COMMITTEE ON AERONAUTICS NEWSLETTER

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The views and opinions expressed in these articles are those of the authors and do not necessarily reflect the views of the New York City Bar Association.

From the Committee Chair and Committee Secretary:

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The Committee on Aeronautics is very pleased to present this sixth issue of the Committee's Newsletter, the last before the Summer break. The prior issues are posted (by year) on the Committee's section of the New York City Bar's public website (click on the "News" button): http://www.nycbar.org/member-and-career-services/committees/aeronautics-committee.

We hope that our Committee Members and alumni (and, of course, other readers accessing this Newsletter on the Bar's website) continue to find each issue of the Newsletter very interesting.

The Committee continues to meet on a monthly basis prior to the Summer break. Our meeting this month will be held on May 24th, and, among other Committee business, it will feature a presentation by Joan Gabel, U.S. Counsel for Air France, on "A Day in the Life of Airline Counsel."

Preparations continue for the Committee's 3-hour "Hot Topics in Aviation" event for the Bar, which is scheduled to be held on the evening of October 23, 2018 at the Bar's landmark building.

Please stay tuned for more information about upcoming Committee activities.

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ARTICLES

Updates on the Space Council, Quiet Supersonic Flight, and the Tiangong-1 Space Lab (RIP)

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The Second Meeting of the National Space Council: In October, I wrote here about the first meeting of the National Space Council (the "Space Council"), which among other things, discussed the need for regulatory reforms in order to promote innovation and investment in space activity. On February 21, 2018, the Space Council met for a second time to discuss its progress and to plan out the future of U.S. space exploration.[2]

Vice President Pence, the chairman of the Space Council, opened the meeting by discussing the administration's progress to date. The day before this meeting, the administration set out a list of nominees for the Space Council Users' Advisory Group to help "accelerate innovation across [the] Nation's space enterprise." The 29-member group[3] is an impressive mix of former astronauts (including Buzz Aldrin), industry leaders (including representatives from SpaceX, Boeing, Orbital ATK, United Launch Alliance, Northrop Grumman, Relativity Space, Sierra Nevada Corporation, Blue Origin, and VOX Launch Company), politicians, engineers, and educators (including Bud Peterson, the president of my alma mater, Georgia Tech).

Again, a focus of the Space Council meeting was on the need to reform the regulatory scheme surrounding space exploration. Vice President Pence noted that private companies are "often stifled by a convoluted maze of bureaucratic obstacles and outdated regulatory processes" both in the realm of satellite servicing and in obtaining launch licenses (which are not even transferrable to different launch sites).

Jeffrey Rosen, the Deputy Secretary of the Department of Transportation, laid out the department's plan to streamline the space licensing framework surrounding commercial space exploration, he proposed: (1) accelerating the rulemaking process so the government can quickly make regulatory changes; (2) expanding the use of licensing waivers; (3) focusing FAA

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[2] *NASA Provides Coverage of the National Space Council Meeting*, YOUTUBE (Feb. 21, 2018) https://www.youtube.com/watch?v=H0K4bLFVQ1w.

[3] *See* Marcia Smith, *White House Announces Members of National Space Council Users' Advisory Group*, SPACEPOLICYONLINE.COM (Feb. 20, 2018), https://spacepolicyonline.com/news/white-house-announces-members-of-national-space-council-users-advisory-group/ (listing the membership of the Users' Advisory Group).

resources to help process launch licenses more quickly; (4) establishing a joint taskforce to help coordinate regulatory bodies in the U.S. government; and (5) creating a new licensing framework to help move to a "file and fly" regulatory framework with respect to launches.[4]

Wilbur Ross, the Secretary of the Department of Commerce, asserted that American companies need regulatory support to keep up with foreign companies and governments (which do not need to contend with the same outdated regulatory system). He recommended the Department of Commerce be the "one stop shop" for space industry regulations (aside from launch-licensing). Among other things, Secretary Ross recommended the Space Council review export licensing regulations affecting commercial space activities, noting that space vehicles are currently (problematically) treated as an "export" of space technologies if they were to land in either international waters or a non-U.S. territory.

Panelists at the Space Council further argued in support of regulatory reform. Jeffrey Manber, the Managing Director of NanoRacks Corporation, sounded the alarm on export controls, questioning the wisdom of U.S. regulations which bar American companies from participating in China's commercial space industry. Eric Stallmer of the Commercial Spaceflight Federation warned that the legal, regulatory, and organizational framework regarding space exploration was lagging behind the substantial advancement and investment in the private space sector, thereby slowing the growth of the industry. Mr. Stallmer suggested moving towards "permission-less innovation in spaceflight," whereby "if public safety, international obligations, and national security are not compromised, the presumption should be that a commercial space project can proceed." He also proposed streamlining the licensing regime regarding launches into a single, performance-based rule. Kevin O'Connell of Innovative Analytics and Training pressed the need for the government to anticipate forthcoming technological advancements when developing a launch licensing scheme.

Since the February meeting, the Space Council has been quite active. In April, Vice President Pence announced that the Space Council would send the president a Space Traffic Management Policy plan to help combat space junk.[5] Additionally, the Space Council is developing a plan to better coordinate the "radio frequency spectrum to protect satellite communications from terrestrial interference."[6] We will see what else comes of the Space Council in the months ahead.

Quiet Supersonic Flight Update: In November, I wrote here about FAA noise regulations spurring investment and innovation into quiet-supersonic technology—potentially allowing airplanes to break the sound barrier over land without the loud, and occasionally destructive, sonic boom. In April, NASA awarded Lockheed Martin a $248 million contract to develop the "Low Boom Flight Demonstrator," an experimental supersonic jet, which would travel at Mach

[4] For a more in-depth look at the policy proposals, see Racquel H. Reinstein's article on "The National Space Council Issues Recommendations to Reform Space Law" in this issue of the Newsletter.
[5] Tariq Malik, *National Space Council Will Deliver Space-Junk Plan to Trump, VP Pence Says*, SPACE.COM (Apr. 16, 2018), https://www.space.com/40324-mike-pence-space-traffic-management-policy.html.
[6] Jeff Fourst, *Space Council seeking to protect satellite spectrum*, SPACENEWS (May 1, 2018), http://spacenews.com/space-council-seeking-to-protect-satellite-spectrum/.

