 956, 957, 958, 959, 960, 961, 962, 963, 967, 968, 969, 978, 979, 980, 981, 982, 983, 984, 985, 987, 989, 993,

1009, 1010, 1011, 1012, 1013, 1014, 1015, 1016, 1017, 1018, 1036, 1043, 1050, 1051, 1052, 1053, 1054, 1055 were read on this motion for SUMMARY JUDGMENT

This case concerns insurance coverage for aircraft and related equipment leased by Russian airlines that were not returned to the insured lessors after Russia's invasion of Ukraine on February 24, 2022. The lessors, Plaintiffs Aircastle (Ireland) Designated Activity Company (f/k/a Aircastle (Ireland) Limited, f/k/a Klaatu Aircraft Leasing (Ireland) Limited), Constitution Aircraft Leasing (Ireland) 3 Limited, and Constitution Aircraft Leasing (Ireland) 5 Limited (collectively, "Aircastle"), commenced this action to obtain a declaration of their rights under two insurance policies covering the aircraft and equipment and for breach of contract damages stemming from various insurers' refusal to pay out under the policies.

After completion of discovery, Defendant insurers Swiss Re International SE, UK Branch and Swiss Re International SE, UK Branch 4066/01/3 (collectively, "Swiss Re") and a group of insurers represented by Foley & Lardner LLP (the "Foley Insurers")<sup>FN1</sup> moved for [\*3]summary judgment in their favor principally on the ground that the requested "All Risks" coverage under their respective policies is precluded by a "War Perils Exclusion." Aircastle's claims against all other insurers named in this action—including insurers whose policies did *not* exclude War Perils—were settled and discontinued before oral argument on these motions (*see* NYSCEF 303, 991, 1002, 1034, 1047, 1058).

For the reasons set forth below, the motions are granted and Aircastle's claims against Swiss Re and the Foley Insurers (collectively, the "All Risks Insurers") are dismissed. In a nutshell, the summary judgment record—including contemporaneous statements, deposition testimony, and interrogatory responses of Aircastle itself—overwhelmingly demonstrates that Russia's invasion of Ukraine and the ensuing war and associated government decrees that followed promptly in its wake caused the "physical loss" of aircraft upon which Aircastle's insurance claims are based, thus bringing those claims squarely within the War Perils Exclusion. Aircastle's speculation that factors other than the most obvious one—that is, the war and associated governmental actions—might have caused the loss is unsupported by any evidence in the record and does not suffice to create a triable issue of fact for trial. Accordingly, the claims asserted against the All Risks Insurers must be dismissed.<sup>FN2</sup>

## **FACTUAL AND PROCEDURAL BACKGROUND**

Aircastle is a group of companies that lease commercial aircraft, spares, and equipment to airlines worldwide (*see* NYSCEF 1033 [Swiss Re's Response to Aircastle's Response to Swiss Re's Rule 19-a Statement of Undisputed Facts ("SSOF")] ¶ 1 [undisputed]). At issue are nine (9) aircraft and two (2) engines (collectively, the "Aircraft") that Aircastle leased to five Russian airlines: JSC Rossiya Airlines ("Rossiya"), AirBridgeCargo Airlines LLC ("ABC"), JSC Aurora Airlines ("Aurora"), Siberia Airlines ("S7"), and JSC Ural Airlines ("Ural" and collectively, the "Airlines") prior to Russia's invasion of Ukraine (SSOF ¶ 2 [undisputed]; NYSCEF 887 [\*4][Aircastle's Response to the Foley Insurers' Rule 19-a Statement of Undisputed Fact ("FSOF")] ¶ 4 [undisputed]).

### ***Aircastle's Insurance Program***

#### ***The Principal Policies***

Under the lease agreements, the Airlines were required to purchase insurance and reinsurance policies for the Aircraft (the "Principal Policies") (SSOF ¶ 4 [undisputed for the proposition stated]).<sup>FN3</sup>

It is common ground that the Airlines obtained Principal Policies for each of the Aircraft (SSOF ¶ 6 [undisputed]; FSOF ¶ 23 [undisputed]). It is also common ground that the Principal Policies allow Aircastle to make claims directly against the insurers and reinsurers of the Principal Policies (SSOF ¶ 7 [undisputed for the proposition stated]). Whether these policies served as Aircastle's "primary insurance," however, is disputed between the parties (*see* SSOF ¶ 5 [disputed]; FSOF ¶ 25 [disputed]).

### *The Contingent Policies*

Separately, Aircastle purchased Aviation Hull, Spares/Equipment, Liability and War and Allied Perils (Including Contingent) Insurance, Policy No. XXXXX, for the policy period December 1, 2020, to December 1, 2021, as extended to March 1, 2022 (NYSCEF 59 [the "First Policy"]) (SSOF ¶ 9 [undisputed]). Aircastle subsequently purchased Aviation Hull, Spares/Equipment, Liability and War and Allied Perils (Including Contingent) Insurance, Policy No. XXXXX, for the policy period March 1, 2022, to March 1, 2023 (NYSCEF 60 [the "Second Policy"]) and together with the First Policy, the "Contingent Policies" (SSOF ¶ 10 [undisputed]).

The Contingent Policies were written on a "subscription" basis, with each participating insurer accepting responsibility for a percentage of the total risk (*see* NYSCEF 1011 [Swiss Re's Response to Aircastle's Rule 19-a Statement of Undisputed Facts ("ASOF")]) ¶ 7 [undisputed for the proposition stated]). The various defendants named in this action are insurers and/or syndicates that subscribed to percentage portions of the First Policy and/or the Second Policy (*id.*).

