



Suing the United States for FAA Negligence

2026 Aviation Roundtable
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Introduction

- Overview of the Federal Tort Claim Act (FTCA), 28 U.S. Code §1346 (b)(enacted in 1946)
- Purpose
- Requirements
- Background and enactment
- Waiver of sovereign immunity
- Scope of liability under the FTCA

Substantive/Procedural Issues

- Negligence
- Statute of Limitations
- Administrative Claim
- Standard Form 95
- Six month deadline
- Exceptions to Tort Liability
- Discretionary Function
- Applicable Law
- Jurisdiction/Venue
- Recoverable Damages
- Non-jury

Areas of FAA Liability Exposure

- Air traffic control
- Violation of FAA ATC procedures FAA Order 7110.65 BB (Eff. 2-20-25)
- Errors in communications/clearances

Recent Headlines

Newark's Air Traffic Control Staffing Crisis Is Dire. It's Also Not Unique.

New Report Highlights Air Traffic Control Staffing Woes

While faulting some towers for inefficient practices, the report recognized significant external factors and called on Congress to help address the problem.

Before Crash, an Alarming Pattern of Near-Misses Between Planes

Understaffing, poor working conditions and outdated technology have for years strained the system that keeps planes from crashing into each other.

Equipment Problems Vexed Newark Airport Controllers for Years

Records show that air traffic controllers handling Newark Liberty International Airport flights have grappled with equipment outages since at least 2023, an anxiety-causing situation they call “plug and pray.”

TIMES INSIDER

Air Traffic Control Problems Are Only the Latest Tap on the Airline Beat

Air travel was supposed to be just one part of Niraj Chokshi's assignment at The Times. But then the pandemic started a wave of news that hasn't really stopped.

Colorado Air Traffic Control Facility Lost Contact With Some Pilots

Controllers switched frequencies and planes were “safely separated,” officials said. The 90-second outage on Monday followed communications problems at Newark's airport.

Exceptions to FAA Liability

- Discretionary function exception -- 28 U.S.C. § 2680(a)
- Policy v. operational
- Purpose of exception: (1) Prevents “second-guessing” of agency’s policy decisions, and (2) protects U.S. from liability that would seriously handicap efficient government operations.

Discretionary Function Exception to Liability

- **Discretionary Nature:** The exception applies when the actions involve discretion or choice; Can include decisions related to planning, policy-making, or resource allocation
- **Policy Considerations:** The decision-making process must be grounded in social, economic, or political policy considerations; Courts look for the presence of these policy decisions to determine if the exception applies
- **Scope of Protection:** The exception is designed to protect government officials from liability when making decisions involving significant policy judgments; Includes decisions related to public safety, resource management, and regulatory enforcement
- **Regulatory Decisions:** If an agency decides how to allocate resources for safety inspections, this may fall under the discretionary function exception
- **Air Traffic Control:** Decisions made by air traffic controllers regarding flight paths or delays based on safety assessments may also be protected under this exception

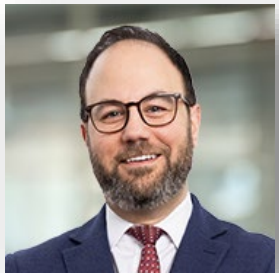
Liability or No-Liability?

- Staffing of towers
- Training, fatigue, and stress
- Outdated equipment
- Slow modernization -- i.e., NextGen
- System overload/outages

New FAA Leadership

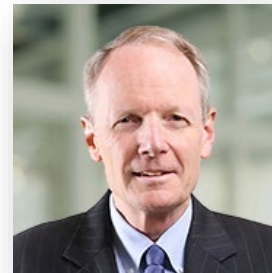
- FAA Administrator Bryan Bedford seeking rapid deployment of first \$12.5 billion approved by Congress for update of U.S. air traffic control system
- Additional funding request likely in 2026-2027
- Promises for modernization and remediation of air traffic control staffing storages

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