



Drones as a Business: Operating in a Commercial World

The UAS Webinar Series

Presenters



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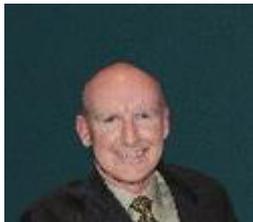
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UAS Lawsuit – What does it look like?

Case 1: Philadelphia Indemnity Insurance Company v. Hollycal Production, Inc. et al

- HollyCal provides photography services and was contracted to film a wedding using a drone
- According to conflicting reports, either the drone was flown into a bystander or the bystander walked into the drone when it was flying at eye level.
- The bystander suffered a serious eye injury that required surgery, and ultimately resulted in the loss of vision in one of her eyes.
- Had a liability insurance policy with a \$1 million per occurrence coverage limit.
- Suit brought against HollyCal

UAS Lawsuit – What does it look like?

- HollyCal asked the insurer to defend and indemnify
- Insurer claimed the accident was not covered
- CGL policy contained aircraft exclusion
- HollyCal claimed that a drone is not “an aircraft,” under the policy and the accident should be covered
- Plaintiff brought declaratory judgment action
- Court ruled in favor of Insurer
- HollyCal left to defend claims on its own.

What does a UAS Lawsuit look like?

Case #2: Plaintiff was a corporate CFO

- Full thickness corneal laceration
- Emergency surgery
 - Medical Expenses, Lost Income for "Extended Period of Time," Lost Opportunities and Growth for the Company, Hedonic Damages
- Strict Liability
- Negligence
- Breach of Warranty
- Colorado Consumer Protection Act
 - Treble Damages, Attorney Fees, Costs
- Loss of Consortium
 - Wife has Suffered Loss of Time, Income, Consortium, Affection, Love, Support, Care, Society, Comfort, Companionship, Services

What does a UAS Lawsuit look like?

- Parrot Rolling Spider Minidrone



What does a UAS Lawsuit look like?

The Search for the Deep Pocket

- Parrot S.A.
- Parrot Drones S.A.S.
- Parrot Inc.
- Parrot Asia Pacific (Shenzhen) LTD
- Sensefly
- PIX4D, S.A.
- Pix4D Inc.
- MICASENSE, S.A.
- Airinov S.A.S.
- Iconem
- EOS Innovation
- Biocarbon Engineering Ltd.
- John Does 1-40

Hiring UAS Service Providers - The Risks

- Risks from non-compliance with the FARs or state and local regulations
 - Illegal activities by your vendor can put your certificates and licenses at risk
 - Increase scrutiny as a non-compliant business
- Risks of injury to your reputation.
 - Your brand becomes linked in the media to an accident or public enforcement action
- Violation of State and Local Laws
 - Invasion of Privacy
 - Trespass

Hiring UAS Service Providers - The Risks

- Risks from non-compliance with the FARs or state and local regulations
 - Illegal activities by your vendor can put your certificates and licenses at risk
- Risks to injury to your reputation.
 - Your brand becomes linked in the media to an accident or public enforcement action;
- Operational risks
 - Injury to employees
 - Damage to infrastructure
 - Liability for injuries to 3rd parties
 - Loss of data and privacy issues
- Transactional Risks
 - Inability to meet your obligations to a customer or other contractors
- Financial Risks
 - Can the vendor deliver on what it promises and can it meet its indemnity obligations in the event of an accident or incident
- Government Penalties
 - OSHA Fines and civil penalties
 - FAA Fines and civil penalties



Hiring UAS Service Providers – Mitigating Risks

- Establish a vetting process
 - Do they have required authorizations?
 - Can the work be done under Part 107?
 - Waivers
 - Exemptions
 - Airspace issues
 - Do they have licensed pilots?
 - Do they have experienced pilots?
 - Do they have registered aircraft?
 - Do they have a track record of satisfied customers?
 - Do they have the financial ability to meet their obligations?

Hiring UAS Service Providers – Mitigating Risks

- Insurance
 - What does your insurance cover?
 - What does their insurance cover?
 - What are the limits?
 - Can they name you as an additional insured?
 - Do they have aviation insurance?
 - If they just have a CGL policy, is there an aviation exclusion?
 - Does their policy cover risks assumed by contract?

Hiring UAS Service Providers – Mitigating Risks

■ Contract Documents

- Waiver of consequential damages
- Defense and indemnity from 3rd party claims
- Choice of law, forum and arbitration
- Warranties of compliance with the law
- Warranties of airworthiness of the aircraft
- Provision making clear that you are relying on the expertise of the provider and his or her professional judgment.
- Responsibility for privacy issues
- Data rights and confidentiality

UAS Service Vendor: Do you have the right insurance?

- What risks are covered?
- Is there an aircraft exclusion?
- Are Payloads covered?
- Injuries to family members?
- Injuries to guests/invitees?
- Damage to insured's Property?
- Damage to third party property Statutory violations?
- Invasions of Privacy?
- Trespass?
- Cybersecurity and IP coverage?
- If the Operation was Illegal, is it still covered?

UAS Service Vendor: Who owns the work?

- Do you want to own the data?
- Should any of the work be copyrighted?
- Is it a “Work for Hire?”
- Is the client providing any proprietary data or a trade secrets as part of the work?
- Am I protecting their data while it is in my possession?
- Does my contract set out the rights and responsibilities of each party?
- Are their third party privacy interests in the work product?
- Is the subject matter of the work confidential?
- Can I use this work to promote my business?

UAS Service Vendor: Warranties?

- Am I making any express guarantees about the quality of the work or the results?
- Am I making implied warranties?
 - Advertising and promotional materials?
 - Sales representatives?
- Are there any Warranties implied by law?
 - Should I make them express limited warranties?
 - Should I disclaim them?
- Integration clause to exclude representations made outside of the contract itself?

UAS Service Vendor: Commercial Terms?

- Price and Payment?
 - Fixed Price or Cost Plus
 - Time to pay
 - Late Fees
 - Interest
- Procedure for changes in the scope of the work
- Early Termination and Notice
 - Penalties and recovery of costs for work in progress
- Defense and indemnity

UAS Service Vendor: Regulatory Compliance

- Take a systematic approach
- What do the regulations require?
- Am I only committed to doing the minimum necessary?
- Industry best practices?
- Going beyond required recordkeeping?
- SMS principles

Preparing for the Worst: Arbitration vs. Litigation

- What is arbitration
- What benefits does it offer over litigation?
- Am I better off just going to court?
- Costs of arbitration
- Costs of litigation
- Writing arbitration provisions into the contract

Preparing for the Worst: Arbitration vs. Litigation

- Subject matter expertise of an arbitrator vs. a circuit court judge
- Is an arbitration agreement enforceable?
- Appeals of arbitration decisions to a court
- Time to resolve an arbitration vs. litigation
- Court discovery vs. Arbitration discovery
- Choice of law, arbitration forum and arbitration clauses

Preparing for the Worst: Arbitration vs. Litigation

- What rules apply to an arbitration and can I find a framework that is best for my business and the likely disputes?
- Differences between an arbitration under the Federal Arbitration Act and State Arbitration rules?

Contact Information

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For UAS News and Analysis, follow us at:

<https://plane-lyspoken.com>

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Upcoming Events

Save the Date: **The 14th Annual Aviation Symposium**
February 4 – 6, 2020

Our Next Webinar

Government Contracts, False Claims and the Aviation Industry
June 20, 2019 – 1:00 pm – 2:30 pm

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