Section One and Section Two of the Contingent Policies, respectively, provide Hull All Risks Insurance and Spares and Equipment All Risks Insurance (the "All Risks Coverage") (SSOF ¶ 11 [undisputed]).

Section One of the Contingent Policies states in relevant part:[FN4](#)

#### **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

(First Policy § 1.1).

### **1.3 Exclusions**

This Section One does not cover:

- (a) wear and tear, deterioration, mechanical breakdown or breakdown or any latent defect but this exclusion does not apply to any subsequent damage to the insured Aircraft caused by such wear and tear, deterioration, mechanical breakage or latent defect.
- (b) any breakage, breakdown or failure of a propulsion unit or the resulting consequences within the propulsion unit, which consists of the Engine or auxiliary power unit, except for items which may become detached and lost overboard as a result of the breakage, breakdown or failure.
- (c) any damage caused by or attributed to the ingestion of stones, grit, sand, ice and any corrosive or abrasive material or any other substances which has a progressive cumulative engine damage effect; these are deemed to be wear, tear and deterioration. Ingestion causing sudden damage attributable to a single recorded incident requiring the immediate withdrawal of the Engine from service or if this is impractical upon first landing thereafter is covered.
- (d) loss or damage to an Engine or Engines unless such damage is:
  - (i) external, or
  - (ii) the consequence of ingestion within the limitations of (c) above, or
  - (iii) caused by sudden and unexpected operation of the Engine(s), necessary to avoid physical damage to property and/or bodily injury to persons.
- (e) loss of use, depreciation or any loss which may result from loss or damage which is covered by this Insurance.

(First Policy § 1.3).

Section Two of the Contingent Policies states:

**SPARES AND EQUIPMENT ALL RISKS INSURANCE**

**2.1 Cover**

This Section Two covers:

(a) Contingent Spares and Equipment, not in the care, custody or control of the Insured or their agents and not within the coverage afforded by paragraph 2.1.(b) of this Section Two,

(b) Possessed Spares and Equipment;

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 against all risks of physical loss or damage howsoever occasioned, (including whilst in transit by any means and including engine running and engines whilst under process) sustained during the Insurance period, except as hereinafter excluded.

The term "in which the Insured has a financial interest" is deemed to include Spares and Equipment which are the insurance responsibility of the Insured but which are not owned by the Insured.

(First Policy § 2.1).

Significantly for present purposes, the All Risks Coverage contains a "War, Hi-Jacking and Other Perils Exclusion (the "War Perils Exclusion") (SSOF ¶ 16 [undisputed]). The War Perils Exclusion states that the All Risks sections of the Contingent Policies do *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.

...

(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 there from is accidental or intentional.

...

(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.

(First Policy § 5.1).

Notably, certain insurers (not including Swiss Re or the Foley Insurers) separately subscribed to The Aviation Hull, Spares And/Or Equipment War And Other Perils Endorsement (the "War Risk Coverage"), which provides coverage excluded by the War Risk Exclusion (SSOF ¶ 12 [undisputed]). As noted above, the claims against these insurers in this action have all been settled and discontinued.

The All Risks Coverage also contains a Principal Policy exclusion (the "Principal Policy Exclusion"), which states: "This Insurance does not cover loss or damage which is recoverable as a claim from the Principal Policy" (First Policy § 5.5). The meaning of this provision is also disputed by the parties.

Under the Contingent Policies, each Aircraft is assigned an "Agreed Value" which is payable under the Contingent Policies in the event of a "total loss" (SSOF ¶ 29 [undisputed]; First Policy § 1.4[a]).

Section 1.4 of the Contingent Policies, titled "Total Loss," provides:

a) In the event of a claim adjustable on the basis of a total loss of the Aircraft the Insurers will pay the Insured Proportion of the Agreed Value of the Aircraft at the date of loss as set forth in the Schedule. Insurers may elect to take the Aircraft (together with all documents of record, registration and title thereto) as salvage. Where such payment represents a partial interest then Insurers shall be entitled to negotiate their salvage rights with any other party at interest.

b) A total loss may be declared under this Insurance, at the option of the Insured, in the event that the cost of repair of the damage together with the cost of salvage and/or transport from the place of the accident to the place of repair and return to service of the Aircraft equals 75% or more of the agreed value of the Aircraft.

Nothing contained herein shall be deemed to prevent the declaration of a total loss

(First Policy § 1.4)

Section 1.5 of the Contingent Policies sets out the amount(s) the insurers will pay in the event of a "partial loss" (First Policy § 1.5).

It is undisputed that Aircastle has not incurred any costs of the types enumerated in Section 1.4(b) of the Contingent Policies. Aircastle nevertheless asserts entitlement to the [\*5] "Agreed Value" of the Aircraft on the basis it has suffered a "total loss" (SSOF ¶ 30 [undisputed]).

Swiss Re subscribed to 11.43378% of the First Policy's All Risks Coverage and 10% of the Second Policy's All Risks Coverage (SSOF ¶ 15 [undisputed]). Swiss Re subscribed to 0% of the War Risk Coverage under the Contingent Policies (*id.*). The Foley Insurers collectively subscribed to 36.20862% of

the First Policy's All Risks Coverage and 53.19% of the Second Policy's All Risks Coverage (NYSCEF 1066 at 2). Like Swiss Re, the Foley Insurers subscribed to 0% of the War Risk Coverage under the Contingent Policies (*id.*).

