



AIRPORT REGULATION AND LITIGATION





Airport Law

Members of our team have advised ground handlers regarding their responsibilities, obligations and potential liabilities under their vendor contracts, Standard Ground Handling Agreement (SGHA), with various airport entities; their subcontractor agreements, and as third parties in contracts concluded by others. Our lawyers have negotiated hold harmless agreements and reviewed and renegotiated indemnity clauses. In the event of a dispute, we have also raised defenses to the exercise of such clauses (e.g., the indemnitee's gross negligence) as well as various affirmative defenses, including statutes of limitations (e.g., under Montreal Convention), conditions precedent (e.g., notice of claim requirement), improper venue and damage caps.

Regulatory Compliance and Enforcement

Members of our team have extensive experience advising and representing airports of all sizes in regulatory compliance and enforcement matters, so we understand the multitude of issues your business faces. We have counseled and advocated for airports before the Federal Aviation Administration (FAA), from helping airports obtain Part 139 operating certificates, which serve to ensure safety in air transportation by requiring that they meet strict federal safety guidelines for design and operation, to responding to alleged regulatory violations, petitioning for exemptions from any rule issued by FAA under its statutory authority interfacing with the agency on airside capacity, airport access and air traffic control matters.

We have counseled airport owners and operators on regulatory matters involving the Department of Transportation (DOT), National Transportation Safety Board (NTSB), Department of Homeland Security (DHS), Transportation Security Administration (TSA), Department of Defense (DoD), Department of Justice (DOJ) and Department of State, among others. Our airport clients also may have to comply with state and/or local regulations, which usually deal with environmental or administrative matters rather than the FAA's primary concern, safety, and we help our clients navigate these regulatory regimes as well.

Risk Analysis, Insurance and Loss Prevention

If you own or operate a private, municipal or commercial airport, you are exposed to liability claims that could result from injuries to members of the general public or damage to their property. Our attorneys work with airports and airport managers to assess, avoid and minimize risks and to structure transactions and insurance to limit exposure. We work with aviation insurance professionals to obtain industry- and organization-specific liability protection (e.g., passenger boarding bridges, bird strikes) under standard commercial general liability policies covering premises, products/completed operations, contractual, personal injury, premises, medical payments, construction and hangarkeeper's liability, as well as insurance covering cyber liability and privacy protection, corporate reputation and public-private partnership (P3) risks.

Our lawyers have dealt with national and international insurers' duties to defend and indemnify with respect to a wide range of coverage areas and grounds for denial, including in connection with commercial leases and service agreements between airports and airlines, ground handlers and other service providers, including third parties with access to and operations on airport property, such as providers of aircraft maintenance, refueling, deicing, ramp and hangar services; baggage and air cargo handling; airport security; check-in counter, gate arrival and departure, and transfer and customer service counter; airline lounges, and retail and restaurant services.

Litigation and Dispute Resolution

Aviation accidents are usually the result of multiple causes (e.g., pilot or other human error, mechanical failure, weather, sabotage, etc.) that come together to produce tragic results. Our attorneys have extensive experience investigating, litigating and taking to trial complex liability cases on behalf of airport management across the United States, from one of the nation's largest and busiest airports to small private airports and FBOs, so we understand the multitude of issues they face.

Fox Rothschild has defended clients against tort claims alleging serious personal injury and wrongful death, including premises liability cases arising from slips and falls and motor vehicle accidents; airplane and helicopter crashes, including taxi, takeoff and landing accidents and other airline disasters (e.g., as counsel for an airport sued in connection with the Sept. 11 terrorist attack, we successfully obtained dismissal of all litigation arising from that disaster); airline support negligence; lack of emergency response; aircraft and other property damage; and false arrest and security screening-related claims.

We have brought claims against the U.S. government under the Federal Tort Claims Act, 28 U.S.C. Ch. 171, in air traffic controller-related accident cases and breach of contract cases, and have represented clients in insurance bad faith cases and in complex commercial litigation involving commercial and government contracts, and violations of intellectual property rights and other unfair trade practices.



Emergency Preparedness and Response

Most airports have experienced emergencies associated with aircraft accidents, power failures, fuel spills, floods or other adverse events that result from natural phenomena, technical failure, human error or intentional malevolent behavior. While emergencies can seldom be predicted, they can be prepared for. The FAA requires that each airport holding an Airport Certificate develop and maintain an Airport Emergency Plan (AEP) designed to minimize the possibility and extent of personal injury and property damage. Our attorneys have assisted airports in developing such plans, as well as accident/incident response manuals (also required) and in otherwise improving their emergency response capabilities.