1.4 without the sonic boom.[7] Rather, the plane would generate a "gentle, supersonic heartbeat." Lockheed Martin hopes to conduct the plane's first test flight in 2021.

Chinese Space Station Meets Its Fiery End: In January, I wrote here about the international protections in place in the unlikely event a person was hit by China's falling Tiangnong-1 Space Station. In April, the Tiangong-1 Space Station met its fiery demise, burning up in the Earth's atmosphere over the southern Pacific Ocean.[8] I am very pleased to report that no one has claimed injuries as a result of its crash. But if you do happen to get hurt by a piece of falling future space junk, don't forget that the Outer Space Treaty and the Space Liability Convention are in place to ensure you are compensated for your injuries.

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[7] Peter Farquhar, *NASA will pay Lockheed Martin $US248 million to build this quieter supersonic jet*, BUSINESS INSIDER AUSTRALIA (Apr. 4, 2018), https://www.businessinsider.com.au/nasa-will-pay-lockheed-martin-us248-million-to-build-this-quieter-supersonic-jet-2018-4.

[8] Mike Wall, *Farewell, Tiangong-1: Chinese Space Station Meets Fiery Doom Over South Pacific*, Space.com (Apr. 1, 2018), https://www.space.com/40101-china-space-station-tiangong-1-crashes.html.

The Evolving US-China Air Market

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Last week, American Airlines announced plans to terminate, after eight years, its nonstop service between Chicago-O'Hare International Airport and Beijing-Capital in China, without a direct replacement for the service.[2]

This decision is meaningful for several reasons. First, it is a remarkable admission that the world's largest airline has been unable to turn a profit[3] on a marquee route between two of the top ten busiest airports in the world by passenger traffic.[4] Second, despite American's hope that the Department of Transportation allows its route authority to go dormant, it may nevertheless open to a competitor one of the until-now coveted "Zone 1" frequencies between the United States and China's biggest markets, Beijing, Guangzhou and Shanghai. Finally, it is evidence of a shift in the competitive dynamics of the US-China aviation scene, fragmented by the entry of Chinese carriers on as many as thirty-seven (37) new city pairs in the past decade and compounded by softening demand due to economic conditions.

The current USA-China aviation bilateral dates to a September 17, 1980 agreement between the two countries, following the reestablishment of diplomatic ties in 1978. This compact paved the way for the first air service by a U.S.-flagged carrier and mainland China since the Communist Revolution in 1949.[5] The first flight was operated by Chinese national airline CAAC, a 747SP between Beijing and San Francisco on January 8, 1981, while the reciprocal service operated by

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[2] Cantle, Katie. "American Cuts Chicago-Beijing as Sino-US Market Crowds." Air Transport World, May 8, 2018. http://atwonline.com/airports-routes/american-cuts-chicago-beijing-sino-us-market-crowds (accessed May 14, 2018).
[3] As reported by American Airlines, Inc. Vice President-Planning Vasu Raja on a May 2, 2018 audio-only podcast.
[4] Mutzabaugh, Ben. "List: The World's 20 Busiest Airports (2017)." USA TODAY, April 9, 2018. https://www.usatoday.com/story/travel/flights/todayinthesky/2018/04/09/list-worlds-20-busiest-airports-2017/498552002/ (accessed May 14, 2018).
[5] U.S.-China Civil Air Transport Agreement, September 17, 1980 (full text). United States Department of State. https://www.state.gov/documents/organization/122714.pdf (accessed May 14, 2018).

a U.S. carrier took the form of a Pan Am 747SP (N540PA, rechristened as the "China Clipper") between New York-JFK and Beijing, with an intermediate stop at Tokyo-Narita, on January 28.[6]

Travel between the United States and China grew at a languid pace for the next two decades. Major changes included Pan Am's route authorities transferring to United in connection with the 1985-86 sale of its fabled Pacific Division, Northwest Airlines entering the market in 1984 and the dissolution of the CAAC monopoly in 1987. The first nonstop flight to China by a U.S. carrier came in May 1996 by Northwest between Detroit and Beijing, but that flight was soon dropped due to low demand.[7] In April 2000, United launched its first nonstop flight to China, between Shanghai and San Francisco, a route which continues today with twice-daily Boeing 787-9 service.[8] From the late 1990s, coinciding with the explosive growth of the Chinese economy, demand for service between the U.S. and China surged, calling for a series of amendments to the bilateral agreement which greatly expanded the number of permissible frequencies and air carriers.

The award of routes under the bilateral is subject to limitations on so-called "Zone 1," "Zone 2" and "Zone 3" frequencies. As noted, cities classified as Zone 1 are Beijing, Shanghai and Guangzhou. Zone 2 consists of seven of the most populous Chinese provinces, and Zone 3 covers all other cities and provinces not classified as Zone 1 or 2.[9] The air service bilateral and amendments thereto have gradually increased the number of daily frequencies permissible between the United States and both Zone 1 and Zone 2, while there is no limit on Zone 3 frequency. In practice, the Zone 1 frequencies have proven most valuable to U.S. airlines, with all of the current allocation currently in use, pending the October 2018 cancellation of American's Chicago-Beijing service.