### ***Russia Invades Ukraine***

Each of the Aircraft was "on lease" when Russia invaded Ukraine on February 24, 2022, shortly before coverage under the First Policy ended and coverage under the Second Policy began (ASOF ¶ 44 [undisputed]). The next day, on February 25, 2022, the European Union (the "EU") issued Regulation 2022/328, which prohibited providing insurance or reinsurance of aircraft to "any person, entity or body in Russia or for use in Russia," effective March 28, 2022, because of "further military aggression by Russia against Ukraine" (FSOF ¶ 31 [undisputed]). That same day, the EU imposed a range of sanctions against Russia including closing airspace, cancelling aircraft technical support for Russian companies, freezing of Russian airline assets, and limiting the supply of spare parts, among other technological sanctions" (FSOF ¶ 32 [undisputed]). The EU also demanded that all leases to Russian airlines terminate by March 28, 2022 (FSOF [undisputed]; *see* NYSCEF 581).

On March 3, 2022, the United States also issued sanctions against Russia (FSOF ¶ 33 [undisputed]; *see* NYSCEF 582) and, on March 8, 2022, the United Kingdom followed suit (FSOF ¶ 34 [undisputed for proposition stated]; *see* NYSCEF 583).

### ***Russia's Response to Sanctions***

The precise nature of Russia's actions impacting the Aircraft after the invasion is disputed, though only in part. According to the All Risks Insurers, but not accepted as true by Aircastle on these pending motions, the Russian government promptly took aggressive steps to ensure that Russian airlines could continue to use foreign-leased aircraft, including that:

- On February 26, 2022, chief officers of the Russian Ministry of Transport (the "RMT") and the Russian Federal Air Transport Agency ("FATA") held a meeting with representatives of Russian airlines, during which the airlines were told, on a preventative basis, not to return foreign-leased aircraft to their lessors in response to their likely demands and instead to wait for further clarification (SSOF ¶ 40 [disputed]; FSOF ¶ 38 [disputed]).
- On March 2, 2022, FATA issued a telegram requesting that Russian airlines submit information relating to commercial aircraft lessors, including the lessors' nationality and whether they had submitted lease terminations (SSOF ¶ 42 [disputed]; FSOF ¶ 41 [disputed]).
- On March 4, 2022, FATA advised Russian airlines that if they received notice asserting that their leases were terminated, they should not return the aircraft but instead re-register the aircraft in Russia (SSOF ¶ 43 [disputed]; FSOF ¶ 43 [disputed]).
- On March 5, 2022, FATA issued an official message recommending that Russian airlines temporarily suspend the transportation of foreign-leased aircraft outside Russia (SSOF ¶ 44 [disputed]; FSOF ¶ 44 [disputed]).

In opposition to the pending motions, Aircastle seeks to dispute the foregoing events on [\*6]the ground that the assertions are derived from expert testimony offered by individuals who lack personal knowledge of the relevant facts and are therefore hearsay. Notably, however, the testimony comes from Aircastle's own proffered experts (see *Dietrich v Puff Cab Corp.*, [63 AD3d 778](#), 779 [2d Dept 2009] [a "statement by an expert that is put forward by a party in litigation constitutes an informal judicial admission that is admissible against, although not binding upon, the party that submitted it"] [citations omitted]). More importantly, Aircastle itself recited these same events—citing the same experts—in its responses to contention interrogatories interposed by other insurers in this action (NYSCEF 686 [Interrogatory Responses] at 9-10). Specifically, asked to "state all facts [ . . . ] that You contend support the allegation" that the Aircraft suffered loss or damage during the First and Second Policy periods, Aircastle stated among other things that: "Russia invaded Ukraine on February 24, 2022. Russian authorities thereafter implemented a systematic policy to preclude the return of foreign leased aircraft to foreign lessors. [ . . . ] These restrictions took immediate effect, making the return of foreign leased aircraft de facto impossible as of February 24, 2022" (*id.*). Aircastle also identified the very same FATA interventions it now disputes in the SSOF and FSOF, as well as several additional measures taken by the Russian government during the same period—and explicitly acknowledged that "[s]ome of the[se] facts [ . . . ] may concern 'perils' mentioned in the War Exclusion and in the War Endorsement" (*id.*).<sup>FN5</sup>

In any event, it is undisputed that, on March 8, 2022, Russian President Vladimir Putin signed a decree initiating formal restrictions on the import and export of certain goods (see NYSECF 584 ["Presidential Decree No. 100"]; SSOF ¶ 45 [undisputed for the proposition stated]; FSOF ¶ 48 [undisputed for the proposition stated]). Presidential Decree No. 100, entitled "On the implementation of special economic measures in foreign trade in order to ensure the security of the Russian Federation," provides:

As a supplement to the measures provided for by Russian Federation Presidential Decrees #79 ("On the implementation of special economic measures due to the hostile actions of the United States of America and the foreign states and international organizations that have joined it," dated February 28, 2022) and #81 ("On additional temporary economic measures to ensure the financial stability of the Russian Federation," dated March 1, 2022), in order to ensure the security of the Russian Federation and uninterrupted industrial operations, I hereby order:

1. To ensure the implementation of the following special economic measures by December 31, 2022:

a) bans on the import to and/or export from the Russian Federation of products and/or [\*7]raw materials according to lists established by the Government of the Russian Federation;

b) restrictions on the import to and/or export from the Russian Federation of products and/or raw materials according to lists established by the Government of the Russian Federation;

2. To establish that the measures provided for by item 1 of this Decree do not apply to products and/or raw materials exported from and/or imported to the Russian Federation by Russian

Federation citizens, foreign citizens, or stateless persons for their personal use.

3. To grant the Government of the Russian Federation the authority to determine the particularities of implementing the measures provided for by item 1 of this Decree with respect to specific types of products and/or raw materials, as well as with respect to specific legal entities and/or individuals.

