



## Airport Litigation

We regularly handle litigation involving mission-critical and precedent-setting issues in airport law, including land use disputes with host municipalities, the authority of airports to control noise and access to their facilities, inverse condemnation, the ability of airport proprietors to fund innovative capital projects, challenges to FAA decisions, orders and regulations, and the environmental and regulatory requirements for airport expansion projects. In addition, we have considerable experience litigating airport compliance disputes before FAA.

We have appeared in courts at every level, including the United States Supreme Court, federal appellate, and district courts; state courts; and federal and state administrative agencies and tribunals. We are comfortable in all phases of litigation from pre-filing planning to pleadings, discovery, complex motions practice, trials, trial and appellate court briefing, and argument. Recognizing that litigation is always costly and often uncertain, Kaplan Kirsch & Rockwell is always alert to settlement opportunities and has successfully negotiated litigation settlements that have achieved the client's objectives without the expense and uncertainty of litigation.

### Representative Cases

#### Supreme Court

- *American Trucking Associations v. City of Los Angeles*, 133 S.Ct. 2096 (2013) (drafted *amicus curiae* brief on behalf of Airports Council International – North America to urge the Court to preserve the full scope of proprietary powers under the proprietor's exception to federal preemption of state aviation laws)
- *Vacation Village v. Clark County*, 244 Fed. Appx. 785 (9th Cir. 2007), *cert. denied* 128 S.Ct. 2956 (2008) (represented Clark County in Supreme Court certiorari petition after unfavorable ruling from the U.S. Court of Appeals for the Ninth Circuit)
- *McCarran International Airport and Clark County v. Sisolak*, 137 P.3d 1110 (Nev. 2006) *cert. denied* 127 S.Ct. 1260 (2007) (represented Clark County in Supreme Court certiorari petition after unfavorable ruling from the Nevada Supreme Court)

#### Federal Appellate and Trial Courts

- *Air Transport Assoc. of Am., Inc. v. FAA*, No. 18-1157 (D.C. Cir. *pending*) (representing Airports Council International – North America as an *amicus curiae* in opposition to airlines' petition for review of FAA decision concerning revenue use rules and stormwater fees)
- *AH Aero Service LLC v. Heber City, Utah*, No. 17-VC-1118 (D. Utah *pending*) (representing airport sponsor in a dispute with an FBO, including claims for breach of contract and First Amendment retaliation)
- *Hillsborough County Aviation Authority v. Huerta*, No. 15-1238 (D.C. Cir. *pending*) (representing the airport sponsor in challenge to FAA's partial denial of a PFC application for terminal and roadway improvement project)
- *Kaufmann v. FAA*, No. 17-3152 (6th Cir. Jan. 22, 2018) (represented airport sponsor as intervenor in successfully defending FAA approval of tree removal plan necessary to protect approaches to Louisville's Bowman field)
- *City of Phoenix v. Huerta*, 869 F.3d 963 (D.C. Cir. 2017) (represented the City of Phoenix in successful challenge to FAA's approval of new NextGen flight procedures at Phoenix Sky Harbor Airport)
- *NAACP v. City of Philadelphia*, No. 15-1002 (3d Cir. Oct. 12, 2016) (represented Airports Council International – North America as an *amicus curiae* supporting the City of Philadelphia's request for



