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How the Sponsor Assurances Affect Airline Service Companies at Commercial Airports

The intent of Congress in passing the first enabling legislation governing airport funding in 1938, and in adopting revised statutory schemes in 1958 and again in 1982, was to improve safety and efficiency by, among other things, promoting competition among aeronautical users engaged in aeronautical activity[1]. In order to promote competition, the FAA was tasked with coming up with a series of obligations imposed on airports in return for federal funding called the Sponsor Assurances which, in part, prohibit an aeronautical user from obtaining or maintaining an exclusive right to perform services at an airport, and require Airport Authorities (also called Sponsors) to not unjustly discriminate against aeronautical users of the airport.

Applicability of the Sponsor Assurances

The Sponsor Assurances are similar to federal regulations and were adopted by the FAA, pursuant to Section 511 (a) of the Airport and Airway Improvement Act of 1982 ("AAIA"), 49 USC 47107. The Regulations are contained in 62 FR 29761 dated June 2, 1997, revised 64 FR 45008 dated August 18, 1999, and are discussed in detail in the "Airports Compliance Handbook," published by the FAA under Order 5190.6A dated 1989.

The Law

Statutory Law

Statutory law is contained primarily in Section 511 (a) of the Airport and Airway Improvement Act of 1982 ("AAIA"), 49 USC 47107 (a), also referred to as Section 308 (a) of the Federal Aviation Act of 1982. The key language is:

> The Secretary of Transportation may approve a project grant only if the Secretary receives written assurances…that (1) the airport will be available for public use on reasonable conditions without unjust discrimination and… (4) a person providing, or intending to provide, aeronautical services to the public

[1] Selected pages from the DOT's and FAA's *Policy regarding Airport Rates and Fees dated June 21, 1996, 61 FR 31994* provide a definition of "Aeronautical Activity". In this Policy, the FAA defines Aeronautical Activity as follows:

…any activity that involves, makes possible, is required for the safety of, or is otherwise directly related to the operation of aircraft. Aeronautical activity includes services provided by air carriers related directly and substantially to the movement of passengers, baggage, mail and cargo on the airport. Persons, whether individuals or businesses, engaged in aeronautical uses involving the operation of aircraft, or providing space and flight support directly related to the operation of aircraft, its passengers and its cargo are considered to be aeronautical users.

will not be given an exclusive right to use the airport, with a right given to only one fixed base operator to provide services at an airport deemed not to be exclusive…

Regulatory Law

The Regulations are contained in 62 FR 29761 dated June 2, 1997, revised 64 FR 45008 dated August 18, 1999. The Regulations provide as follows (emphasis supplied):

22. Economic Nondiscrimination

a. It (the Airport Authority) will make its airport available as an airport for public use on reasonable terms and without unjust discrimination to all types, kinds and classes of aeronautical activities, including commercial aeronautical activities offering services to the public at the airport.

b. **In any** agreement, contract, **lease**, or other arrangement under which a right or privilege at the airport is granted to any person, firm, or corporation to conduct or to engage in any aeronautical activity for furnishing services to the public at the airport, the **Sponsor will insert and enforce provisions requiring the contractor to**

(1) furnish services on a reasonable, and not unjustly discriminatory, basis to all users thereof, and

(2) charge reasonable, and not unjustly discriminatory, prices for each unit or service, provided that the contractor may be allowed to make reasonable and nondiscriminatory discounts, rebates or other similar types of price reductions to volume purchasers.

