

Aviation Cos., Insurers Settle \$20M Plane Damage Suit

By Allison Grande

Law360, New York (December 07, 2011, 3:32 PM ET) -- WM Aviation LLC and Tricor International Corp. on Monday agreed to resolve their suit in Florida federal court seeking nearly \$20 million in coverage from U.S. Aircraft Insurance Group and three other insurers for damages that a plane sustained during a 2008 runway accident.

U.S. District Judge Mary S. Scriven entered an order directing administrative closure of the dispute, pursuant to the parties' Nov. 23 joint notice of settlement of all claims and counterclaims in the suit against insurers USAIG, U.S. Aviation Underwriters Inc., Liberty Mutual Insurance Co. and Ace American Insurance Co.

The parties have 60 days to submit a final stipulation of dismissal. If this stipulation is not filed and no request for extension is received, the court will dismiss the case with prejudice with no further order, according to Judge Scriven.

The parties reached their confidential settlement agreement one day after the judge issued a Nov. 22 order denying the insurers' motion to dismiss the complaint.

The insurers had argued that the suit was not ready to be litigated because WM Aviation and Tricor 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 Judge Scriven had found that the suit, which was filed more than two years after the submission of the insurance claims, could proceed because the defendants had "sufficient time" to investigate the disputed claim.

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 served "as some evidence that defendants have been able to adequately investigate the claim and perform under the policy," the ruling said.

Judge Scriven also had 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 could serve as an affirmative

defense to liability under Florida law, the defendants had not shown that the insured failed to cooperate.

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 for the damages under an all-clear aircraft policy issued by USAIG, Liberty Mutual and Ace American with USAU acting as manager and underwriter, 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 plane.

In her ruling, Judge Scriven had 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 was to be determined at trial, which Judge Scriven canceled as part of her Monday order.

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 as well as by L. Richard Musat and Mark A. Pottinger of [Treece Alfrey Musat & Bosworth PC](#).

The case is WM Aviation LLC et al. v. U.S. 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.