4. The Government of the Russian Federation to determine, within two days, the lists of foreign governments necessary for implementing the measures provided for by item 1 of this Decree.

5. This Decree comes into force as of the day of its official publication

(Presidential Decree No. 100)

On March 9, 2022, the Russian government issued Governmental Decree No. 311, titled "On Steps to Implement Decree No. 100 of the President of the Russian Federation dated 8 March 2022," setting forth the specific parameters of the import and export bans (*see* NYSCEF 585 ["Governmental Decree No. 311"]; SSOF ¶ 46 [undisputed for the proposition stated]; FSOF ¶ 50 [undisputed for the proposition stated]). Among the goods contained in Governmental Decree No. 311 were "[a]ircraft," including "airplanes," and "[p]arts for aircraft" (Governmental Decree No. 311 at 21). "The export from the Russian Federation of goods on the list according to the attachment is prohibited up to and including December 31, 2022" (*id.* at 1).

On March 11, 2022, the Russian legislature adopted Federal Law No. 56-FZ, amending certain provisions of the Russian Air Code and related regulations to establish procedures for Russian registration of aircraft to retain a fleet of foreign-leased aircraft (SSOF ¶ 47 [undisputed that Federal Law No. 56-RZ was enacted]; FSOF ¶ 56 [undisputed that Federal Law No. 56-RZ was enacted]; *see* NYSCEF 587 at 8, 21).

On June 25, 2022, the Russian government issued Order No. 1693-r, which acknowledged that "[i]n April 2022, Russian aviation companies operated 1,160 passenger aircraft for commercial air transportation," and that "[a]bout 700 pieces of aircraft were [leased] from foreign lessors" (FSOF ¶ 63 [undisputed]; *see* NYSCEF 590 at 5). These aircraft were "registered in foreign aircraft register" until March 2022 but, by "April 2022, almost the entire aircraft fleet was re-registered in the Russian State Register of Civil Aircraft" (*id.*).

On October 26, 2022, President Putin signed a decree extending the measures introduced by Presidential Decree No. 100 to December 31, 2023 (SSOF ¶ 48 [undisputed for the proposition stated]; FSOF ¶ 64 [undisputed for the proposition stated]; *see* NYSCEF 592). On December 23, 2023, the measures were again extended to December 31, 2025 (*see* NYSCEF 593).

### ***Aircastle Seeks Return of the Aircraft***

On or about February 25, 2022, Aircastle representatives began requesting that the [\*8]Airlines return the Aircraft (SSOF ¶ 50 [undisputed]; FSOF ¶ 68 [undisputed])<sup>FN6</sup> and, on February 28, 2022, Aircastle requested that the Airlines cease operating the Aircraft and relocate them to an agreed location outside of Russia (SSOF ¶ 51 [undisputed for the proposition stated]; FSOF ¶ 69 [undisputed for the

proposition stated]). Although negotiations continued throughout February and March—including the exchange of draft redelivery agreements between Aircastle and certain of the Airlines—ultimately, the Aircraft were never returned (SSOF ¶¶ 57, 67, 72 [undisputed for the proposition stated]).

In the period between March 4, 2022, and March 25, 2022, Aircastle terminated the Aircraft lease agreements with the Airlines (FSOF ¶¶ 76-77 [undisputed]).

### ***Aircastle Seeks Insurance Coverage***

On March 3, 2022, Aircastle sent its insurers and insurance broker notice of a potential claim under the Second Policy (FSOF ¶ 78 [undisputed for the proposition stated]; *see* NYSCEF 598]). The notice stated that: "*Given the ongoing conflict in Ukraine we consider it likely that the Insured Assets [ . . . ] could suffer loss or damage that falls for cover under the policy*" (*id.* [emphasis added]). On March 8, 2022, Aircastle sent notice of a potential claim under the First Policy (SSOF ¶ 105 [undisputed for the proposition stated]; *see* NYSCEF 754). Like the March 3 notice, the March 8 notice again stated that: "*Given the ongoing conflict in Ukraine we consider it likely that the Insured Assets [ . . . ] could suffer loss or damage that falls for cover under the policy*" (*id.*).

On April 20, 2022, Aircastle followed up on its initial notices by formally asserting claims under the Contingent Policies (FSOF ¶ 79 [undisputed]; *see* NYSCEF 649). Aircastle described its claim as being "(i) based on the ongoing conflict in Ukraine, (ii) the current/last known location of the Insured Assets (as defined below) being in Russia, and (iii) the difficulty in repossessing the Insured Assets from Russia, resulting in loss or damage to the Insured Assets [ . . . ] (the 'Event')" (NYSCEF 649 ¶ 5.1). At the time, Aircastle "determined that in view of the uncertain and developing nature of the Event, the Insured Assets [ . . . ] have suffered loss or damage that falls for cover under the Policy" (*id.* ¶ 5.2). The claim went on to describe in detail the "Russian Military Operation and Restrictive Measures" (*id.* ¶ 6.1) and "Russian Restrictive Measures" (*id.* ¶ 6.2), relating primarily to government action and restrictions in the immediate aftermath of Russia's invasion of Ukraine.

On September 6, 2022, Aircastle sent an amended claim letter which stated, among other things, that the Airlines "relied, *inter alia*, on the various pieces of Russian legislation as an alleged basis for not returning the insured aircraft," although "Aircastle has not obtained specific advice as to the meaning and effect of the various pieces of Russian legislation" (FSOF ¶ 80 [undisputed for the proposition stated]; *see* NYSCEF 651). Aircastle further "advised of events giving rise to a claim for coverage under the Policy (i) based on the ongoing conflict in Ukraine, (ii) the current/last known location of the Insured Assets (as defined below) being in Russia, and (iii) the difficulty in repossessing the Insured Assets from Russia, resulting in loss or damage to the Insured Assets" (FSOF ¶ 81 [undisputed for the proposition stated]; *see* NYSCEF 649 at 2, 19).