Accordingly, when U.S.-carrier Zone 1 frequencies come available, either by expansion of the bilateral or an airline relinquishing service, they have been pursued heavily by other airlines. The Department of Transportation prescribes a formal frequency allocation process by which qualified applicants are invited to submit proposals for exemption authority under 49 U.S.C. §40109 to serve a foreign air route, subject to public comment.[10] After airlines make their submissions, the DOT reviews the proposals, answers by competing applicants and replies thereto, along with public comments. A determination for the frequency award is made based on a number of factors, including the public interest in competitive air service and broadening market access. The complete dockets for each frequency award, with all filings, are published on Regulations.gov.[11]

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[6] Turner, Wallace. "Scheduled Air Service from China to U.S. Resumes." The New York Times, January 8, 1981. https://www.nytimes.com/1981/01/08/us/scheduled-air-service-from-china-to-us-resumes.html (accessed May 14, 2018).
[7] "Detroit Metro Airport History." https://www.metroairport.com/about-us/airport-history (accessed May 14, 2018).
[8] Anand, Rohan. "Experiencing United's First Nonstop Flight from San Francisco to X'ian." Airways Magazine, May 10, 2016. https://airwaysmag.com/traveler/experiencing-first-nonstop-flight-san-francisco-xian/ (accessed May 14, 2018).
[9] Department of Transportation December 16, 2016 Final Order in Docket DOT-OST-2016-0076-0030 (Zone 1 China Frequency Allocation Proceeding) https://www.regulations.gov/document?D=DOT-OST-2016-0076-0030 at 1 (accessed May 14, 2018).
[10] *Id*.
[11] *Id*. at 5-6.

In the most recent Zone 1 frequency allocation, a 2016 regulatory proceeding, Delta and American aggressively competed for the authority to serve the same route, namely between Los Angeles and Beijing. The DOT awarded the frequency to American on the basis that it would allow the entry of a third U.S. carrier on the West Coast-Beijing route (joining United from San Francisco and Delta from Seattle), plus would provide the public the benefit of connections beyond Los Angeles through its hub-and-spoke structure.[12] Delta, for its part, lobbied the DOT to be awarded 'backup' authority, to the extent American could not launch its flight, and sought tough restrictions on dormancy, should AA choose to delay the start of service.[13] After delays associated with obtaining favorable arrival and departure slots at Beijing-Capital airport, American finally launched the service on November 5, 2017.

In many ways, the 2016 route case represented the high-water mark for U.S.-China frequency allocations, with vigorous competition for the Los Angeles-Beijing route. In 2015, Chinese carriers surpassed their American counterparts in terms of daily seats, flights and routes between the two countries.[14] Now, with American withdrawing its Chicago-Beijing flight, concerns have been raised about overcapacity in the U.S.-China air market, and whether competitors like Delta will attempt to swoop in on the now-unused frequencies to launch their own service. Delta is widely believed to have long-term interest in the Los Angeles-Beijing route, but with its third attempt at Atlanta-Shanghai service commencing in July, it begs the question of whether introducing additional capacity into a volatile market is a wise strategy.[15]

It will, therefore, be interesting to watch what becomes of American's Chicago-Beijing frequencies once service terminates at the end of the northern summer schedule. Aggressive competition for the Zone 1 frequency on the order of the previous regulatory proceedings undoubtedly signals a bullish outlook on the China market, cementing the notion that any current sag in demand is merely temporary.

On the other hand, if the frequencies fall unclaimed by another airline, it will certainly be cause for alarm that, for the first time in nearly twenty years, sufficient Zone 1 frequencies for daily service to China will go unallocated. The latter would be a clear acknowledgment that the proverbial "game" has changed.

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[12] *Id*. at 6.
[13] *Id.*
[14] "Reaching Out: China's Love Story." Official Airline Guide, 2016. http://www.oag.cn/wp-content/uploads/2017/01/China-reaches-out-report.pdf at 10 (accessed May 14, 2018).
[15] "Delta to Expand Transpacific Service with Nonstop Shanghai-Atlanta Flight." July 19, 2017. https://news.delta.com/delta-expand-trans-pacific-service-nonstop-shanghai-atlanta-flight (accessed May 14, 2018).

An Airline is <u>Not</u> a Nursing Home!

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On March 9, 2018, the United States District Court for the Northern District of California issued an opinion in an interesting case involving the application of California's Elder Abuse and Dependent Adult Civil Protection Act, Cal. Welf. & Inst. Code, Sections 15600, *et seq.*, *Balukjian v. Virgin America, Inc.* (US District Court NDCA, case no. 18-cv-00185, dec. 3/9/18) The facts were as follows:

In July 2017, plaintiff Balukjian and her father Romulo Valdez took a red eye flight from San Francisco to Boston operated by Virgin America. Valdez was extremely elderly and was traveling with a portable oxygen concentrator which was stored in the overhead bin. Some three hours into the flight, Valdez woke his daughter and said the word "oxygen". The daughter retrieved the portable oxygen container and set the tank near her father. At that point, the flight attendant came over and asked what was wrong and was told that the father was having difficulty breathing and needed oxygen. Balukjian continued attempts to set up the portable oxygen concentrator but the cabin lights were off because it was the middle of the night and she was having difficulty connecting the tubes given the minimal light levels. She asked the flight attendant to at least turn on the light above their seat while she continued to work on the oxygen concentrator. The flight attendant complied but did not offer any other assistance.

The daughter was finally able to activate the oxygen concentrator and put the mask over her father's head but was having difficulty keeping the nose piece in place. She held it in place with her hand but at some point asked the flight attendant whether the attendant knew how to get the nose piece to stay in place. Balukjian also informed the flight attendant that her father had a pacemaker and several other medical issues. However, it is claimed that there was no response from the flight attendant. It is further alleged that the cabin lights were never raised and there was very little assistance, if any, from the flight attendants while the plaintiff's father was struggling to breathe.

At some point Valdez stopped breathing and in a panic state the daughter informed the flight attendants that this had occurred. One of the attendants brought over the airline oxygen tank and

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told Balukjian to place the apparatus over her father's head and mouth and they finally made an announcement requesting that any medical care professional identify themselves.

While the father had not resumed breathing, the flight attendants made a second announcement stating that there was a medical emergency. A young man, who was a first-year medical student, responded to the announcement and administered CPR. Continued attempts to administer CPR occurred for the next 20 to 30 minutes and at one point the medical student requested that the flight attendants rotate, performing compressions, which they did. Finally, an automated external defibrillator was brought into the area and Valdez was administered a number of electric shocks which did not revive his heart. It was also alleged that one of the flight attendants seemed very unconcerned about the situation and was not making a real effort on the chest compressions. Approximately 90 minutes passed during which time the medical student and flight attendants performed CPR. However, at a certain point all efforts ceased and it appeared the father had passed away.

