

Drones Law 101 for Business Lawyers

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*Yanai Z. Siegel, Esq. - Shafer Glazer, LLP – New York, NY
Marissa E. (Hirsch) Rosenberg, Esq. – Berkeley Heights, NJ*

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Today's Flight Plan

- **MIDAIR COLLISIONS**
 - Where Hobbyists and Professionals Intersect
- **DRONE REGULATIONS AND STATUTES**
 - Federal Regulations, State Statutes, Tort Law
- **INSURANCE FOR DRONE OPERATIONS**
 - Drone Coverage under General & Specific Policies
- **RECOMMENDED BUSINESS PRACTICES**
 - Commercial UAS Operations Guidelines



Meet the DJI Phantom 4 Pro

- Service Ceiling: 19,685 ft.
- Flight Time: 30 minutes
- Flight Range: 3.1 Miles
- Max Flight Speed: 45 mph
- Vehicle Weight: 3 lbs.
- Features TapFly, ActiveTrack, Flight Autonomy, Dual Vision Obstacle Sensing & Avoidance
- GPS/GLONASS, Flight Logs, Dual Compasses, Dual Inertial Nav
- 1-Inch 20-Megapixel Camera
 - 4k/60fps, HD1280p/120fps
 - Integrated Gimbal
 - Live Feed via OcuSync 2.0
- Cost: \$1,799 from DJI

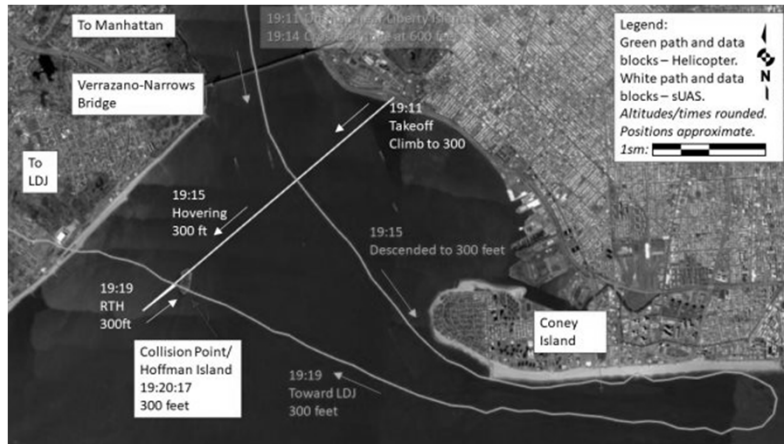


Meet the Sikorsky UH-60M Black Hawk

- Service Ceiling: 19,000 ft.
- Flight Range: 1,381 miles
- Combat Radius: 368 miles
- Max Flight Speed: 174 mph
- Flight Crew: 2 pilots, 2 chiefs/gunners
- Can carry 11 troops with equipment or 2,600 lbs. of cargo internally
- Can carry 9,000 lbs. with external sling
- Cost: \$21.3 Million



Hoffman Island, NY Harbor Tuesday September 12, 2017, 7:20pm



Other Drone/Manned Midair Collisions

- October 12, 2017: Quebec City, Canada
 - Sky Jet Flight SJ512, King Air A100 8-passenger
 - Unidentified drone, no injuries, negligible damage
- February 9, 2018: Kauai, Hawaii
 - Blue Hawaii Kauai Tour Helicopter
 - Unidentified drone, no injuries, negligible damage
- February 11, 2018: Charleston, So. Carolina
 - R22 Helicopter, DJI Phantom, IP evasive maneuver
 - Aircraft totaled, NTSB unable to verify incident

Aviation Regulations and Statutes for Unmanned Aircraft

Yanai Z. Siegel, Esq.