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- en banc* review of decision striking down on First Amendment grounds parts of the airport's commercial advertising policy)
- *City of Santa Monica v. FAA*, No. 16-72827 (9th Cir. *settled*) (represented Airports Council International – North America as an amicus curiae in support of airport sponsor seeking to limit duration of grant obligations to stated 20-year term)
  - *Friends of East Hampton Airport v. Town of East Hampton*, 841 F.3d 133 (2d Cir. 2016) (represented the airport sponsor in defense of curfews and restrictions on noisy aircraft)
  - *Independent Pilots Association v. FAA*, Case No. 11-1483 (D.C. Cir. 2016) (representing UPS pilots in challenge to FAA decision to exclude cargo carriers from flight time and duty rules)
  - *Town of Barnstable, Mass. v. FAA*, 740 F. 3d 681 (D.C. Cir. 2014) (represented the Town of Barnstable in a challenge to FAA Determination of No Hazard regarding tall towers near Barnstable Municipal Airport)
  - *Spokane Airport Board v. Huerta*, Case No. 13-71172 (9th Cir. 2013) (acted as lead counsel in litigation brought by more than 40 airports with contract towers in a challenge to FAA's decision to terminate funding for—and to close—150 contract towers at small- and medium-sized airports throughout the nation; dismissed as moot per Public Law 113-9)
  - *Tinicum Twp., PA. v. U.S. Dep't. of Transp.*, 685 F. 3d 288 (3d Cir. 2012) (represented City of Philadelphia as intervenor in successful defense of FAA's approval of major capacity enhancement project at Philadelphia International Airport)
  - *Town of Barnstable, Mass. v. FAA*, 659 F. 3d 28, Court of Appeals (D.C. Cir. 2011) (represented the Town of Barnstable in a successful challenge to FAA Determination of No Hazard regarding tall towers near Barnstable Municipal Airport)
  - *City of Santa Monica v. FAA*, 631 F. 3d 550 (D.C. Cir. 2011) (challenged FAA decision that limited ability of airport proprietor to enact rules applicable to heaviest aircraft using the airport)
  - *Trump v. FAA*, No. 10-15543-E (11th Cir. 2010) (represented airport sponsor as intervenor in challenge to FAA's approval of a third runway at Palm Beach International Airport)
  - *41 North, 73 West, Inc. v. U.S. Dep't. of Transp.*, 408 Fed. Appx. 393 (2d Cir. 2010) (successful defense of FAA decision upholding airport proprietor's authority to distinguish between types of FBOs in setting rates and charges)
  - *Clark County, Nev. v. FAA*, 522 F. 3d 437 (D.C. Cir. 2008) (successfully challenged FAA approval of siting of tall towers near end of proposed new airport runway)
  - *Tutor-Saliba Corp. v. City of Hailey*, 452 F. 3d 1055 (9th Cir. 2005) (successfully defended challenge to the airport's runway weight restriction against Constitutional and statutory challenges by owner of a large private jet that exceeded the weight limit)
  - *City of Naples Airport Auth. v. FAA*, 409 F. 3d 431 (D.C. Cir. 2005) (successfully challenged FAA revocation of grant eligibility of airport proprietor for banning Stage 2 aircraft)
  - *Nat'l Bus. Aviation Ass'n v. City of Naples Airport Auth.*, 162 F. Supp. 2d 1343 (M.D. Fla. 2001) (successfully defended ban on Stage 2 aircraft against Constitutional challenges)
  - *City of Los Angeles v. FAA*, 138 F. 3d 806 (9th Cir. 1998) (represented City of Los Angeles in challenge to EIS for new airport terminal)
  - *Grand Canyon Air Tour Coalition v. FAA*, 154 F.3d 455 (D.C. Cir. 1998) (represented Las Vegas airport system in challenge to FAA Grand Canyon air tour overflight rule)
  - *Burbank-Glendale-Pasadena Airport Auth. v. Burbank*, 136 F. 3d 1360 (9th Cir. 1998) (represented the City of Burbank in multiple litigation matters related to the expansion of the airport and authority of local government to control land use in vicinity of airport)
  - *Conservation Law Foundation, Inc. v. Busey*, 79 F. 3d 1250 (1st Cir. 1996) (challenged approval of reuse of former military base)



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- *City of Cleveland, Ohio v. City of Brook Park, Ohio*, 893 F. Supp. 742 (N.D. Ohio 1995) (successfully represented City of Brook Park in defense of zoning regulations controlling airport expansion)
- *City of Grapevine, Tex. v. U.S. Dep't of Transp.*, 17 F. 3d 1502 (D.C. Cir 1994) (represented municipality in challenge to EIS for airport expansion)
- *State of Kansas v. United States*, 16 F.3d 436 (D.C. Cir. 1994) (drafted brief for airport as intervenor defending the Wright Amendment against Constitutional challenges)