The complaint alleged a violation of California's Elder Abuse and Dependent Adult Civil Protection Act, negligent infliction of emotional distress and several other causes of action including an unlawful business practice against a senior citizen pursuant to California Business and Professional Code Section 17200.

Virgin America moved to dismiss for failure to state a claim, contending that the requirements of the Elder Abuse Act were not met. Essentially, the Act provides remedies to elders or dependent adults who are able to prove by clear and convincing evidence that the defendant is liable for physical abuse or neglect as defined in the statute and who can demonstrate that the defendant acted with "recklessness, oppression, fraud or malice in the commission of the abuse."

The statute further defines "neglect" as a negligent failure of any person "having the care or custody of an elder or a dependent adult" to exercise a degree of care which a reasonable person in a like position would exercise.

In a fairly detailed discussion, the district court held that a claim of neglect under the statute requires proof of a caretaking or custodial relationship, one where a person has assumed significant responsibility for attending to one or more of the basic needs of the elder or dependent adult that an able bodied and fully competent adult would normally be capable of managing without assistance. Obviously the statute is focused primarily on nursing homes or in-patient hospitals treating elderly patients. Thankfully for the airline industry, the court ruled that the airline had not undertaken a "substantial caretaking or custodial role" with regard to Valdez and, instead determined that the role, to the extent it even existed, was "circumscribed," "intermittent" or "episodic," drawing on language from another case construing the statute. Plaintiff's argument that her father was dependent on the airline for medical care and his basic needs during the flight was deemed insufficient to meet the requirements of the statute. Consequently, the court dismissed the claim under the Elder Care Act without leave to amend.

However, this is not the end of the story because the plaintiff had also alleged an unlawful business practice under Cal. Bus. & Prof. Code Section 17200 *et seq.*, involving a senior citizen

under California Civil Code Section 2100[2] and Welfare and Institution Code Section 15600 *et seq*. Reading those statutes broadly, the court found that as a matter of pleading, the case could proceed under the Unfair Business Practice Act, although it acknowledged that there was no case law supporting the application of Section 2100, to the statute prohibiting unfair business practices involving a senior citizen.

It is worth following the progress of this case to see how this cause of action progresses. However, one question that immediately came to my mind was why the issue of preemption under the Airline Deregulation Act was never raised since it would seem to me that the activities and unfortunate demise of Mr. Valdez certainly related to airline "prices, routes or services," areas of express preemption under the ADA, although *Charas v. Trans World Airlines, Inc.*, 169 F.3d 594 (9th Cir. 1999) may limit the ADA's application to a certain extent, given its very narrow definition of "services."

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[2] Cal. Civ. Code §2100 provides "A carrier of persons for reward must use utmost care and diligence for their safe carriage, must provide everything necessary for that purpose, and must exercise to that end a reasonable degree of skill".

House Passage of the FAA Reauthorization Act of 2018 Leaves Recreational Drone Users in Limbo

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On April 27, 2018, the U.S. House of Representatives passed the Federal Aviation Administration (FAA) Reauthorization Act of 2018 (the "Bill) by a 393-13 vote.[2] The Bill includes two contradictory provisions regarding the regulation of recreational unmanned aerial vehicles (UAVs).[3]

The two amendments seek to address a U.S. Court of Appeals for the District of Columbia Circuit's 2017 decision that struck down the FAA's rule requiring the registration of recreational UAVs in *Taylor v. Huerta* and preempted any FAA regulation of most recreational UAVs.[4] In an opinion written by Judge Brett Kavanaugh, a George W. Bush appointee widely rumored to be a leading contender for the next Supreme Court vacancy to arise during a Republican administration, the D.C. Circuit held that recreational UAVs weighing less than 55 pounds constitute "model aircraft" for the purpose of Section 336 of the FAA Modernization and Reform Act of 2012 which prohibits the FAA from regulating "model aircraft."[5] Although the National Defense Reauthorization Act for Fiscal Year 2017 signed by President Trump on December 13, 2017 reinstated the registration requirement for recreational UAVs struck down in *Taylor*, the D.C. Circuit's holding continues to deprive the FAA of the statutory authority to otherwise regulate recreational UAVs weighing less than 55 pounds.[6]

The more expansive of the two seemingly conflicting amendments (the "DeFazio Amendment"), was introduced by Rep. Peter DeFazio (D-OR), the Ranking Member of the House Committee on Transportation and Infrastructure. The DeFazio Amendment would require all recreational UAV operators to obtain specific certification or operating authority from the FAA through a process to be developed by the FAA unless they only operate their UAVs within their line of site, give way to all manned aircraft, and pass an aeronautical knowledge and safety test to be

[1] Bradford P. Meisel earned his J.D. from Georgetown University Law Center in May of 2018 and will be joining the New York City office of McElroy, Deutsch, Mulvaney & Carpenter, LLP after completing a clerkship with New Jersey Superior Court Judge Diane Pincus in September of 2019. Mr. Meisel analyzed drone, autonomous vehicle, and cybersecurity law and policy during his time as a law clerk for U.S. Senators Gary Peters and Sheldon Whitehouse and the U.S. Department of Justice and has logged numerous hours as a student pilot.
[2] FAA Reauthorization Act of 2018, H.R. 4, 115th Cong. (2018).
[3] *Id*.
[4] *Taylor v. Huerta*, 856 F.3d 1089, 1093 (D.C. Cir. 2017).
[5] *Id.*
[6] National Defense Reauthorization Act for Fiscal Year 2017, S. 2943, 115th Cong. § 1092(d) (2017).

developed and administered by the FAA.[7] The DeFazio Amendment would also grant the FAA Administrator the authority to periodically update its restrictions on UAV operations exempt from the FAA certification or operating authority requirement in response to emerging trends in recreational UAV technology, safety, and usage.[8]