c. **Each fixed-based operator (the FAA has called ground handlers "limited FBOs") at the airport shall be subject to the same rates, fees, rentals and charges as are uniformly applicable to all other fixed-based operators making the same or similar uses of such airport and utilizing the same or similar facilities.**

e. Each air carrier using such airport (whether as a tenant, nontenant, or subtenant of another air carrier tenant) shall be subject to such **nondiscriminatory and substantially comparable rules, regulations, conditions, rates fees, rentals, and other charges with respect to facilities directly and substantially related to providing air transportation as are applicable to all such air carriers which make similar use of such airport and utilize similar facilities, subject to reasonable classifications, such as tenants or nontenants and signatory carriers and nonsignatory carriers.** Classification or status as tenant or signatory shall not be unreasonably withheld by any airport provided an air carrier assumes obligations substantially similar to those already imposed on air carriers in such classification or status."

f. It will not exercise or grant any right or privilege which operates to prevent any person, firm, or corporation operating aircraft on the airport from performing any services on its own aircraft with its own employees (including, but not limited to maintenance, repair, and fueling) that it may choose to perform.

g In the event the Sponsor itself exercises any of the rights and privileges referred to in this assurance, the services involved will be provided on the same conditions as would apply to the furnishing of such services by commercial aeronautical service providers authorized by the Sponsor under these provisions.

h. The Sponsor may establish such reasonable, and not unjustly discriminatory, conditions to be met by all users of the airport as may be necessary for the safe and efficient operation of the airport.

i. **The Sponsor may prohibit or limit any given type, kind or class of aeronautical use of the airport if such action is necessary for the safe operation of the airport** or necessary to serve the civil aviation needs of the public.

23. Exclusive Rights

It (The Airport Authority) will permit no exclusive right for the use of the airport by any person providing, or intending to provide, aeronautical services to the public. For purposes of this paragraph, the providing of the services at an airport by a single fixed-based operator shall not be construed as an exclusive right if both of the following apply:

It would be unreasonably costly, burdensome, or impractical for more than one fixed-based operator to provide such services, and

If allowing more than one fixed-based operator (the FAA has called ground handlers "limited FBOs") to provide such services would require the reduction of space leased pursuant to an existing agreement between such single fixed-based operator and such airport.

It further agrees that it will not, either directly or indirectly, grant or permit any person, firm, or corporation, the exclusive right at the airport to conduct any aeronautical activities, including, but not limited to, charter flights, pilot training, aircraft rental and sightseeing, aerial photography, crop dusting, aerial advertising and surveying, air carrier operations, aircraft sales and services, sale of aviation petroleum products whether or not conducted in conjunction with other aeronautical activity, repair and maintenance of aircraft, parts, and any other activities which, because of their direct relationship to the operation of aircraft, can be regarded as an aeronautical activity, and that it will terminate any exclusive right to conduct an aeronautical activity now existing at such an airport before the grant of any assistance under Title 49, United States Code.

FAA Policy

Airports Compliance Handbook

Perhaps the most useful guide to understanding the Sponsor Assurances is the "Airports Compliance Handbook," published by the FAA under *Order 5190.6A* in 1989. Although there have been certain policy changes regarding exclusive rights, this policy remains in effect. The most relevant sections of the Handbook are as follows:

Chapter 4 – 13b
The terms imposed on those who use the airport and its services, including rates and charges, must be fair, reasonable, and applied without unjust discrimination, whether by the owner or by a licensee or tenant who has been granted rights to offer services or commodities normally required at the airport. The terms and conditions which the owner imposes on those offering services or commodities to the public which are related to aeronautical activity must be fair and reasonable and applied without unjust discrimination.

Chapter 4 – 14d (1) c
In respect to a contractual commitment a Sponsor may charge different rates to similar users of an airport if the differences can be justified as nondiscriminatory and such charges are substantially comparable. These conclusions must be based upon the facts and circumstances involved in every case.