Shafer Glazer, LLP - New York, NY

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Federal Aviation Regulations

- 14 CFR Part 101
 - Hobby and Recreational UAS operations.
 - 14 CFR Part 101 subject to revision under FAA Reauthorization Act of 2018
- 14 CFR Part 107
 - Small UAS operations (not to exceed 55 pounds), for non-recreational use.
- Accident Reporting Requirements
 - Only if an accident results in either serious injury (including loss of consciousness) or more than \$500 of damage to property.
- FAA's B4UFLY Phone App – Flight Paths



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14 CFR Part 107 – Limitations I

- Non-Hobby, Non-Recreational use of Small UAS
- Weighing less than 55 lbs. / 25 kg.
- Visual Line of Sight required by Remote Pilot in Command (RPIC) and Person on Flight Controls, or Visual Observer (VO)
- Must operate close enough to be within unenhanced eyesight (other than corrective lenses) of RPIC or Person on Flight Controls
- May not operate directly above anyone not involved in flight ops
- May not operate under a covered structure or stationary vehicle
- Daylight Only Operation (Civil Twilight if anti-collision lights on)
- Must yield Right of Way to other aircraft
- Since drone is less visible to pilots of manned aircraft
- Max groundspeed 100 mph
- Max altitude 400' AGL or w/in 400' of structure



14 CFR Part 107 – Limitations II

- Minimum Weather Visibility of 3 miles from Control Station
- ATC Permission required to operate in Class B, C, D and E airspace
- No person may act as RPIC or VO for more than 1 UAS at a time
- May not operate Small UAS:
 - From Moving Aircraft
 - From Moving Vehicle, unless operating over sparsely populated area
 - In a Careless or Reckless Manner
 - Carrying Hazardous Materials
 - If you have any physical or mental condition that would interfere with the safe operation of your aircraft
- Transport of property for compensation or hire permitted if:
 - Combined Aircraft/Cargo weight under 55 lbs.
 - Some restrictions on delivery locales (Hawaii, DC, US Territories)



14 CFR Part 107 – Remote Pilot

- Operator Requirements
 - Must hold either a Remote Pilot Airman Certificate with sUAS rating
 - Or under direct supervision of a person with such a Certificate
- Remote Pilot Airman Certificate Requirements
 - Demonstrate sufficient aeronautical knowledge
 - Pass Initial Aeronautical Knowledge Test at FAA-approved site
 - Hold Part 61 Pilot Certificate, Complete a flight review w/in 24 months and complete FAA sUAS Online Training Course
 - Be vetted by the Transportation Security Administration
 - Be at least 16 years old
- Responsibilities of Remote Pilot In Command
 - Provide FAA upon request the sUAS for inspection/testing and docs
 - Report to FAA w/in 10 days any serious accident or property damage
 - Pre-Flight Inspection of sUAS to ensure its safe operating condition



Waivable Sections of Part 107

- Operation from a moving vehicle or aircraft (§ 107.25)
 - Not available for sUAS to carry cargo for compensation or hire
- Daylight Operation (§ 107.29)
- Visual Line of Sight Aircraft Operations (§ 107.31)
 - Not available for sUAS to carry cargo for compensation or hire
- Visual observer (§ 107.33)
- Operation of multiple sUAS (§ 107.35)
- Yielding the right of way to other aircraft (§ 107.37(a))
- Operation over people (§ 107.39)
- Operation in certain airspace (§ 107.41)
 - Class B, Class C, Class D or Class E airspace
- Operating limitations for small unmanned aircraft (§ 107.51)
 - Groundspeed 100mph, Altitude 400 ft. AGL, 3 mile visibility



New PA Criminal Drone Statute

- Pennsylvania Consolidated Statutes
 - Ch. 35 Burglary and Other Criminal Intrusions
- § 3505. Unlawful use of unmanned aircraft.
 - (a) Offense defined.--A person commits the offense of unlawful use of unmanned aircraft if the person uses an unmanned aircraft intentionally or knowingly to:
 - (1) Conduct surveillance of another person in a private place.
 - (2) Operate in a manner which places another person in reasonable fear of bodily injury.
 - (3) Deliver, provide, transmit or furnish contraband in violation of section 5123 (relating to contraband) or 61 Pa.C.S. § 5902 (relating to contraband prohibited).