The DeFazio Amendment was seemingly nullified by the amendment (the "Sanford Amendment") introduced by Rep. Mark Sanford (R-SC), the former Governor of South Carolina considered a rising star in national politics before a 2009 sex scandal, which restricts FAA regulation of recreational UAVs "notwithstanding any other provision of law."[9] The Sanford Amendment would prohibit the FAA from regulating "model aircraft" including recreational UAVs weighing less than 55 pounds with the exception of a recreational UAV capable of flight beyond its operator's line of sight when its operator is a member of "a community-based organization" and does not fly the UAV within 3 miles of an airport without previously notifying the airport operator or air traffic control tower.[10] The Sanford Amendment would seemingly enable recreational UAV operators to evade all federal regulation besides the registration requirement re-imposed by the National Defense Reauthorization Act by declining to join any aviation or drone organizations and never operating their UAVs within 3 miles of an airport.[11]

The conflict between the DeFazio and Sanford Amendment sets up a debate that will play out in the U.S. Senate as the upper chamber drafts and debates its own version of the Bill. On the one hand, Senate Republican leadership, which has become increasingly hostile towards the administrative state, and centrist Democrats reluctant to set a precedent that could lead to innovation-stifling federal regulation of autonomous vehicles may favor the Sanford Amendment's approach over the DeFazio Amendment's. On the other hand, Republican and centrist Democrat hawkishness on national security which has increased during the Trump administration may forge a bipartisan consensus in favor of increased federal regulation of recreational UAVs such as the DeFazio Amendment's approach especially in light of concerns that ISIS and other terrorist organizations could use UAVs to perpetrate terrorist attacks. Even if the Senate were to adopt the Sanford Amendment's approach granting the FAA very narrow regulatory authority over recreational UAVs, they will likely refine its language to prevent UAV operators from escaping all federal regulations besides the registration requirement by declining to join any aviation or drone organizations and never operating their UAVs within 3 miles of an airport.

The Senate may also consider pending drone legislation as amendments to the upper chamber's version of the Bill such as the Drone Operator Safety Act introduced by Sen. Sheldon Whitehouse (D-RI) which would make it a federal crime to operate UAVs, including recreational UAVs considered "model aircraft," in a manner that recklessly or knowingly interferes with manned aircraft including operating UAVs within runway exclusion zones without prior air traffic control tower approval.[12]

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[7] FAA Reauthorization Act of 2018, H.R. 4, 115th Cong. § 332 (2018).
[8] *Id*.
[9] FAA Reauthorization Act of 2018, H.R. 4, 115th Cong. § 343 (2018).
[10] *Id*.
[11] *See*, *Id*.
[12] Drone Operator Safety Act of 2017, S. 1755, 115th Cong. (2017).

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Are you feeling okay, Captain? A little light headed maybe? Perhaps some shortness of breath? But you've been sitting for a while and you're getting on in years – so it's probably normal. And is the rapid heart rate – um – just your imagination? A little bluish tint to the fingernails? Maybe it's caused by the dwindling light. You're at about – what was that altitude again? A quick glance at the pulse oximeter on your finger – it reads 70%. That's a passing grade, isn't it? Oh, and the tasks you started to complete – simple enough to be sure -- but in your current state of detachment you just don't feel like doing them. Could if you wanted to, though. Odd how gray and narrowly focused the world has become. But you just don't care anymore,

do you . . .

do you . . .

do you?

By now, dear reader, you probably recognize the symptoms of hypoxia overtaking the pilot. Is he or she doomed, you might ask? Well, mercifully, no. You see, our pilot is (more or less) comfortably ensconced in a Portable Reduced Oxygen Training Enclosure (PROTE) and in a few seconds, if he or she does not take any remedial action, a helpful representative of the FAA's Civil Aerospace Medical Institute (CAMI) will assist the pilot in donning an oxygen mask. After that, the hypoxia symptoms will disappear in a matter of seconds, but the queasiness might linger

[1] Portable Reduced Oxygen Training Enclosure.

[2] Michael P. Peck is a retired partner in the New York office of Sidley Austin LLP, where he practiced for 36 years in the area of asset-backed finance (including aircraft finance). He is also an Adjunct Assistant Professor at Embry-Riddle Aeronautical University where he teaches courses in aviation law and is the Chair of the Aviation Finance Subcommittee of the Association of the Bar of The City of New York. Mr. Peck is a graduate of the Institute of Air and Space Law at McGill University, has JD and MBA degrees from Vanderbilt University, an MA degree from Duke University and a BA degree from Washington & Lee University. He holds a commercial pilot's certificate with instrument rating and is a certified flight instructor, instrument instructor and advanced ground instructor.

[3] Albert J. Pucciarelli is a partner in the firm of McElroy, Deutsch, Mulvaney & Carpenter, LLP. He is a commercial, instrument-rated pilot and aircraft owner who has flown several Patient Airlift Services (PALS) missions in each of the past five years. He is a member and past Chair of the New York City Bar Association Committee on Aeronautics Law, President of the Mid-Atlantic Pilots Association, an AOPA Legal Services Plan Attorney and past Director, Executive Vice President and General Counsel of Inter-Continental Hotels and Resorts.

for a while. We know this because last May at the Mike Monroney Aeronautical Center of the Federal Aviation Administration (FAA) in Oklahoma City, one of us was that pilot.

You don't have to travel to Oklahoma (where the wind really does come "sweeping down the plain")[4] in order to experience this training environment. The FAA sends the PROTE and its staff around the country at FAA expense to offer a convenient opportunity for local pilots to intimately experience the impact of hypoxia. And in spite of what one might think, participants don't have to be instrument rated pilots or fly at altitudes where oxygen is required[5] in order to benefit from the experience. The only requirements are that they be licensed pilots at least 18 years of age and have a current Class I, II or III medical certificate.