Chapter 4 – 14d (1) d
Differences in values of properties involved and the extent of use made of the common use facilities are factors to be considered. Seldom will each user have properties of the same value nor will their use of the common facilities be the same. However, the airport in order to justify noncomparable rates must show that the differences are substantial

Chapter 4 – 14d (1) e
All leases with a term of 5 years or more should contain an escalation provision for periodic adjustments based on a recognized economic index. Future lessees may expect like treatment in that their leases will have a built-

in escalation provision. This is in accordance with the Sponsor assurance "…to make the airport as self-sustaining as possible under the circumstances…"

Chapter 4 – 15c
Activities offering services to the Public. If adequate space is available on the airport, and if the airport owner is not providing the service, it is obligated to negotiate on reasonable terms for the lease of space needed by those activities offering flight services to the public, or support services to other flight operators, to the extent that there may be a public need for such services proposed to be offered.

Chapter 6 – 4
Agreements covering services to the Public. In reviewing airport leases and agreements, special consideration must be given to those arrangements conveying the right to offer services and commodities to the public. The FAA is concerned that the airport owner maintain a fee and rent structure for facilities and services that will make the airport as self-sustaining as possible. The airport owner is obligated to the Government to ensure that the facilities of the airport are made available to the public on fair and reasonable terms without unjust discrimination. Any lease or agreement granting the right to serve the public on the premises of an airport so obligated should be subordinate to the authority of the owner to establish sufficient control over the operation and applies not only to the purveyors of aeronautical services but to restaurants, shops, parking lots, ground transportation and/or services to the public.

Exclusive Rights/Minimum Standards

FAA Advisory Circular 50/5190-61 dated January 4, 2007, entitled Exclusive Rights At Federally-Obligated Airports, provides additional guidance on the issue of competition at Airports. The FAA states:

"The existence of an exclusive right to conduct any aeronautical activity at an airport limits the usefulness of the airport and deprives the public of the benefits that flow from competitive enterprise. The purpose of the exclusive rights provision as applied to civil aeronautics is to prevent monopolies and combinations in restraint of trade and to promote competition at federally-obligated airports. An exclusive rights violation occurs when the airport sponsor excludes others, either intentionally or unintentionally, from participating in an on-airport aeronautical activity. A prohibited exclusive right can be manifested by an express agreement, unreasonable minimum standards, or by any other means. Significant to understanding the exclusive rights policy is the recognition that it is the impact of the activity, and not necessarily the airport sponsor's intent, that constitutes an exclusive rights violation."

Most importantly, the FAA deals with two of the major exceptions to the Rule, namely restrictions based on safety and efficiency. The FAA states that "(A)n airport sponsor can deny a prospective aeronautical service provider the right to engage in an on-airport aeronautical activity for reasons of safety and efficiency. A denial based on safety must be based on evidence demonstrating that airport safety will be compromised if the applicant is allowed to engage in the proposed aeronautical activity. Airport sponsors should carefully scrutinize the safety reasons for denying an aeronautical service provider the opportunity to engage in an aeronautical activity if the denial has the possible effect of limiting competition."

The FAA is the final authority in determining what, in fact, constitutes a compromise of safety. As such, an airport sponsor that is contemplating the denial of a proposed on-airport aeronautical activity is encouraged to contact the local Airports District Office (ADO) or the Regional Airports Office (RAO). Those offices will then seek assistance from FAA Flight Standards (FS) and Air Traffic (AT) to assess the reasonableness of the proposed action and whether unjust discrimination results from the proposed restrictions on aeronautical activities because of safety and efficiency. [2]

[2] Here the word efficiency refers to the efficient use of navigable airspace, an inherent FAA Air Traffic Control function. That is the reason why FAA Air Traffic (AT) is to be consulted in such cases. It is not meant to be an interpretation that could be construed as protecting the "efficient'' operation of an existing aeronautical service provider for example.

