

# Insurers Can't Jump Out Of \$20M Damaged Plane Suit

By Allison Grande

Law360, New York (November 23, 2011, 3:20 PM ET) -- A Florida federal judge on Tuesday refused to toss WM Aviation LLC's suit seeking nearly \$20 million in coverage from U.S. Aircraft Insurance Group and three other insurers for damages sustained to its aircraft during a 2008 runway accident.

Defendants USAIG, U.S. Aviation Underwriters Inc., Liberty Mutual Insurance Co. and Ace American Insurance Co. argued that the instant suit was not ready to be litigated, since WM Aviation and fellow insured Tricor International Corp. had refused to allow the insurers to finish an inspection to determine if the cost of the claimed repairs equaled or exceeded the insured value of the aircraft.

But in denying the insurers' motion to dismiss the complaint, which was filed more than two years after the submission of the insurance claims, Judge Mary S. Scriven found that the defendants had "sufficient time" to investigate the disputed claim.

"There is nothing potential, abstract or speculative about the adjudication of these matters," Scriven ruled.

The insurers' previous tender of \$6.8 million to the plaintiffs for what the insurers estimated to be the cost of repairs to the aircraft — while falling short of the plaintiffs' request for the full \$19.2 million available under the policy for a total loss of the plane — additionally "serves as some evidence that defendants have been able to adequately investigate the claim and perform under the policy," the ruling said.

The coverage dispute stems from damages incurred when a Cessna jet owned by WM Aviation skidded off the runway at New York's John F. Kennedy Airport in April 2008, leaving the pilot and co-pilot on board unharmed but resulting in damages to the plane.

WM Aviation and Tricor sought coverage from these damages under an insurance policy issued by USAIC, which included a limit of coverage for "damage to or loss of your aircraft" in the amount of \$19.2 million.

Since the time of the accident, the plaintiffs have maintained that the aircraft should be declared a total loss and that the defendants should pay the full insured value, but the defendants have countered that the claimed losses were well below the insured value of the aircraft.

Judge Scriven found that the two-year delay between the filing of the insurance claim and the instant action, coupled with the insurers' payment of \$6.8 million for what they estimated to be the damages, undermined their argument that they had been deprived of the opportunity to perform under the contract. The full extent to which they had this ability to perform would be determined at trial, the ruling added.

The ruling also shot down the insurers' alternative bid for summary judgment based on the alleged inability to perform under the policy, finding that while an insured's noncooperation with an insurance contract can serve as an affirmative defense to liability under Florida law, the defendants had not shown that the insured failed to cooperate.

WM Aviation is represented by Stephen A. Marino Jr. and Danya J. Pincavage of Ver Ploeg & Lumpkin PA.

The insurers are represented by Michael C. Siboni and Robert B. Buchanan of Siboni & Buchanan PLLC and by L. Richard Musat of Treece Alfrey Musat & Bosworth PC.

The case WM Aviation LLC et al. v. United States Aircraft Insurance Group et al., case number 6:10-cv-00971, in the U.S District Court for the Middle District of Florida.

--Editing by Eydie Cubarrubia.