A lot has been written about hypoxia, and everyone who has passed the oral portion of a pilot certification exam can recite the cause – a lack of sufficient oxygen in the blood and tissues caused by a decrease in the partial pressure of oxygen which results from increasing altitude.[6] And most pilots can name several indicative symptoms. But unless you have experienced hypoxia in a controlled environment, you probably can't identify the aspects that are peculiar to your body. Hypoxia affects each of us in different ways – both the specific symptoms and their order of appearance vary from person to person. The bottom line, however, is the same for everybody – a loss of cognitive ability akin to being drunk (or so I'm told) and a mild sense of euphoria which makes everything seem alright – and ultimately, if left uncorrected, it results in death.

In order to spare you an excruciatingly technical explanation of how the PROTE works, let us just say that it realistically approximates the oxygen deprivation a pilot would experience at 25,000 feet without supplemental oxygen – and it does that without the potential adverse effects of a hypobaric chamber.[7] At the beginning of the training session, the CAMI team provides a safety briefing as well as an in-depth explanation of what to expect. Then you are given a form containing some very simple cognitive problems that you will be asked to solve and boxes in which you can record your personal hypoxia symptoms at designated intervals. A pulse oximeter is placed on your finger to allow you to monitor your blood oxygen level as well as your pulse. The atmosphere in the PROTE is then modified to the training altitude. When you experience three symptoms of hypoxia or when you begin to feel uncomfortably impaired, you simply reach for your oxygen mask and the invigorating flow of O2 makes the world seem right

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[4] Rodgers, R. and Hammerstein, O. (1943, March 31). Oklahoma. St. James Theatre, New York, New York.

[5] The FAA requires the use of supplemental oxygen in certain circumstances in order to prevent hypoxia. *See* 14 C.F.R. §91.211 which provides that "No person may operate a civil aircraft of U.S. registry: (1) At cabin pressure altitudes above 12,500 feet [mean sea level] (MSL) up to and including 14,000 feet (MSL) unless the required minimum flight crew is provided with and uses supplemental oxygen for that part of the flight at those altitudes that is of more than 30 minutes duration; (2) At cabin pressure altitudes above 14,000 feet (MSL) unless the required minimum flight crew is provided with and uses supplemental oxygen during the entire flight time at those altitudes; and (3) At cabin pressure altitudes above 15,000 feet (MSL) unless each occupant of the aircraft is provided with supplemental oxygen." Please note that these are minimum requirements and that hypoxia can occur in some individuals at much lower altitudes.

[6] The atmosphere on Earth is approximately 21% oxygen and 78% nitrogen (with the remaining percentage being made up of various other gases). As altitude increases, the relative percentage of oxygen remains the same but the partial pressure (i.e., the distance between molecules) increases, resulting in less oxygen being absorbed by the body.

[7] A high-pressure cylinder also called an "altitude chamber."

again. The "flight" lasts about five minutes, and virtually everyone is on oxygen by the time it ends.

One of the most entertaining aspects of a PROTE session is watching your fellow pilots. The object of the exercise is to recognize and make note of symptoms heralding the onset of hypoxia. It's sort of like stall/spin awareness training.[8] But some intrepid souls don't get the message and continue the exercise to a point where third-party intervention is required. When this happens, a member of the CAMI team approaches what he or she believes to be an impaired pilot and asks some simple questions. If the answers are not promptly forthcoming (and they almost never are), the PROTE monitor puts an oxygen mask on the pilot and, after a few seconds, asks whether he or she remembers the questions. In the very few cases requiring intervention that one of us witnessed, the pilot could recall neither the questions nor the answers. The PROTE offers each pilot an opportunity to safely focus on subtle signs of hypoxia; it is a mistake to view it as a test of strength or stamina.

The FAA does not require this sort of training, but it is strongly recommended.[9] The FAA offers every pilot the opportunity to fly the PROTE in order to learn more about his or her body's unique reaction to reduced oxygen pressure. The objective is to produce safer pilots. It's an interesting experience and you never know when the knowledge you gain could make all the difference in the world.

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[8] In stall/spin awareness training, pilots learn to recognize the early onset of a stall or a spin so that they can take proper action in order to avoid entering a fully-developed stall or spin. *See* Federal Aviation Administration. (September 25, 2000). Advisory Circular 61-67C, *Stall and Spin Awareness Training*. Retrieved from https://www.faa.gov/documentLibrary/media/Advisory_Circular/AC_61-67C.pdf.

[9] Federal Aviation Administration. (March 29, 2013). Advisory Circular 61-107B, *Aircraft Operations at Altitudes Above 25,000 Feet Mean Sea Level or Mach Numbers Greater Than .75*. Retrieved from https://www.faa.gov/documentLibrary/media/Advisory_Circular/AC_61-107B.pdf.

Patient Airlift Services ("PALS") Pilot Qualifications

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There have been many organizations over the years that have allowed pilots and aircraft owners to utilize their ability and aircraft in the service of persons and even animals in need of transportation. Angel Flight has historically been well-known for transporting sick people who are unable to fly commercially either because their medical condition does not allow them to or because they live in areas not serviced in any practical way by an airline. Over the years, Angel Flight has evolved into regional programs. See, for example, http://angelflighteast.org/ and http://angelflightmidatlantic.org/.

Pilots n Paws (https://www.pilotsnpaws.org/) is a well-known organization for rescuing, sheltering and finding adoptive homes for domesticated animals.

A relatively new entry into this field of eleemosynary flying is Patient Airlift Services or "PALS." Formed in 2010, PALS arranges free air transportation through their volunteer aviation community for individuals requiring medical diagnosis, treatment or follow-up. PALS also provided assistance for military personnel and their families through the *PALS for Patriots Program* and disaster relief assistance through the *PALS Sky Hope Disaster Relief Program*.

PALS is unique in its pilot training program. PALS pilot-in-command requirements are as follows: 350 hours for single engine pilots and 500 hours total time with 400 hours PIC for multi-engine or turbine pilots. Pilots must have flown a minimum of 50 hours in the make/model aircraft to be flown for the PALS mission. Additionally, PALS requires that pilots have flown at least 50 hours in the preceding 12 months and 12 hours in the preceding 90 days (2 hours of dual training with an instructor can satisfy the 90-day requirement). All PALS pilots must be instrumented rated.