### ***[\*9]Aircastle Sues the Principal Policy Insurers and Reinsurers in the United Kingdom***

In or around June 2023, Aircastle commenced proceedings under the Principal Policies in the High Court of Justice of England and Wales seeking coverage from the Principal Policy insurers and reinsurers (the "UK Litigation") (SSOF ¶¶ 108-10 [undisputed for the proposition stated]). As discussed below, those proceedings were resolved in part and otherwise remain pending.

### ***Settlements with the Principal Policy Insurers and Reinsurers and the Airlines***

#### ***Rossiya and Aurora Aircraft***

Starting in September 2022, Aircastle began negotiating with certain of the Airlines and Insurance Company NSK ("NSK"), successor to the original Principal Policy insurers (SSOF ¶ 114 [undisputed for the proposition stated]).

In December 2023, Aircastle reached agreements with NSK, Rossiya, and Aurora in respect of the Aircraft leased to Rossiya and Aurora (SSOF ¶ 115 [undisputed]). Pursuant to those agreements, Aircastle transferred title to those four aircraft to NSK and NSK paid Aircastle \$43,224,936 (SSOF ¶ 116 [undisputed for the proposition stated]). Aircastle provided a release of all claims against the Principal Policy insurers and reinsurers of the Rossiya and Aurora aircraft (*id.* ¶ 119). In turn, Aircastle has dismissed its claims in the UK Litigation concerning the Rossiya and Aurora aircraft (*id.* ¶ 125).

#### *Ural and S7 Aircraft*

The parties dispute the status of negotiations regarding the Ural and S7 aircraft: The All Risks Insurers contend that Aircastle has reached a settlement agreement with NSK in respect of the four aircraft leased to Ural and S7 as part of which Aircastle will receive \$40,247,399 (SSOF ¶¶ 127, 132-3 [disputed]; FSOF ¶¶ 136, 141-2 [disputed]). Aircastle's position is that, although they previously agreed to preliminary settlement terms in connection with Ural and S7, they have not reached a binding agreement and are not awaiting receipt of any funds (*see* SSOF ¶ 127 [Aircastle's response]; FSOF ¶ 136 [Aircastle's response]).

#### *ABC Aircraft*

It is undisputed that neither the ABC aircraft nor the two engines also leased by Aircastle are subject to any settlement agreement (SSOF ¶ 140 [undisputed for the proposition stated]; FSOF ¶ 148 [undisputed for the proposition stated]).

## **Procedural Background**

Aircastle commenced this action by filing a Summons and Complaint on October 31, 2022 (*see* NYSCEF 1). Aircastle filed a First Amended Complaint on February 13, 2023 (*see* NYSCEF 58). On February 28, 2025, Aircastle discontinued its claims against certain of the Defendants (*see* NYSCEF 303).

On March 14, 2025, the remaining Defendants moved for summary judgment (*see* NYSCEF 321, 326, 331, 396). Between July 15, 2025, and January 22, 2026 (the date of oral argument on the instant motions), Aircastle discontinued its claims against several more Defendants, resulting in the discontinuation of all claims against insurers that subscribed to War Risk Coverage (*see* NYSCEF 991, 1002, 1034, 1047, 1058).

As noted above, the remaining All Risks Insurers now move for summary judgment dismissing all claims asserted against them in the First Amended Complaint.

## **DISCUSSION**

Under CPLR 3212(b), summary judgment is appropriate when the record demonstrates that "there is no material issue of fact to be tried, and that judgment may be directed as a matter [\*10]of law" (*Brill v City of New York*, [2 NY3d 648](#), 651 [2004]). Once the moving party has made a *prima facie* showing of entitlement to judgment as a matter of law, the burden shifts to the nonmoving party to produce

"evidentiary proof in admissible form sufficient to require a trial of material questions of fact," or to demonstrate an "acceptable excuse for [their] failure to meet the requirement of tender" (*Stonehill Cap. Mgmt., LLC v Bank of the West*, [28 NY3d 439](#), 448 [2016]). "Mere conclusions, expressions of hope or unsubstantiated allegations or assertions are insufficient" (*Zuckerman v City of New York*, 49 NY2d 557, 562 [1980]; see also *Winegrad v New York Univ. Med. Ctr.*, 64 NY2d 851, 853 [1985]; *Glassman v Weinberg*, [154 AD3d 407](#), 408 [1st Dept 2017]).

In the context of insurance claims, "it is a well-established principle that a policyholder bears the initial burden of showing that the insurance coverage covers the loss" (*Roundabout Theatre Co. v Cont'l Cas. Co.*, 302 AD2d 1, 6 [1st Dept 2002]). If the policyholder meets its burden, the burden then shifts to the "insurance company [to] prov[e] such facts as will come within exclusionary clauses in an insurance policy" (*Prashker v United States Guarantee Co.*, 1 NY2d 584, 592 [1956]).

"Where the provisions of [a] policy are clear and ambiguous, they must be given their plain and ordinary meaning, and courts should refrain from rewriting the agreement" (*United States Fid. & Guar. Co. v Annunziata*, 67 NY2d 229, 232 [1986] [citations omitted]). "[T]he policy must [ . . . ] be construed in favor of the insured, and ambiguities, if any, are to be resolved in the insured's favor and against the insurer" (*Annunziata*, 67 NY2d, at 232; see similarly *Endurance Am. Ins. Co. v StoneX Commodity Solutions, LLC*, [235 AD3d 489](#), 490-1 [1st Dept 2025] [noting that "an all risks policy should be interpreted in favor of the insured"] [citations omitted]).