18 Pa.C.S. § 3505

- 18 Pa.C.S. § 3505 (Continued)
 - (b) Grading.--The offense of unlawful use of unmanned aircraft shall be graded as follows:
 - (1) An offense under subsection (a)(1) or (2) is a summary offense punishable by a fine of up to \$300.
 - (2) An offense under subsection (a)(3) is a felony of the second degree.
 - (c) Exceptions for law enforcement officers.--Subsection
 - (a) shall not apply if the conduct proscribed under subsection (a) is committed by any of the following:
 - (1) Law enforcement officers engaged in the performance of their official law enforcement duties.
 - (2) Personnel of the Department of Corrections, local correctional facility, prison or jail engaged in the performance of their official duties.



18 Pa.C.S. § 3505 Exceptions

- Law Enforcement and Corrections Officers
- Firefighters, Emergency Medical Responders
- Electric, Water, Natural Gas or Other Utility
- Employee or Agent of a Government Agency
- Aerial Data Collection, if comply with FAA Regs
 - If no intentional surveillance of “private place”
- Also added 53 Pa.C.S. § 305: Local regulation of unmanned aircraft prohibited.
 - 18 Pa.C.S. § 3505 preempts local ordinances.



ULC Model Drone Torts Act

- Primarily addressing Drone Trespass issues
- Drafts presented “For Discussion Purposes”
- Seeking to establish a clear corridor for UAS at altitudes from 200’ to 400’.
- Model Act once approved by ULC then goes to ABA for review and approval, then to State Legislatures as a model Act for consideration.
- Similar concept to U.C.C., also from ULC.



Insurance for Drone Operations: Do You Need Insurance?

Marissa E. (Hirsch) Rosenberg, Esq.
Berkeley Heights, NJ



June 28, 2015 - Seattle, WA

- On June 28, 2015, during a parade in Seattle, Washington, a video drone crashed into a building and fell onto the watching crowd, striking a woman unconscious with a concussion.
- On February 24, 2017, Paul Skinner, owner of an aerial photography company, was convicted of reckless endangerment for engaging in conduct that created a "substantial risk of death or serious bodily injury in another person."
- The municipal court judge acknowledged that the crash was accidental, but also aggravating factors including prior convictions for other acts.
- Mr. Skinner was sentenced to one year in prison and \$5,000 fine, reduced to 30 days in municipal jail, \$500 fine, and probation for two years on the balance.
- The case marked the first time the Seattle City Attorney's Office had charged anyone with mishandling a drone in a public space, and it did not require specific drone-related laws for enforcement.
- Prosecutors in other states have also implemented similar charges.



August 8, 2016 – Windham, NH



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Searles Castle Wedding

- On August 8, 2016, Barry Bilcliff married his wife Nichole at Searles Castle in Windham, New Hampshire.
- The groom and three others had been operating a video drone throughout the day to cover the wedding and the subsequent reception.
- Near the end of the reception, the groom had grounded the drone and left it on a table as he went to dance with his wife for their “special song.”
- Another guest then launched the drone, lost control of it and injured two guests, allegedly causing lacerations, concussions, and fractured bones. One of the injured guests may have grabbed the drone prior to the accident, according to some witnesses.
- On December 1, 2016, Bilcliff and Searles Castle were sued for claims alleging permanent physical and emotional injury as a result of the crash.
- The management of Searles Castle asserts that Bilcliff did not have permission to operate his drone, and had been asked to put it away prior to the accident.
- The guest who operated the drone later came forward to settle the case.

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April 20, 2017. HollyCal Wedding Video

- On August 1, 2017, HollyCal Productions employee Satyam Sukhwal was operating a video drone to film footage of a wedding.
- Satyam allegedly flew too low and struck a wedding guest, Darshan Kamboj, in the eye.
- Darshan Kamboj lost vision in that eye, and filed an insurance claim against HollyCal Productions on October 12, 2016, and later filed suit on August 1, 2017.



