



PRESS RELEASE

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ACG prevails on appeal with Olympic Airlines

FOR IMMEDIATE RELEASE

April 17, 2013, Newport Beach, CA. Aviation Capital Group Corp. (ACG) has prevailed in the appeal filed by Olympic Airlines (Olympic) concerning the April 2012 trial judgment in ACG's favor. In a case that has attracted considerable attention in the aircraft leasing industry, the English Court of Appeal rendered judgment today in ACG's favor in ACG Acquisition XX LLC v Olympic Airlines S.A. The Court of Appeal decision for ACG upheld the trial court's judgment that Olympic was bound by its acceptance of a leased aircraft and, going further than the trial court's judgment, validated that ACG's lease agreement was effective in itself to transfer to Olympic at delivery the risks for the condition of the aircraft. As a result, Olympic remains liable for the substantial judgment amounts assessed by the trial court. By upholding a lessee's acceptance of a leased aircraft, the judgment highlights the importance of commercial certainty to all participants in the aircraft leasing industry.

In August 2008, Olympic, the now-defunct Greek state airline, accepted a Boeing 737-300 aircraft from ACG Acquisition XX LLC after carrying out extensive pre-delivery inspections. It executed a Certificate of Acceptance confirming that the aircraft complied with the delivery conditions in all respects. Both the Malaysian and Greek aviation authorities issued certificates of airworthiness for the aircraft.

Subsequently, a fault was discovered with a spoiler cable, and following further inspections other issues were identified. Olympic carried out work on the aircraft but failed to return it to service. Both Courts confirmed that ACG was unaware of any defects in the aircraft when Olympic accepted the aircraft and certified that it complied with the delivery conditions. The Court of Appeal did not revisit the trial Court's conclusion that Olympic's ultimate failure to restore the aircraft to service cannot be attributed to any failure by ACG.

Olympic had refused to pay rent and minimum monthly maintenance reserves for the aircraft, and also claimed that it was entitled to be compensated for both the costs of replacement aircraft and the costs of repair. The Court of Appeal affirmed the trial judgment rejecting those claims, and therefore Olympic remains liable to ACG Acquisition XX LLC for all of the unpaid rent and maintenance reserves, plus damages to cover the remainder of the lease term.

The Court of Appeal demonstrated a clear understanding of the issues involved in aircraft operating leasing, including key differences between the aviation and shipping industries, and contracts typically entered into governing the use of their respective assets. The Court noted that with an asset as complex as a commercial aircraft, neither lessor nor lessee can be absolutely certain of an aircraft's condition on delivery short of complete disassembly, which is impractical. For that reason, aircraft dry lease contracts such as the one at issue in this case allocate that risk between the parties, and provide a contractual mechanism whereby the parties may determine conclusively when risk for the condition of the aircraft passes to the lessee. The Court of Appeal held that the "conclusive proof" clause of ACG's lease, together with the Certificate of Acceptance, provided

such a mechanism and effectively transferred the risk to Olympic at delivery. “Today’s judgment by the English Court of Appeal is very good news for participants in the aircraft leasing industry,” said Loren M. Dollet, Executive Vice President and Chief Legal Officer of ACG. “We often select English law to govern our lease agreements, and the Court of Appeal has shown it understands several important risk allocation principles in our leases and has generated confidence they will be enforced. Having clear and certain interpretation of leases facilitates the efficient and cost-effective financing of aircraft, which benefits lessors and airlines alike.”

Notes for Editors:

1. The aircraft in this case is owned by the Claimant entity, ACG Acquisition XX LLC, which is a non-consolidated securitization vehicle for which ACG acts as Servicer.
2. Any alleged defects were in no way attributable to ACG; prior to being leased to Olympic, all maintenance work was the responsibility of the previous lessee, AirAsia.
3. Following its repossession from Olympic by ACG, the aircraft was successfully returned to service and placed with a new lessee. It has operated without incident since that time.
4. Previously, an interim judgment had been given in which the Court held that Olympic had an arguable case for breach of contract and/or total failure of consideration. Despite the fact that it did not decide any questions of fact or points of law, that decision attracted considerable attention as a result of some of the judge’s non-binding comments concerning proper construction of the contract. Both the trial and appeal judgments which the Court have given do decide the case, and having considered Olympic’s arguments, both Courts rejected them. The Court of Appeal said explicitly that where the interim judgment had taken a different approach to the interpretation of the contract, the Court of Appeal disagreed with it.
5. ACG is represented by Michael McLaren QC and Harriet Jones-Fenleigh of Fountain Court (barristers), and by Simmons & Simmons (solicitors), where the team was led by Nick Benwell and Stephen Moses.
6. Olympic is represented by Philip Shepherd QC and Edward Cumming of XXIV Old Buildings (barristers), and by Fulbright & Jaworski (solicitors).

About Aviation Capital Group:

ACG is the owner and manager of a diversified fleet of commercial jet aircraft leased to the world’s leading airlines. Its portfolio includes over 250 aircraft leased to approximately 90 airlines in 40 countries. ACG also provides asset management and remarketing services to aircraft investors and institutional clients. ACG was founded in 1989 and is a wholly-owned subsidiary of Pacific Life Insurance Company, a Pacific LifeCorp company.