FAA Advisory Circular 150/5190-7 dated August 28, 2006, entitled Minimum Standards for Commercial Aeronautical Activities, discusses how Minimum Standards, while not mandatory, can be useful to protect against unjust discrimination. The FAA states that by accepting federal funding

"The airport sponsor of a federally obligated airport agrees to make available the opportunity to engage in commercial aeronautical activities by persons, firms, or corporations that meet reasonable minimum standards established by the airport sponsor. The airport sponsor's purpose in imposing standards is to ensure a safe, efficient and adequate level of operation and services is offered to the public. Such standards must be reasonable and not unjustly discriminatory. In exchange for the opportunity to engage in a commercial aeronautical activity, an aeronautical service provider engaged in an aeronautical activity agrees to comply with the minimum standards developed by the airport sponsor. Compliance with the airport's minimum standards should be made part of an aeronautical service provider's lease agreement with the airport sponsor.

"The FAA suggests that airport sponsors establish reasonable minimum standards that are relevant to the proposed aeronautical activity with the goal of protecting the level and quality of services offered to the public. Once the airport sponsor has established minimum standards, it should apply them objectively and uniformly to all similarly situated on-airport aeronautical service providers. The failure to do so may result in a violation of the prohibition against exclusive rights and/or a finding of unjust economic discrimination for imposing unreasonable terms and conditions for airport use."

Case Law

In order to see how the statute, regulations and FAA policies have been interpreted, it is necessary to review existing FAA and federal case law. In order to organize these cases into a coherent order, I have separated these cases by different principles of law.

Exceptions to the granting of an exclusive right--lack of space and safety

There are two exceptions to the granting of an exclusive right. These are restrictions based on lack of space and safety. The FAA has informed us that no Sponsor has ever been found to have had a lack of space, and before a Sponsor can successfully argue that it is entitled to limit an activity because of safety concerns, it must be based on sound reasoning. Thus, there must be firm evidence demonstrating that safety will be compromised. The FAA suggests that a Sponsor contact the FAA before "restricting a party".

Thus, where a private terminal operator tried to prohibit a ground handler from operating at its terminal, and was unable to show that it lacked space or that there was a safety reason to limit competition, the FAA determined that the Sponsor was in violation of the exclusive rights doctrine unless it required the terminal operator to permit the ground handler to operate at the terminal. See Evergreen Aviation Ground Logistics Enterprises, Inc v. The Port Authority of New York and New Jersey, FAA Part 13 Order dated April 20, 2000 (matter settled).

In the Evergreen case (this firm represented the successful ground handler claimant), the FAA found that the JFKIAT's refusal to renew a lease was unreasonable and unjustly discriminatory and that the Port Authority, as Sponsor, was responsible for the JFKIAT's actions. The FAA stated that the JFKIAT was unable to demonstrate that three ground handlers at Terminal 4

presented any safety concerns and that "the handler's off peak operation and disperse activity throughout the day did not add to congestion." The FAA held that Sponsors have a duty to negotiate in good faith for the leasing of aeronautical activities and space. In this case, there was no effort by the JFKIAT to even negotiate. Accordingly, the FAA recommended that the JFKIAT's license to the ground handler to operate be renewed because the handler was being unjustly discriminated against. Furthermore, the FAA encouraged that the Port Authority to prepare Airport minimum standards for JFK in accordance with FAA Advisory Circular 150/5190-5, dated April 7, 2000.

Landlord as Sponsor

- In the matter of the complaints of Everett Aviation, Inc against the City of Youngstown, Ohio, GL-1978-3, the FAA held that the City of Youngstown, by relinquishing control of a large portion of its airport to its sole FBO, made the FBO which effectively managed the airport the "surrogate landlord" of the airport and its facilities. While this decision was dated prior to the 1982 statute, this case has been used as precedent for its findings that a private company, by managing a portion of an airport, becomes a de facto Sponsor. The relevance for an Airport Operator and Sublessors is that it is held to the same standards as a Sponsor under the Sponsor Assurances

Unjust Discrimination/Disparate Treatment

The most difficult issue for Sponsors is what constitutes unjust discrimination, or what has also been referred to as "disparate treatment." There are FAA rulings in both Part 13 and Part 16 cases as well as federal case law which help define what constitutes disparate treatment, but many issues are unresolved.