The All Risks Insurers seek summary judgment principally on the ground that Aircastle's claims are barred by the War Perils Exclusion. In the alternative, they assert that coverage is precluded by the Principal Policy Exclusion. The Foley Insurers separately seek summary judgment on the ground that the nonreturn of the Aircraft does not fall within the Contingent Policies' categories of indemnity, while Swiss Re seeks summary judgment on the alternative ground that the Airlines' failure to return the Aircraft did not constitute a "total loss" entitling Aircastle to payment of the Agreed Value. Because the Court agrees with the All Risks Insurers that the War Perils Exclusion is dispositive of all claims against them, the Court will focus on that issue.

## **I. The War Perils Exclusion**

### A. The All Risks Insurers have made a prima facie showing that the War Perils Exclusion applies

"To negate coverage by virtue of an exclusion, an insurer must establish that the exclusion is stated in clear and unmistakable language, is subject to no other reasonable interpretation, and applies in the particular case" (*Cont'l Cas. Co. v Rapid-American Corp.*, 80 NY2d 640, 652 [1993]). "The law governing the interpretation of exclusionary clauses in insurance policies is highly favorable to insureds" (*Pioneer Tower Owners Ass'n v State Farm Fire & Cas. Co.*, [12 NY3d 302](#), 306 [2009]). Nevertheless, once the insurer has met its burden of demonstrating that the exclusion applies, "the burden then shift[s] to the [insured] to prove the applicability of an exception to the exclusion" (*Hritz v Saco*, [18 AD3d 377](#), 378-9 [1st Dept [\*11]2005] [affirming summary judgment in favor of the insurer based, in part, on the application of an exclusion clause]).

Here, the All Risks Insurers have met their *prima facie* burden of establishing that the War Perils Exclusion applies. It is undisputed that Russia invaded Ukraine on February 24, 2024, and that the Airlines refused to return the Aircraft to Aircastle shortly thereafter. It is similarly undisputed that, in

and around that time, the Russian government enacted Governmental Decree No. 311, implementing an export ban initiated by Presidential Decree No. 100.

The All Risks Insurers have established, through admissible evidence in the form of certified translations of those decrees that the decrees prohibited the export of, among other things, foreign-owned aircraft and aircraft parts. It is further undisputed that, after the war broke out, Aircastle sought return of the Aircraft, the Airlines failed to return them, and that Aircastle shortly thereafter initiated claims under the Contingent Policies against the All Risks Insurers based expressly on the war and its immediate aftermath, including in particular government restraints. This factual showing is sufficient to trigger subsection (a) of the War Perils Exclusion which excludes from All Risks Coverage "claims caused by [ . . . ] [w]ar, 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" (First Policy § 5.1[a]), as well as subsection (f), which excludes from coverage "claims caused by [ . . . ] [c]onfiscation, 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" (First Policy § 5.1[b]).<sup>FN7</sup>

That the Aircraft's nonreturn was "caused by" one or more of the events contained in subsections (a) and/or (f) of the War Perils Exclusion is reinforced by Aircastle's own assessments both contemporaneously and in the course of litigating this action. As noted above, from the outset Aircastle was communicating to its insurers that the Airlines were not returning the Aircraft because of Russia's invasion of Ukraine. This assessment is further reflected in the deposition testimony of Aircastle's representatives (*see e.g.*, NYSCEF 692 at 57:1-3 ["on the 24th, [ . . . ] an invasion had occurred which put in motion a sequence of events that led us to loss of our assets" and the alleged loss "occurred in the immediacy after the invasion so 24, 25, 26 of February"]; NYSCEF 691 at 123:1-12 [explaining that, although, initially, "we didn't have a clear understanding of what was going on," it subsequently became clear "that they were not going to be flying the aircraft out of Russia without the permission of the Russian Government"]; NYSCEF 688 at 45:11-13, 23-24 [recalling that multiple Airlines "were *unable* to return the aircraft based on restrictions from various authorities"] [emphasis added]).

And as noted above, Aircastle's responses to certain of the Defendants' contention <sup>[\*12]</sup>interrogatories during this litigation—late in the pretrial discovery process—confirm this key point. Aircastle itself stated that: "Russia invaded Ukraine on February 24, 2022. ***Russian authorities thereafter implemented a systematic policy to preclude the return of foreign leased aircraft to foreign lessors. These restrictions took immediate effect, making the return of foreign leased aircraft located in Russia de facto impossible as of February 24, 2022,***" and went on to concede that "[s]ome of the[se] facts [ . . . ] may concern 'perils' mentioned in the War Exclusion and in the War Endorsement" (Interrogatory Responses at 9-10 [emphasis added; citations omitted]). While the Court recognizes the possibility that Aircastle does not know with certainty why the Aircraft were retained in Russia, it is nevertheless telling that its own contemporaneous assessments and subsequent admissions in interrogatory responses corroborate the evidentiary record established by the All Risks Insurers.