### State Cases

- *Riser v. City of Chicago*, 2015-L-009955 (Cook Cty., Ill. Dec. 19, 2018), *appeal pending* (successfully defended airport sponsor in state inverse condemnation litigation concerning construction and use of new runway at O'Hare International Airport)
- *Starr Indemnity & Liability Co. v. Telluride Regional Airport Authority*, No. 2017CV30048 (Dist. Ct., San Miguel County, Colo., May 8, 2018) (successfully defended airport sponsor against claims for damages allegedly caused by aircraft crashing into a snow plow during snow removal operations)
- *No Night Flights Network v. Telluride Regional Airport Authority*, Case No. 2011CV71 (Dist. Ct., San Miguel County, Colo., Mar. 20, 2013) (successfully defended the Airport Authority's changes to its nighttime airport curfew against state law challenges)
- *Afoa v. Port of Seattle*, No. 85784-9 (Wash. Sup. Ct. Jan. 31, 2013) (drafted *amicus curiae* brief on behalf of Airports Council International – North America in support of Seattle-Tacoma International Airport's effort to defend itself against suit by an injured employee of an airport licensee)
- *Trump and Mar-A-Lago Club v. Palm Beach County, Florida* (Palm Beach County, FL) (successfully defended sponsor in multiple rounds of litigation seeking to enjoin the construction of a new runway and to obtain money damages for alleged damages from aircraft overflights)
- *Telnack v. Martin County, Florida*, Case No. 04-459 (19th Cir. Fla. Mar. 5, 2010) (defeated class certification of a putative class of homeowners seeking damages for aircraft overflights)
- *Minnesota ex rel. City of Minneapolis v. Minneapolis Airports Commission* (Minn. Dist. Ct. 2007) (represented City of Minneapolis in challenge under state Environmental Rights Act to sound insulation program at Minneapolis-St. Paul International Airport; secured settlement providing for sound insulation for 10,000 homes)
- *Continental Aviation Services, Inc. v. City of Naples Airport Auth.*, 29 Fla. L. Weekly D1236 (Fla. Dist. Ct. App. 2004) (successfully defended ban on Stage 2 aircraft against state law zoning and land use challenges)
- *City of Naples Airport Auth. v. Jet 1 Center Inc.*, Case No. 02-5010-CA-HDH (Fla. Cir. Ct. 2003) (obtained injunction against fueling by FBO for violations of airport regulations)
- *City of Burbank v. Burbank-Glendale-Pasadena Airport Auth.*, 113 Cal.App.4th 465 (Cal. Ct. App. 2003) (successfully represented City of Burbank in prosecuting a challenge to citizen-sponsored initiative on airport development)
- *City of Des Moines v. Puget Sound Regional Council*, 988 P.2d 27 (Wash. Ct. App. 1999) (represented coalition of local governments in challenge to land use approval for new runway project)
- *City of Burbank v. Burbank-Glendale-Pasadena Airport Auth.*, 72 Cal.App.4th 366 (Cal. Ct. App. 1999) (successfully represented City of Burbank in defense of authority under state law to review acquisition of property for airport expansion)
- *Burbank-Glendale-Pasadena Airport Auth. v. City of Burbank*, 64 Cal.App.4th 1217 (Cal. Ct. App. 1998) (represented City of Burbank in defense of transient parking tax)
- *City of Cleveland v. City of Brook Park*, 659 N.E.2d 342 (Ohio Ct. App. 1995) (successfully represented City of Brook Park in defense of property acquisition adjacent to airport)



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- *City of Irving v. Dallas/Fort Worth Int'l Airport Bd.*, 894 S.W.2d 456 (Tex. App. 1995) (represented municipalities in challenge to zoning applicable to airports)
- *Dallas/Fort Worth Int'l Airport Bd. v. City of Irving, Texas*, 854 S.W.2d 161 (Tex. App. 1993) (represented municipalities in challenge to zoning for airport project)