Session 11 – Airport Proprietors’ Liability and Safety Obligations

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Desk Reference
Chapter 24
Today’s presentation

• Airport Liability
  – Potential areas of concern
  – Risk Mitigation Means & Measures
  – Standard of Care

• Safety responsibilities generally

• Historic division of responsibility

• Emerging issues
  – Safety Management Systems (SMS)
  – Legal considerations in implementing SMS
Hope for the best but...
Two airplanes clipped at LaGuardia Airport; no injuries.

JFK Intl. Airport
June 20, 2011
7pm ET

Egypt Air 986

Lufthansa 411

New developments:
"Cancel takeoff! Cancel takeoff!"
Jets nearly collide at Kennedy Airport

Beaten Giants fan upgraded from critical to serious condition
Airport Proprietors’ Liability

• Sources of Liability
  – Airfield
    • Ramp
    • Jetways
    • Taxiways & Runways
    • Airspace
      – Commercial and GA flights
      – UAS
  – Terminal
    • Gates
    • Common Areas
    • Support Areas
Airport Proprietors’ Liability

• Sources of Liability (continued)
  – On Airport Aeronautical Support Facilities
    • Hangars
    • Cargo Facilities
  – Non-aeronautical facilities
    • Office buildings
    • Hotels
    • ???
Risk Mitigation

• Contractual Shifting of Liability
• Indemnification
• Insurance
  – Airport’s Insurance Program
  – Tenant & User Insurance
    • Amount & Type
    • Airport as Additional Insured
• Risk Management
Standard of Care

• Core of all airport liability
• What is the standard of care?
• What will the proprietor do to comply with its duty?
• Start with the regulatory scheme for airports
Airport Tort Liability

• Part 139 and Advisory Circulars
  – Mandatory obligations
  – Can form basis for tort liability after accidents

• Precise extent is dependent on state sovereign immunity provisions and tort law
Historic Responsibility - Airport Safety

SAFETY

- Air Traffic
- Airlines/Operators
- Pilots
- FAA
- Airport Mgmt.
- Ground Operators
Ground Operators

Airlines/Operators

Air Traffic

Airport Mgmt.

Pilots

FAA

SAFETY
Airfield signage
Fueling safety

Obstruction protection and removal

FOD protection
Runway Safety Areas
Runway Protection Zones

Source: U.S. Department of Transportation
Wildlife Hazard Management
Wildlife Hazard Management

• Principally (not exclusively) commercial airports
• Airports “must take immediate action to alleviate wildlife hazards whenever they are detected.”
  – Wildlife Hazard Assessment
  – Wildlife Hazard Management Plan
Safety Management Systems
What is SMS?

“A formalized approach to managing safety by developing an organization-wide safety policy, developing formal methods of identifying hazards, analyzing and mitigating risk, developing methods for ensuring continuous safety improvement, and creating organization-wide safety promotion strategies.”
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**Risk Levels:**
- **High Risk**
- **Medium Risk**
- **Low Risk**
The Regulatory World of SMS

- Part 139
- AVS Order 8000.367
- ARP Order 5200.11
- Part 121
- ATO
- Other SMS*

* Service Providers

LATE 2015
Why Airports Should Care?

• A *paradigm shift* for proprietors:
  – Liability exposure
  – Legal responsibility
  – Administrative burdens
  – Public disclosure of safety information
PUZZLE PROCESS 3D

NEW STANDARD OF CARE

POLICING OF LEASE-HOLDS AND NON-MOVEMENT AREAS

REGULATION BY OBJECTIVE VS. PRESCRIPTIVE REGULATION

BEYOND SCOPE OF PART 139 OBLIGATIONS

PROACTIVE PROPRIETOR RESPONSIBILITY
SMS – Liability

• State law immunity unchanged
• May create a new, uniform standard of care
• Liability for safety on leaseholds
• Personal liability of “responsible official”
• Self reporting (no immunity?)
• Inconsistency among airports
Personnel

• Accountable executive: top-down approach to “full control of the human and financial resources required to implement and maintain the [SMS]”
  – Who
  – Fit into personnel and administrative structure
  – Compare to Japanese quality control model
  – Qualifications, liability

• Creation of safety function
• Enforcement hierarchy
Information/ IT

- Collect highly sensitive information
- Not proprietary so may not be able protect under open records laws
- Documentation submitted to FAA
- Safety reports, scorecard as sources of public scrutiny
- Self reporting implications
Tenants

• Non-movement areas
• Need to police leasehold property
• Need authority to direct tenant to take action (check leases)
• Need for revisions to standard leases, minimum standards, rules/regulations
Implementation Planning

BEGIN

- Legal Exposure Audit
- Regulatory Documents Audit
- Administrative Audit
- Financial Assessment
- FAA Approvals Audit
- Assemble Review Team
- Schedule Document Revisions
- Gap Analysis

IMPLEMENT
Homework Questions

• Status of wildlife management efforts
• Protection of safety areas
• Plan for SMS
  – Liability
  – Personnel
  – Information/ IT
Questions?

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