Considering the circumstances surrounding the Aircraft's nonreturn—specifically, the outbreak of war and resulting government action—together with Aircastle's own assessments and submissions, the All Risks Insurers have met their *prima facie* burden of establishing the applicability of the War Perils

Exclusion (see *Vitanza v Growth Realties, Inc.*, 81 AD2d 917, 917 [1st Dept 1983] [noting that "[t]he fact of causation is incapable of mathematical proof" and that "[i]f as a matter of ordinary experience a particular act or omission might be expected, under the circumstances, to produce a particular result, and that result in fact has followed, the conclusion may be permissible that the causal relation exists"] [citations omitted]; see similarly *Benzaken v Verizon Communications, Inc.*, [21 AD3d 864](#), 865-6 [2d Dept 2005] ["[c]ircumstantial evidence is sufficient if [ . . . ] conduct may be reasonably inferred based upon logical inferences to be drawn from the evidence"] [citations omitted]; *Delacy v Ettrich*, 217 AD2d 838, 839 ["[c]ircumstantial evidence is sufficient if it supports the particular inference even though it does not negate the existence of remote possibilities which are inconsistent with the inference"]). The burden therefore shifts to Aircastle to establish the existence of one or more issues of fact requiring a trial.

B. Aircastle has failed to submit admissible proof sufficient to create a question of fact for trial as to whether the War Perils Exclusion applies

Aircastle resists summary judgment principally on the basis that—despite its contemporaneous assessments, testimony, and interrogatory responses that the Aircraft's nonreturn was due to the war and export bans—it remains possible that some other cause was in fact responsible. In support, Aircastle contends that it "unsuccessfully demanded the return of the Aircraft repeatedly beginning February 25, 2022, or two weeks before the Russian government promulgated a ban on the export of foreign-owned aircraft" and goes on to assert that "[t]he 'cause' of the loss as a factual or legal matter *could just as easily have been* the Russian Airlines' desire to keep the Aircraft following the imposition of sanctions by Western nations" (NYSCEF 850 at 27 [emphasis added]). This speculation is insufficient to create a triable issue of fact.

Aircastle's notion that the Airlines *may* have acted with an ulterior motive—perhaps to safeguard their business interests considering the likely difficulty of acquiring alternative aircraft following the imposition of Western sanctions—is at odds with Aircastle's initial claim representations, its own representatives' recollection, and its interrogatory responses. More [\*13] importantly, this speculative theory is unsupported by any *evidence* in the record<sup>FN8</sup> (see *Smith v Costco Wholesale Corp.*, [50 AD3d 499](#), 501 [1st Dept 2008] [ "mere speculation" is insufficient to generate a disputed issue of material fact]); *Kane v Estia Greek Rest., Inc.*, [4 AD3d 189](#), 190 [1st Dept 2004] ["rank speculation is no substitute for evidentiary proof in admissible form that is required to establish the existence of a material issue of fact and, thus, defeat a motion for summary judgment"] [citations omitted]; *Fender v Prescott*, 101 AD2d 418, 425 [1st Dept 1984] [on summary judgment, a "shadowy semblance of an issue is not enough to defeat the motion"]).

Furthermore, even if Aircastle was permitted to walk away from its own admissions regarding the cause of its loss, its speculation that the Airlines preemptively chose to withhold the Aircraft in response to sanctions imposed by, among others, Europe, the United Kingdom, and the United States nevertheless would fall within the War Perils Exclusion. Subsection (a) excludes from coverage claims caused by, among other perils, "war," "invasion," and "hostilities" (First Policy § 5.1[a]). Even under Aircastle's proposed scenario, the operative and efficient proximate cause for purposes of the exclusion remains Russia's invasion of Ukraine, which triggered the imposition of Western sanctions in the first instance and in turn Russian formal prohibitions (see *Siegel v Chubb Corp.*, [33 AD3d 565](#), 566 [1st Dept 2006]

[holding that an exclusion for losses "caused by [ . . . ] mold" applied even though plaintiff attribution his loss to air toxins because mold remained the "efficient proximate cause"]; *Ope Shipping v Allstate Ins. Co.*, 687 F2d 639, 641 [2d Cir. 1982] [explaining that, in evaluating exclusions, individual acts "cannot be viewed in isolation without consideration being given to causative and motivative factors" and applying a war exclusion where, "from a common sense standpoint," the seizure of ships "obvious[ly]" stemmed from the Nicaraguan civil war]).

Moreover, Aircastle's theory would at most account for a brief period of dispossession before the indisputable Russian government edicts permanently shut the door on the return of the Aircraft. In *Consolidated Restaurant Operations, Inc. v Westport Insurance Corporation*, [41 NY3d 415](#) [2024], the Court of Appeals rejected an insured's contention that "direct physical loss" encompasses a "partial or complete loss of use for a limited period of time" (*id.* at 428-29). Instead, the court held that such loss requires "complete and persistent dispossession of the insured property, rather than loss of use of it," and quoting approvingly another court's observation that "[l]osing a thing is conceptually different than losing the functional use of that thing for a period of time" (*id.* at 428 [citations omitted]). The same applies here to the hypothetical—and indisputably short—period during which the Airlines purportedly were not yet formally prohibited by government mandate from returning the Aircraft to Aircastle.

Accordingly, because Aircastle has failed to submit proof in admissible form sufficient to create a triable question of fact as to whether the War Perils Exclusion applies, the All Risks Insurers are entitled to summary judgment in their favor.

\* \* \*

In light of the foregoing, it is unnecessary to address the alternative bases on which the All Risks Insurers seek summary judgment. [FN9](#)

Accordingly, it is

**ORDERED** that the motion of Defendants Swiss Re International SE, UK Branch and Swiss Re International SE, UK Branch 4066/01/3 for summary judgment is **GRANTED**, and all claims in the Amended Complaint with respect to insurance coverage from those insurers are dismissed with prejudice; it is further

**ORDERED** that the motion of the Foley Insurers (defined in footnote 1, *supra*) for summary judgment is **GRANTED** and all claims in the Amended Complaint with respect to insurance coverage from those insurers are dismissed with prejudice; and it is further

**ORDERED** that the parties settle a final judgment (with taxable costs to be assessed by the Clerk) pursuant to 22 NYCRR 202.48, returnable to the Court on May 26, 2026.