- Wilson Air Center, LLC v. Memphis and Shelby County Airport Authority, 2001 FAA Lexis 567 at 30-31, Docket No. 16-99-10

The FAA held that "(T)he prohibition of unjust economic discrimination does not prevent a Sponsor from accepting different lease rates resulting from differing time frames of lease terms. A Sponsor does not have an obligation to equalize the terms of use, but can pursue agreements with more recent leaseholders that more nearly serve the interests of the public and provide for more professional business practices. The FAA does not require that a Sponsor or a Sublessor maintain equal lease rates over time between competing FBOs at the same airport.

- Buffalo Jet Center v. Niagara Frontier Transportation Authority1998 FAA Lexis 1132 Docket No.16-98-01

The FAA dismissed a complaint by an FBO that alleged that an airport had engaged in the granting of an exclusive right. The FAA found that the FBO had failed to submit a timely and acceptable proposal and thus failed to comply with minimum standards. The existence of a single FBO, in and of itself, is insufficient to warrant a finding of a violation of an exclusive right provision. There must be an intent, understanding, commitment, or express agreement to exclude other reasonably qualified FBOs. By failing to comply with minimum standards that were not unjustly discriminatory or unreasonable, the Sponsor acted properly in turning down a proposal from a company seeking to set up a competing FBO. (This case provides an excellent explanation of the Sponsor Assurances.)

- City of Pompano Beach v. FAA, 774 F.2d 1529 (11th Cir. 1985)

An appellate court upheld an FAA decision finding a City Airport Authority violated the Sponsor Assurances when it offered a lease to a company seeking to become a FBO on terms and conditions dissimilar to those leases offered to another FBO. By unjustly discriminating against one party, the City was held to be improperly creating an exclusive right for the existing FBO.

- Penobscot Air Services, Ltd. v. FAA, 164 F. 3d 713 (1st Cir. 1999)

The appellate court held that the imposition of disparate rates is neither a violation of the "exclusive right" provision, nor a per se violation, where the competitor had negotiated a lease seven years earlier under market conditions. The court set up a two-part test for determining if there is an exclusive right or unjust discrimination. First, there must be a "contemporaneous disparity" in dealing between the claimant and other similarly situated operators. The existence of two similarly situated operators who are not treated identically does not automatically constitute the granting of an exclusive right or unjust discrimination. Second, if a disparity exists, does the extent of disparity rise to a level of unreasonableness?

- Associated Air Services, Inc. v. Broward County, 109 B.R. 520 (Bkrpty. Ct. S. D. Fl. 1990).

The court, in an adversary proceeding, reduced the rent charged to an FBO, a debtor in possession, because it found that Broward County unjustly discriminated against it by charging disparate rents.

- U.S. Aerospace v. Millington Municipal Airport Authority, 1998 FAA LEXIS 1129

The FAA held that an airport's favorable treatment of one FBO over another FBO does not necessarily constitute unjust discrimination. However, the continuation of such favorable treatment over a period of time may constitute unjust discrimination and act as a constructive grant of an exclusive right.

Obligation to Allow Party to Conduct Business on Airport

- Indiana Airmotive, Inc. v. Dubois County Airport Authority, 13-93-14 ROD 13

Unless it provides these services itself, the airport owner has a duty to negotiate in good faith for the lease of such premises as may be available for the conduct of aeronautical activities.

- Ricks v. Millington Municipal Airport Administration, 1999 FAA Lexis 1076

The FAA held that an airport may not limit itself to one FBO if the airport can accommodate other FBOs who meet the necessary qualifications (according to minimum standards). However, an exception exists if the airport can provide direct and substantial evidence that it would be unreasonably costly, burdensome, or impracticable for there to be more than one FBO, and allowing an additional FBO would require a reduction in space leased to the existing FBO.