PALS offers to pilots who meet certain qualifications fuel reimbursement for the cost of fuel for a PALS flight, where such reimbursement would not otherwise be allowed unless the flight were conducted as part of a commercial operation. This required a special FAA Exemption Letter

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dated May 12, 2017 (Exemption No. 10294C, Regulatory Docket Number FAA-2011-0324) (For the full text of the letter: http://www.palservices.org/wp-content/uploads/2013/10/2017-FR-Exemption-10294C.pdf).

The salient requirements for fuel reimbursement are that pilots seeking fuel reimbursement must have a Class II or Class I medical and at least 500 hours total time and 400 hours as pilot-in-command. Pilots must also satisfy certain flight preparation and operation standards that resemble the standards applied to commercial operations. Each flight must be flown under Instrument Flight Rules regardless of weather conditions.

All pilots meeting the PALS pilot-in-command requirements must also submit copies of their airman certificate, current medical (Class I, II, III or BasicMed), declaration page of their aircraft insurance policy showing coverage of no less than $1,000,000 per occurrence, and $100,000 per seat, proof of the pilot's most recent FAA-required flight review and copies of the last few pages of the pilot's logbook showing total time, and, if applicable, the pilot's latest instrument-proficiency check ride.

Throughout the onboarding process, safety is consistently highlighted as being the most important consideration. As pilot-in-command, a PALS pilot makes all decisions with regard to flight planning and mission viability. All passengers are required to have a back-up plan. Calls to passengers regarding cancelations are handled by the Mission Coordination staff so that pressure is not put on pilots to fly. PALS also has ear-marked funding available to accommodate pilots and passengers in the event of weather or mechanical diversions requiring overnights or alternative means of transportation to get to their destinations.

To date, PALS has logged over 15,000 passenger flights flown. Over $12.3 million has been donated in the form of pilot/airline services since 2010. Cash contributions since 2010 have exceeded $4.5 Million.

Organizations such as PALS benefit and put to good use so many – the vast majority – of our nation's airports that are not served by scheduled airline flights and our nation's aviation infrastructure that is still friendly to private aircraft operations. In so doing, these organizations strive to assure the safety of the public they serve by insistence on certain reasonable pilot qualifications that go beyond those required generally for a pilot to fly passengers without compensation. The "unsuspecting public" – in this instance, the patients who utilize services such as PALS - can take comfort in knowing that the pilots flying the aircraft have met these standards.

The National Space Council Issues Recommendations to Reform Space Law

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In recent weeks, the world has been wowed by the image of a Tesla Roadster in space with a proto space man. In fact, one can track where the Roadster is presently on http://www.whereisroadster.com/. Private industry leaders such as Blue Origin, SpaceX, and Virgin Galactic have developed programs in both space tourism and space exploration. These private companies still must abide by the laws of the country from which they are registered and launch rockets. On February 21, 2018, the National Space Council met to go over recommendations for what should be done to encourage private space exploration. The following are the four recommendations to reform the commercial space regulatory framework:[2]

1. The Secretary of Transportation should work to transform the launch and re-entry licensing regime.

Right now, any aerospace company that wants to launch a rocket or land a spacecraft back on Earth has to get a license from the Federal Aviation Administration. These licenses are meant to ensure that such vehicles will not harm any unsuspecting bystanders or cause any damage to public property when they launch or land. The Verge noted that the current process to obtain the license can be burdensome, as each launch site has its own licensing process, and different types of rockets have their own licenses that must be obtained.[3] The National Space Council recommended that one type of license should be issued, no matter what and where is being launched.

2. The Secretary of Commerce should consolidate its space commerce responsibilities, other than launch and reentry, in the Office of the Secretary of Commerce.

Right now the commercial space industry sort of exists through a hodge podge of regulations. The Federal Aviation Administration (FAA) regulates non-government spaceports and the launch and reentry of private spacecraft under the Commercial Space Launch Act, as amended by the 2004 Commercial Space Launch Amendments Act. Various other federal laws, such as the 1992 Land Remote Sensing Policy Act and International Traffic in Arms Regulations, state

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[2] *See* https://www.nasa.gov/sites/default/files/atoms/files/moon_mars_worlds_beyond.pdf.
[3] *See* https://www.theverge.com/2018/2/23/17035436/national-space-council-regulatory-reform-industry-mike-pence.

contract and tort laws, and decades of commercial practice in the telecommunications, remote sensing and launch services industries also affect government and private space operations. However, as far as the commercial space industry generally, there are regulatory gaps. For instance, there is no regulatory framework for commercial space missions to another world, and Moon Express had to apply for a special license to fly to the moon, a project that has since been delayed.[4] Secretary of Commerce Wilbur Ross called for developing an Under Secretary of Space Commerce, and streamline the existing commercial remote sensing operation licensing regime, and address new issues such as radio frequency spectrum surveys, rendezvous and proximity operations and docking maneuvers.

3. The National Telecommunication and Information Administration should coordinate with the Federal Communications Commission to ensure the protection and stewardship of radio frequency spectrum necessary for commercial space activities.

Companies need to communicate with their satellites and space probes. The Federal Communications Commission (FCC) regulates the spectrum and has allocated only a very narrow band of spectrum to these space activities. The existing process of obtaining access to the spectrum is lengthy and complicated, and there is a lack of coordination. The Department of Commerce was tasked with finding better ways to manage the spectrum.

4. The Executive Secretary of the National Space Council, in coordination with members of the National Space Council, should initiate a policy review of the current export licensing regulations affecting commercial space activity.

