

LONG TERM AIRCRAFT STORAGE – RISKS FOR LESSORS, AIRLINES AND THEIR INSURERS

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Airlines across the world have grounded a substantial portion of their fleets and many airports are filled with grounded and parked aircraft. A number of operators have relocated aircraft to longer term aircraft storage facilities in dry climates, including Alice Springs (Australia), Teruel (Spain) and Victorville (USA). Whilst this is a prudent step by airlines to preserve the condition of the grounded aircraft, lessors, airlines and their insurers should also ensure that appropriate steps are taken to consider and address potential liability issues arising from the storage of aircraft at these facilities.

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Pre-Covid-19, dry climate aircraft storage facilities were intended and primarily used to store and dismantle decommissioned aircraft. Covid-19 has accelerated the retirement of older aircraft, including the 747 and early model 777 and A330 aircraft. Many airlines have had to ground newer aircraft, including the B787 and A350, with the intention that these aircraft and some of the other grounded aircraft, such as A380s and B777s, would resume operations once demand for air travel returns.

By comparison with storing decommissioned and end of life aircraft, storing relatively new aircraft for an eventual return to operations can result in very different obligations and risk exposure for park operators, airlines, lessors and insurers. A critical issue is the accumulation risk resulting from the concentration of aircraft parked in close proximity. This accumulation risk operates on several levels:

- Damage to an aircraft through deterioration or exposure to the elements;
- Damage to an aircraft during movement or other acts or omissions of a third party, such as MRO service providers, the airport or aircraft storage facility;
- Damage to other aircraft caused by an aircraft;
- Damage to other aircraft caused by an aircraft during movement or other acts or omissions of a third party, such as MRO service providers, the airport or aircraft storage facility; and
- Damage to the airport or storage facility caused by an aircraft, including through taxi and runway overload or deterioration.

In deciding whether to store aircraft at an airport or aircraft storage facilities, airlines will consider the cost and availability of storage, the impact of the climate on extended storage and the cost and time to inspect, maintain and recommission the aircraft. Dry climate storage facilities can be cheaper and provide a more ambient climate for storage of the aircraft.

In assessing where and how to store grounded aircraft, airlines should equally consider:

- The proximity of their aircraft to each other and to other aircraft;
- The condition of the runways and taxiways and their ability to withstand the continuous weight of static aircraft for months and years in the same position;
- The proximity and resources of local fire fighting and emergency services;
- The level of liability insurance held by the airport or storage facility, including third party and hangar keeper's liability; and
- Whether their hull/war, third party liability and hangar keeper's liability provide sufficient and satisfactory cover for their aircraft at the airport or storage facility.

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Given the importance of ensuring that the aircraft are covered by satisfactory and appropriate insurance, it is critical that airlines disclose their storage plans to their insurers and provide sufficient details of the storage and their risk assessment. This is to reduce the prospects of denial of cover by insurers for a failure to disclose material facts. Aircraft insurance cover may also have geographic and operational restrictions, which do not include or contemplate long-term storage at a third-party location. This is particularly the case where the location is in a country/territory not served by the airline. For example, if storage of aircraft is in the US by an EU airline which does not serve any US airport.

Airlines and their insurers may also need to consider additional coverage, particularly if the insured value of the stored aircraft is equivalent to or exceeds the policy limits in the airline's hull/war policy. Many insurers may require additional cover if the insured value of the stored aircraft exceeds an amount below the policy limits in the airline's hull/war policy. Relatively new aircraft, such as A350s and 787s, are likely to have a higher insured value under an airline's hull/war policy than decommissioned aircraft, such as B747s. This highlights the unprecedented issues and challenges facing airlines, their insurers and lessors and sharply contrasts with the risk exposure for end of life and decommissioned aircraft.

In addition to hull/war policy cover, it is equally critical to ensure that there is sufficient insurance cover for damage to other stored aircraft and to the airport or storage facility. If a fire breaks out on one aircraft, it could quickly spread to other aircraft. This is particularly the case if the storage facility has limited firefighting equipment and/or is some distance from the nearest emergency services. The insurers of the aircraft on which the fire broke out are likely to face claims for damage to the other aircraft affected by the fire. The risk exposure for damage to relatively new aircraft in such a situation is significantly higher than if the other proximate aircraft are end of life and decommissioned aircraft. For this reason, the extent of an airline's third party liability cover may be critical and should be carefully assessed and additional cover may be required.

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Airlines, airports, storage facilities and their insurers may also need to carefully consider where and how the aircraft are stored at an airport or storage facilities. Unused runways and taxiways may provide suitable storage space, but they were neither designed nor intended to be used for extended static storage of aircraft. Liability for runway and taxiway deterioration caused by static aircraft to the aircraft, other aircraft and the airport or storage facility may become a contentious issue, particularly if the insured value of the aircraft exceeds available insurance cover. Appropriate disclosure of such storage plans to insurers of airlines, airports and storage facilities is essential to ensure that the risk is accepted by the insurers and that airlines, airports and storage facilities continue to meet their material disclosure obligations as insureds.

The nature and extent of airport and storage facility liability insurance cover should be a critical component of assessing whether to select the airport or storage facility for the storage of aircraft. Adequate third party insurance cover is also relevant to damage caused by the airport or storage facility. Their insurance cover will typically be limited to their negligence and may have total or sub-limits which would have been adequate and appropriate for end of life and decommissioned aircraft but are unlikely to be appropriate for relatively new aircraft.

Lessors will require that an airline lessee not prejudice the insurance cover for the leased aircraft and ensure that it is covered by agreed levels and types of cover at all times, regardless of whether it is being operated or stored. In the current market conditions, where many lessors are either not receiving lease payments or have been forced to agree to substantially discounted lease payments, it is even more critical for lessors, as a named insured under lessee airline insurance policies, to be able to rely on the ability to have claims paid by the airline's insurers. Using the above example, if a number of aircraft are declared a constructive total loss because of fire damage, the airline's insurers can expect a claim under the airline's policies, particularly for the insured value of the aircraft under the hull/war policy. The Insurers would then need to consider the prospects of a subrogated recovery against the facility, if they can establish its negligence, and/or airline and/or lessor of the aircraft on which the fire broke out. Given per event policy limits, it is likely that whether the fire and resulting damage was a single event is likely to be a contentious issue in dealing with such claims.

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