Phila. Indemnity v. HollyCal

- Philadelphia Indemnity Insurance Company, HollyCal's insurer, agreed to defend pursuant to a reservation of rights to recoup all costs paid by Philadelphia if the CGL policy did not apply.
- On April 16, 2018, Philadelphia Indemnity filed an action seeking declaratory relief:
 - No duty to defend or indemnify Hollycal
 - Recoupment of defense expenses and
 - Recoupment of indemnity payments



Aircraft Exclusion Clause

- The Phila. Indemnity policy included the following aircraft exclusion clause, stating that the CGL policy did not apply to:
 - *“Bodily injury” or “property damage” arising out of the ownership, maintenance, use or entrustment to others of any aircraft, “auto” or watercraft owned or operated by or rented or loaned to any insured.*
 - *This exclusion applies even if the claims against any insured allege negligence or other wrongdoing in the supervision, hiring, employment, training or monitoring of others by that insured, if the “occurrence” which caused the “bodily injury” or “property damage” involved the ownership, maintenance, use or entrustment to others of any aircraft, “auto” or watercraft that is owned or operated by or rented or loaned to any insured.*



Other Coverage Exclusions

- *Miscellaneous Recreational Exposures*
 - *This insurance does not apply to “bodily injury”, “property damage”, or “personal and advertising injury”: ...*
 - *Arising out of the ownership, operation, maintenance, use, loading, or unloading of any flying craft or vehicle, including, but not limited to, any aircraft, hot air balloon, glider, parachute, helicopter, missile or spacecraft.*
- *Designated Hazards, Events or Activities*
 - *This insurance does not apply to “bodily injury”, “property damage”, “personal and advertising injury” or medical expenses arising out of the following events or activities:*
 - *5. Objects Propelled*
 - *Arising out of any object propelled, whether intentionally or unintentionally, into a crowd by or at the direction of a participant or insured.*
 - *However, this exclusion does not apply to the accidental propelling of an object while being used in the performance of juggling.*
 - *Coverage is excluded regardless of whether such events or activities are conducted by you or on your behalf, or whether the events or activities are conducted for you or for others.*



Insurance Options

- Home Insurance Policy
 - Some carriers in 2018 have added coverage for recreational drone use by homeowners
 - Always check your policy for terms and conditions
- Unmanned Aircraft Insurance
 - Per Flight, on-demand
 - Annual Policy for greater coverage, more flights



On-Demand UAS Insurance

VeriFly provides on-demand single-drone one-hour coverage

- \$10 Premium, covers Quarter-Mile circle around GPS location
- \$1 Million Bodily Injury / Property Damage, Single Occurrence
- \$10,000 for Violations of Privacy Liability, Single Occurrence
- But excludes Criminal Acts, Knowing Violation of Privacy and Publishing Material with Knowledge of Falsity
- Covers All Legal Purposes for flight operations
- Must specify UAS and Operator
- If policy is not primary, then No Duty to Defend
- Includes Terrorism Risk Insurance Act of 2002 Coverage rider



VeriFly UAS Insurance Exclusions

Notable Coverage Exclusions:

- Excludes Indoor Operations
- Excludes Simultaneous Operations of more than 1 UAS
- Excludes claims for noise damage, pollution, electrical or electromagnetic interference (EMI), or other interference with the use of property
- Excludes Expected or Intended Injury or Property Damage unless to protect persons or property
- Excludes Property Damage to Insured's Property
- Excludes Injury/Damage from Dispensable Loads unless resulting from a crash, fire, or in-flight emergency
- Excludes Munitions Releases



Recommended Practices for Drone Operations

- FAA UAS Licensing and Regulatory/Statutory Compliance
 - Obtain proper FAA UAS License, and check flight path for TFRs and NOTAMs.
 - Also determine which state and local laws may apply, and comply.
- Insurance – For UAS Operations and More
- Municipal Coordination – Preempt the Police Response
 - Notify local law enforcement of pending operations. You are more likely to receive support from law enforcement if they are aware of your operations.
- Landowner's Permission
 - If over public lands, then explicit state and municipal approval may be sufficient.
 - If over private lands, then obtain permission of land owner. Existing utility easements may apply, but notice to land owner may be mandated by easement and is recommended regardless.
 - Notify residents of pending operations. Even if you have the permission of the land owner, neighboring land owners may respond adversely. Prior notice may provide an indication of any potential issues with neighbors.
- Preflight Inspections, Flight and Maintenance Logs



Questions?