- Turner v. City of Kokomo, 1997 FAA LEXIS 1526, Docket No. 16-98-16

The FAA held that a "constructive" exclusive right may be created by an unreasonable requirement or standard applied in an unjustly discriminatory manner. The FAA, however, decided that minimum standards prohibiting a company from self-fueling near its hangar, but allowing self-fueling in designated areas, did not unjustly discriminate against complainant.

- Steven J. Hamilton v. City of Yankton, South Dakota, Formal Complaint No. 13-93-96

The FAA concluded that an airport can increase its minimum standards to ensure a higher quality of service to the public, but it is unacceptable to manipulate the standards solely to protect the interest of an existing tenant. Moreover, in the absence of necessary facilities, an airport is not required to construct hangers and terminal facilities, but it is obligated to make available suitable areas or space on reasonable terms. Furthermore, it is not unreasonable to require prospective commercial aeronautical tenants to construct their own buildings and facilities on leased property at the airport.

- Corporate Jets, Inc. v. City of Scottsdale, 2002 FAA Lexis 169

The FAA held that a Sponsor may exclude an incumbent FBO from bidding on available land in order to promote and further competition at an airport. The FAA also stated that if an existing FBO can demonstrate the need for additional space or land, the FBO may be required to compete with all other qualified bidders and should not be given the land without competition. A Sponsor has a duty to promote competition and prevent the domination of an airport by a single enterprise.

- Maxim United, LLC v. Board of County Commissioners of Jefferson County, Colorado, 2002 FAA LEXIS 170 (2002)

The FAA held that it is unreasonable to require a lessee to abide by a restrictive lease term that precludes the lessee from self-fueling at an airport until a Sponsor adopts revised minimum standards for refueling. Furthermore, it is unjust economic discrimination to prohibit self-fueling to one entity while permitting two other similarly situated entities to self-fuel pending the adoption and execution of revised minimum standards.

LAX III

One of the two most recent FAA rulings on the issue of when disparate rental practices of an airport authority amount to unjust discrimination is the Alaska Airlines, et. al. v. Los Angeles World Airports et. al case, 2007 FAA LEXIS 176, 167, which was decided in May 2007 (attached in part as Exhibit 7).

In *Alaska*, also known as "LAX III," twenty-eight airlines filed suit against Los Angeles World Airports, alleging unjust economic discrimination arising out of the structure of new leases meant to replace expiring leases for space at several passenger terminals. Instead of paying for "usable" airport space (actual square footage of the leased premises), the carriers were now charged for "rentable" space (actual square footage plus an amount of the common use areas). By increasing the size of the space for which each carrier was responsible, the total rental increased. In addition, maintenance and operations fees based on total square footage dramatically increased. LAWA also increased the rental rate per square foot.

Airlines without expired leases maintained their existing, much lower costs and rate structures. LAWA argued that the difference in leasing rates was justifiable, as the unexpired leases had been agreed to and signed at a different time and in a different market than the new leases.

FAA Administrative Law Judge Richard Goodwin found no merit in LAWA's argument, noting that the complaining airlines were similarly situated and in similar facilities to the non-complaining carriers. Not only were the Complainants' rental rates higher, but the maintenance costs imposed by virtue of the additional square footage were found to be unjustly discriminatory as well, because the cost burden imposed on the Complainants was substantially higher than that of the long-term lessees clarify or delete. Seems like some carriers were given long-term leases, the complainants were given only short-term ones. Further, LAWA was found to be in violation of its duty of good faith and fair dealing, for its refusal to negotiate the terms of the leases with the Complainants.

The ALJ held that, in determining whether or not there has been unjust discrimination in violation of Grant Assurance 22, one must look not only to the comparability of facilities, but to the "overall dollar impact, the absolute impact, and the extent and the duration" of the discriminatory practices.

In LAX III the FAA relied on methods used by other airports as a means to analyze the methods used by LAWA. To my knowledge, there is not another airport in the U.S. which employs a penny-per-pound/per acreage method of rental determination.