This constitutes the Decision and Order of the Court.

DATE 5/13/2026

JOEL M. COHEN, J.S.C.

## FOOTNOTES

**Footnote 1** The "Foley Insurers," so named for convenience to reflect the law firm representing all of them, are: Global Aerospace Underwriting Managers, for itself and on behalf of pool members Great Lakes Insurance SE, Berkshire Hathaway International Insurance Ltd. (sued both under its correct name and the incorrect names Berkshire Hathaway Specialty Insurance, Berkshire Hathaway Specialty Ins and Berkshire Hathaway European Insurance Designated Activity Company), HCC International Insurance Company PLC (sued both under its correct name and under the incorrect name HCC International Insurance Co PLC), Houston Casualty Company, Mapfre Espana Compania De Seguros y Reaseguros S.A., and Mitsui Sumitomo Insurance Company (Europe) Limited; Great Lakes Insurance SE; Convex Insurance UK Limited (sued in its correct name and incorrectly as Convex Insurance Company UK Limited); AXIS Specialty Europe SE; Faraday Capital Limited (as the sole member of and capital provider of Lloyd's Syndicate 435 (named incorrectly as Lloyd's Syndicate FDY 0435 and Faraday FDY 435)); and Starr Managing Agents Limited (for and on behalf of Lloyd's Syndicate CVS 1919 (named incorrectly as Starr Syndicate 1919 CVS and Lloyd's Syndicate 1919)).

**Footnote 2** This conclusion is in accord with every court decision involving similar facts that has been brought to the Court's attention (*see BBAM US LP v KLN 510 Tokio Marine Kiln, et al.*, Case No. CGC-22-603451 [Super Ct CA, SF County 2024] [granting summary judgment in favor of "all risks" defendants on the ground that plaintiffs' claims involving Russian aircraft lost shortly after Russia's invasion of Ukraine were barred by war perils exclusion]; *Air Lease Corp. v Certain Underwriters*, Case No. 22STCV39411 [Super Ct CA, LA County 2025] [same]; *Carlyle Aviation Partners, LLC v American International Group UK Ltd.*, Case No. 2022-020857-CA-01 [Cir Ct FL, MD County 2022] [same]; *Castlelake L.P. v Lancashire Airline War Consortium/Airline Hill, et al.*, Case No. 27-CV-22-17450 [Dis Ct MN, Hennepin County 2025] [same]; *BOCA Aviation Ltd. v AirBridgeCargo Airlines, LLC*, 669 F Supp 3d 204 [SDNY 2023] [holding that Russian Governmental Decree No. 311 effected a "seizure" of the lessor's aircraft within the meaning of the parties' lease agreement]; *AerCap Ireland Ltd v AIG Europe S.A. & Others*, Case Nos. CL-2022-000294, CL-2022-000557, CL-2022-000611, CL-2022-000662, CL-2022-000697, CL-2023-000148 [Commercial Ct, England and Wales 2025] [concluding after a 12-week trial that Russian Governmental Decree No. 311 was the proximate cause of the aircraft's loss]).

**Footnote 3** In the policies at issue here, "Principal Policy" is defined to mean "the policy or policies required to be effected by the operator pursuant to the provisions of the Lease Agreement (inclusive of policies such as hull deductible policies as may be necessary to meet the lease requirements)" (SSOF ¶ 5 [undisputed for the proposition stated]).

**Footnote 4** Although the Second Policy does not fully restate the provisions of the First Policy, there is no dispute that that the First Policy and the Second Policy do not differ in any material respect. References herein to the language of the Contingent Polices are from the First Policy.

**Footnote 5** The Court recognizes that Aircastle was in the awkward (though in some ways beneficial) position of pursuing coverage simultaneously from the All Risks Insurers (which required it to argue against application of the War Perils Exclusion) and War Perils insurers (which required it to establish that War Risk Coverage applied), and objected to the interrogatories in part on that ground (*id.* at 2-3). However, it cannot simply walk away from *factual* assertions made in its own interrogatory responses that may be unhelpful now that it has settled with the latter group of insurers. In any event, the Court does not consider these purportedly "disputed" preliminary actions essential to the resolution of this motion given the undisputed formal government actions that closely followed them.

**Footnote 6** The parties dispute the precise day on which Aircastle first made contact with the Airlines—February 25, 2022, or February 26, 2022—according to Aircastle and the All Risks Insurers respectively.

**Footnote 7** The All Risks Insurers also invoke subsection (d) of the War Perils Exclusion which excludes from coverage "claims caused by [ . . . ] [a]ny 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 there from is accidental or intentional" (First Policy § 5.1[f]). Although this provision may also apply, the Court need not determine the precise character of Russia's invasion of Ukraine given the conclusion that other, broader subsections of the War Perils Exclusion independently bar coverage.

**Footnote 8** Aircastle's citation to deposition testimony from its own representatives describing failed attempts to retrieve the Aircraft from its lessees during the two weeks before Russian Governmental Decree No. 311 came into effect is unavailing. That evidence does not undermine the Court's finding (and Aircastle's own contemporaneous conclusion) that the foundational cause of Aircastle's purported loss — including its failed attempts at recovering the Aircraft — was Russia's invasion.

**Footnote 9** The alternative grounds for summary judgment raised by the All Risk Insurers in the pending motions are, in the Court's view, better left for decision in an action in which their resolution is necessary to the outcome.