OUR FLIGHT PLAN

- Sources and Summary of Safety Obligations
- Enforcement
- Critical Issues in Tort Liability
- Safety Management Systems (SMS)
- Airport Security
  - Interfacing with Federal Agencies
  - Maintaining Secure Airport Environment
LAWYER’S BASIC SAFETY ROLE

- Know where to look
- Know what to look for
- Know what to do when things go wrong!
SOURCES OF SAFETY OBLIGATIONS

- Grant Assurances
- FARs - Part 139
- Tort Liability
SAFETY-RELATED GRANT ASSURANCES

- Operation and Maintenance (#19)
- Hazard Removal and Mitigation (#20)
- Compatible Land Use (#21)
- Economic Nondiscrimination (#22)
ABOUT THOSE “ADVISORY” CIRCULARS

- 123 current Series 150 Advisory Circulars
- Generally *mandatory* for Part 139 airports
- Often *mandatory* for grant- or PFC-funded projects
- *Recommended* practices in other cases, but beware…
"The airport and all facilities which are necessary to serve the aeronautical users of the airport . . . shall be operated at all times in a safe and serviceable condition and in accordance with the minimum standards as may be required or prescribed by applicable Federal, state and local agencies for maintenance and operation."

- **Signage, Marking, and Lighting**
- **NOTAMs**
- **Snow and Ice**
- **Foreign Object Debris (FOD)**
- **Pavement Maintenance**
- **Wildlife Hazard Management**
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OPERATIONS AND MAINTENANCE (#19)

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- Pavement Maintenance
- **Wildlife Hazard Management**
HAZARD REMOVAL AND MITIGATION (#20) AND COMPATIBLE LAND USE (#21)
ECONOMIC NONDISCRIMINATION (#22)

An airport sponsor –

- *May* establish reasonable and not unjustly discriminatory conditions for the safe and efficient operation of the airport.

- *May* prohibit or limit aeronautical uses of the airport if such action is necessary for the safe operation of the airport.
CERTIFICATED AIRPORTS

Minimum regulatory standards for:
- Airport certification manual
- Aircraft rescue and firefighting
- Runway safety areas
- Wildlife hazard assessment and management
- Snow and ice control plan
SAFETY ENFORCEMENT

Part 139

Source: coaching-journey.com
TORT LIABILITY (A BRIEF REVIEW)

Duty

Breach

Negligence

Causation

Damages
TORT LIABILITY (A BRIEF REVIEW)

Premises Liability?

Negligence Per Se?

Res Ipsa Loquitur?

Damages

Duty

Breach

Causation

Negligence

Premises Liability?
SOVEREIGN IMMUNITY

Things to know the answer to:

- Are you covered?
- Limitations on damages?
- Procedural requirements?
- Discretionary function exceptions?
- Permissible causes of action?
- Liability insurance?

Start Here!

AIRPORT’S STANDARD OF CARE

- Generally, no private right of action under FAA Act
- Standard of care depends on your airport:
  - Certificated
  - Non-Certificated
  - Was the airfield component AIP-funded?
- And it depends on your jurisdiction:
  - Standard of care
  - Evidence of the standard of care
  - Preemption
SOMETHING COMPLETELY DIFFERENT?
UNCERTAINTY EXISTS
SMS REGULATORY PROCESS

- First Draft – October 2010
- Supplemental Draft – July 2016
- Final Draft
  - Q1 of 2017
  - Q4 of 2017
  - April 2018
  - Summer 2018
  - ???
- Advisory Circular?
KEY NEW ELEMENTS OF SMS

- The accountable executive
- Responsibility on non-movement area
- Data collection
- Sponsor-produced documents
  - Risk matrix
  - SMS Manual
THE ACCOUNTABLE EXECUTIVE
NON-MOVEMENT AREAS
DATA COLLECTION

SMS Form

Safety Management System (SMS) Confidential Report Form

The Confidential Report Form (CRF) should be used to report non-emergency safety concerns identified at Hartsfield-Jackson Atlanta International Airport (ATL). This form is not intended for reporting emergencies. If the safety concern is an emergency, call 911 immediately.

Please report safety concerns as soon as possible after the hazard is recognized, using one of several methods:

- Complete the CRF shown below and submit online.
- Call 404-352-4674 and report the details.
- Mail the printed and completed CRF to:
  SMS Manager
  6000 North Terminal Parkway
  Atlanta, GA 30330
- Email the completed and scanned CRF to SafetyAlways@atl.com.

If you have photos of a safety concern, please email to SafetyAlways@atl.com and reference the issue.

This SMS form does not acknowledge any liability on behalf of the City of Atlanta Department of Aviation.

Confidential Report Form (CRF)

This form should be completed by the individual reporting the event. All fields are required unless noted as Optional.

Employee Type:
- Choose One

Event Date:

Event Time:
- Choose One

Event Type:
- Choose One

Gate #:

Vehicle # / Tag #:

Items Involved:
- Aircraft
- Air Stairs
- Door
- Dumpster
- Fire safety
- Fueling issue
- HVAC
- Jet Bridge
- Pedestrian
- Smoking issue
- Tug
LEGAL CONCERNS WITH SMS

- Shifting liability (remember this?)
  - Sponsor
  - Accountable executive
- Data protection and privacy
- Existing documents
LIABILITY

HELLO
I AM...
SUING YOU
DATA PROTECTION
EXISTING DOCUMENTS
WHAT NOW?
BEGIN

1. Legal Exposure Audit
2. Regulatory Documents Audit
3. Administrative Audit
4. Financial Assessment
5. FAA Approvals Audit
6. Assemble Review Team
7. Schedule Document Revisions
8. Gap Analysis

IMPLEMENT
UNCERTAINTY REIGNS, BUT FEW LEGAL ISSUES THUS FAR

ACRP 11-01/Topic 08-01 [Completed]

Legal Issues Related to the Implementation and Operation of Safety Management Systems for Airports
[ACRP 11-01 (Legal Aspects of Airport Programs)]
AIRPORTS AND SECURITY AGENCIES
AIRPORT SPACE

- **TSA**
  - *Prohibited* from requiring sponsors to provide no-cost space, *except* for security checkpoints

- **CBP**
  - Receives all space “without cost” at “international airports”
    - This is regulatory, not naming convention – see 19 C.F.R. § 122.13.
  - “Landing rights” and “user fee” airports…less clear
National Security

U.S. customs agency is so short-staffed, it’s sending officers from airports to the Mexican border

Source: N. Miroff, Washington Post, Jan. 19, 2018
CBP’S STAFFING “OBLIGATIONS”

- No statutory or regulatory mandate!
- Sponsor options limited for growth or new service unless they are willing to pay

CBP Announces 17 Potential Partnerships for New and Expanded Services

Release Date: October 2, 2018

As part of the Reimbursable Services Program, these agreements will promote economic growth in cross-border trade and travel

Source: CBP Media Release
AIRPORT SECURITY

- Sterile areas
- AOA
- SIDA
- Airport security plans
- Perimeter / physical security
- Cybersecurity
- Insider threats
- Local law enforcement
- Operational agreements
- Sensitive security information
GENERAL AVIATION AIRPORT SECURITY
SENSITIVE SECURITY INFORMATION (SSI)

- Information “obtained or developed in the conduct of security activities . . . the disclosure of which TSA has determines would be detrimental to the security of transportation.”
- May only be disclosed to those with a “need to know.”
- Must take “reasonable steps” to protect from disclosure.
QUESTIONS AND DISCUSSION

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