In the LAX case, while the Airport notes that Federal law "does not require a single approach to airport rate setting", the ALJ qualifies that statement by noting that the methodology must be "applied consistently to similarly situated aeronautical users" and be “fair and reasonable”. (*Id.*, at 12).

Ricks Aviation, Inc. v. Peninsula Airport Commission

A second case, decided in a Part 16 proceeding in May 2007, is also important to an analysis of this ruling. In *Ricks Aviation, Inc. v. Peninsula Airport Commission*, Docket 16-05-18 (May 2007), the FAA stated that

> “In general terms, airport management may make changes in lease terms, rates and conditions of occupancy in order to more nearly balance the various legitimate interests of the public in civil aviation as the circumstances effecting civil aviation change over time….”
>
> The FAA has found that differences in lease terms executed at different points in time can be justified by the market conditions present at the time of lease execution. [See, FAA Docket No. 16-99-09, Wilson Air Center, LLC v. Memphis-Shelby County Airport Authority, Final Decision and Order (August 30, 2001), hereinafter, Wilson] Additionally, FAA policy provides that an airport sponsor may quite properly increase its standards from time to time in order to ensure a higher quality of service to the public. [See, FAA Order 5190.6A, Sec. 3-17(c)] In Wilson, the FAA held that differences in lease terms that result from an airport sponsor improving its business practice does not result in a per se violation of Assurance 22. [Wilson, p. 17] That said, an airport sponsor that increases its standards may be required to apply those same standards to previously executed leases at the time those leases are modified or renewed… Not sure if you’re quoting here…the font size seems larger than the above paragraph

Procedure to Challenge Airport Authority Decisions

As no private right of action is granted to private parties, and since private companies cannot be named defendants in FAA proceedings or federal lawsuits under the Sponsor Assurances, all complaints must first be taken to the Airport Authority. If the Airport Authority refuses to resolve the issue to a party’s satisfaction, the next step is to meet with the FAA and ask that they become involved in attempting to find a reasonable settlement of a claim. These matters are handled by regional “Airport Certification and Compliance Inspectors” at FAA Regional Offices. Some Inspectors take a more, others a less proactive approach.

If the party allegedly in breach of the Sponsor Assurances is a private company, such as a Sublessor, it is up to the Airport Authority to get the private company to comply with the Sponsor Assurances. If the Airport Authority doesn’t act or resolve this matter to the satisfaction of the complainant, then the Airport Authority becomes the de facto respondent and any further claim must be made against the Airport Authority.

The next step is for a complainant to file a Part 13 complaint (as discussed in the “Airports Compliance Handbook”—see the Attachment). This can be in the form of a letter to the Airport

Certification and Compliance Inspector or Regional FAA Director. At this point, the Regional office may seek legal clarification from local FAA counsel or, more likely, FAA counsel in Washington D.C. Meetings and hearings are set and the local office, if unable to negotiate a compromise, then makes an informal decision. These Part 13 decisions are either in letter or case decision format.

Part 13 decisions are only advisory because there is no penalty if a party refuses to follow the decision. In this case, the loser has the option of filing a formal Part 16 Complaint with the FAA in Washington D.C. This procedure is found in 14 CFR 16 of the Handbook. Once a Part 16 Complaint is filed, and the FAA does not dismiss the Complaint for procedural or jurisdictional reasons, a hearing officer is appointed (usually an attorney at the FAA). Hearings may be held or, upon agreement, the matter can be submitted in writing. An enforceable decision is usually rendered within 120 days. There is also an appeals process where an Assistant Administrator reviews the decision. A party may also appeal the FAA final order to the local U.S. Circuit Court of Appeals.

For additional information about rights of ground handlers at commercial airports, or the handling of any legal matter, please call Leonard Kirsch at (516) 364-1095 or email me at lkirsch@mklawnyc.com