Advice informed by real world experience in disaster situations is key to developing an emergency response plan that is not only compliant but also best for your organization. It's also critical when putting the plan into operation. We have provided airports with critical support and advice when accidents or incidents have occurred on the airfield, surrounding terrain or nearby bodies of water. We understand that successful representation in this area requires due consideration of business interests, public relations concerns, claims management, regulatory issues and the inevitable civil litigation and criminal investigations and prosecutions that frequently result. Excellent legal results cannot be achieved at the expense of these other important interests.

Environmental Law

Our team members advise airports on all aspects of federal and state environmental regulatory compliance, including the FAA's Airport Environmental Program, which implements the National Environmental Policy Act (NEPA), and its state analogs, including ensuring legally defensible environmental assessments (EA), environmental impact statements (EIS) and environmental impact reports (EIR) in connection with airport development projects. We counsel clients regarding air quality (including carbon emissions and lead emissions from avgas), airport noise, waste management (including recycling and sustainability), water and drainage, wildlife hazard mitigation and land use compatibility, planning pollution associated with aircraft and runway deicing activity, and incident response. We have performed environmental regulatory compliance audits as a means of reducing potential civil liability or avoiding criminal prosecution. In addition, our team has authored an environmental compliance handbook for use by airport management.



Energy and Sustainability

The issues surrounding renewable energy and clean technologies, including biofuel, biomass, carbon capture and storage, geothermal, hydroelectric, landfill gas, run of river, solar, waste-to-energy, wave and tidal, on and offshore wind, and the preservation of clean water, land and air, are as vast as our ecosystem. Members of our team help airports comply with all applicable regulatory regimes, including assisting with impact assessments and response strategies, the identification of future vulnerabilities and regulatory reviews, audits and other examinations. Our experience with climate and energy solutions is extensive, ranging from structuring CO² supply agreements and carbon-offset programs to advising on infrastructure builds and natural resource recovery activities, including relevant tax credits and other subsidy regimes.

Financing

In addition to airport-generated income, airports rely on a variety of public and private funding sources to finance capital development, including state and federal grants, earmarked taxes and fees, and revenue bonds.

- Airport Improvement Program (AIP). To fund airport development noise compatibility initiatives and other improvements to airports and the nation's air traffic control system, the FAA administers the AIP, an airport financial assistance program financed by taxes on domestic tickets, international arrivals and departures, air freight and fuel surcharges, and other levies. Airports that apply for AIP funds must assure the FAA that they will comply with a multitude of federal laws regulations, executive orders, policies and guidelines covering operations and maintenance, compatible land use, fee and rental structure, airport revenues, airport layout plan, economic nondiscrimination and exclusive rights, among many other requirements. We have advised its airport clients on the full range of such obligations and defended them in FAA enforcement actions brought under CFR Parts 13 (informal reports resulting in regional staff determination) and 16 (formal complaints resulting in final agency decision).
- Passenger facility charges (PFCs). Congress has authorized airports to charge airline passengers a passenger facility charge (PFC) of up to \$4.50 per flight segment and up to \$18 per round trip, provided such fee is used to (i) preserve or enhance safety, capacity or security of the national air transportation system; (ii) reduce noise, or (iii) enhance competition between or among air carriers. Our team has assisted airports in obtaining FAA approval to levy this tax.
- Revenue bonds. General airport revenue bonds (GARBs), secured by future airport revenue and subject to the scrutiny of credit rating agencies, are the largest source of capital for airport development, be it construction of a new terminal or parking garage. Fox Rothschild's public finance attorneys have served as bond counsel, disclosure counsel and counsel to underwriters, issuers borrowers, trustees, banks and credit enhancers in tax exempt and taxable financings for governmental and private entities.

A Dedicated Team with Strong Agency Relations

Our team is comprised of practitioners who are deeply familiar with the myriad regulations, statutes and treaty requirements; who have represented clients in regulatory investigations by U.S. federal and state agencies as well as international regulatory bodies; and who have defended clients in enforcement actions before administrative tribunals and arbitration panels as well as in courtrooms throughout the world. Many members of the team are former FAA attorneys who have maintained productive relationships with officials and staff members at the agency. Members of our team also regularly interact with and, as a result, have developed positive relationships with personnel at the NTSB, DOT, TSA, DoD, DOJ, Occupational Safety and Health Administration (OSHA), Environmental Protection Agency (EPA) and Department of Energy (DOE). There is a big difference between a regulatory framework on paper and in practice. Our lawyers don't just have a deep understanding on the law; we understand its real world application. We pride ourselves on our ability to help clients address issues before they become problems, and to resolve problems in a manner that preserves our clients' relationships with regulatory authorities and the flying public.



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