The U.S. government maintains three big lists of items that need to be licensed for export: the Nuclear Regulatory Commission Controls, which covers nuclear equipment; the US Munitions List, which covers defense-related technology; and the Commerce Control List, which covers mostly commercial items that could have a military application. Until 2014, space technology was covered under the Munitions List, which meant that it was a cumbersome and difficult process to obtain approval to export this technology to other countries. In 2014, the Obama administration moved certain satellite technology to the Commerce Control List,[5] however, many items related to human spaceflight are still on the Munitions List. Taking these items off the Munitions List and placing them on the Commerce Control List would enable greater development of the international business of space flight.[6]

The National Space Council called for this regulatory reform to happen by March 2019. Additionally to what was noted, the White House announced the creation of a Users Advisory Group to advise the National Space Council.[7] The members of this Advisory Council are heavily

[4] *See* https://www.theverge.com/2016/8/3/12361256/moon-express-private-mission-spaceflight-us-government-approved.
[5] *See* 79 Fed. Reg. 66608 (Nov. 10, 2014), available at https://www.federalregister.gov/documents/2014/11/10/2014-26631/amendment-to-the-international-traffic-in-arms-regulations-revision-of-us-munitions-list-category-xv.
[6] For a more in-depth look at possible space-related export reforms, see Dan G. Agius' article: "Rethinking ITAR" in the March 2018 issue of this Newsletter.
[7] See http://spacenews.com/national-space-council-backs-incremental-space-regulatory-reform/.

weighted to industry groups.[8] The author will track this regulatory agenda to see the progress as it unfolds.

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[8] *See* https://www.whitehouse.gov/briefings-statements/vice-president-pence-announces-national-space-council-users-advisory-group/.

Congress Provides Significant Funding for Aviation Cybersecurity

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The aviation industry is considered one of 18 critical sectors which requires enhanced cybersecurity protection by the Department of Homeland Security ("DHS"). To that end, on March 23, 2018, Congress enacted and the President signed the Consolidated Appropriations Act, 2018, which provides $1.3 trillion in funding, including significant amounts devoted to aviation cybersecurity. Specifically, the FAA received $18 billion, an increase of $1.6 billion over the 2017 level, which includes $24 million devoted to addressing the cybersecurity requirements of the air traffic control system and $1.3 billion for NextGen. In addition, DHS received $244 million for cyber readiness programs, $432.7 for federal cybersecurity efforts, and $46.2 to improve cyber infrastructure resilience.

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Drone Operations Near U.S. Airports and Commercial Aircraft

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Numbers on the Rise

In January 2018, the U.S. Department of Transportation Secretary Elaine L. Chao announced that over one million drones (also known as unmanned aerial vehicles ("UAVs") and unmanned aircraft systems ("UAS")) had been registered with the Federal Aviation Administration ("FAA"), marking a new milestone for the registration program. This number is made up of approximately 878,000 hobbyist registrations and approximately 122,000 drones to be operated for commercial purposes. According to an aerospace forecast published by the FAA, drone operations are expected to increase and the sales of small drones requiring registration are projected to rise to around seven million by 2020.

Part 107 – FAA Regulations

Currently, drones operated for commercial purposes must comply with the FAA's rule on the Operation and Certification of Small Unmanned Aircraft Systems (14 C.F.R. Part 107, known as "Part 107"). Although Part 107 generally authorizes the commercial use of drones that weigh less than 55 pounds (including the entire payload), the authorization is subject to significant conditions. For example, drones must:

- not be flown over people;
- not exceed a flying speed of 100 miles per hour (87 knots);
- remain in Class G airspace (i.e., the only form of "uncontrolled" airspace in the U.S.);
- only operate within Class B, C, D, and E airspace if granted permission from Air Traffic Control ("ATC"); and
- be operated by a FAA certified Remote Pilot in Command.

[1] Jenny A. Urban is an associate in the K&L Gates U.S. Aviation Finance practice and also holds her Remote Pilot - Small Unmanned Aircraft Systems license.
[2] Amanda Darling is the head of the K&L Gates U.S. Aviation Finance practice.

If the commercial drone operation is not compliant with Part 107, a waiver or special exemption from the FAA must be issued, which requires the operator be able to demonstrate to the FAA that the intended operations can be done in a safe manner.

Most of the airspace surrounding the busiest airports in the U.S. is Class B from the surface to 10,000 feet Mean Sea Level ("MSL"). Under Part 107, a commercial drone operator must obtain specific permission from ATC before operating in this airspace. A recreational drone operator may either 1) operate under Part 107, requiring the same ATC authorization as commercial operations, or 2) operate in compliance with the Special Rule for Model Aircraft (Public Law 112-95 Section 336). Under the second option, the operator must provide proper notification to any airport and ATC tower (if available) when the operation is within 5 miles of an airport. These provisions are intended to make airports and ATC aware of any drones operating near airport facilities in order to adequately be able to protect manned aircraft operations and sensitive information regarding airport infrastructure.

The FAA's June 2017 "Law Enforcement Guidance for Suspected Unauthorized UAS Operations" publication recognized the significant benefits offered by drones and emphasized its priority of integrating drones into the National Airspace System. However, this guidance also cited the increasing number of unauthorized drone operations as a primary concern for the FAA. The FAA has emphasized that operating drones near manned aircraft and helicopters is not only dangerous, but also illegal, and former FAA Administrator Michael Huerta has reiterated that persons conducting unauthorized or irresponsible drone operations will be prosecuted to the fullest extent of the law.

Impact of Incidents

Unauthorized drone operations near airports can pose a serious safety risk for aircraft taking-off and landing and for other airport operations. In some instances, the security threat can be severe enough to cause the shutdown of an entire airport. An airport shut down is not only inconvenient for passengers, staff, and airline crew, it is extremely costly to the airport and the airlines. For example, flights scheduled to land at the airport may be rerouted and take-offs may be delayed, which can cause high costs to accrue on a minute-to-minute basis. In September 2016, unauthorized drone operations forced Dubai International Airport ("DXB") to shut down for approximately 27 minutes totaling a cost of around $28 million USD.

In late 2017, the Alliance for System Safety of UAS through Research Excellence ("ASSURE"), led by Mississippi State University, released a research report regarding airborne collision severity. The FAA is using these research results in the development of tools to mitigate the risks of potential collisions between manned aircraft and drones.

Airport Strategies to Combat Unauthorized Drone Operations

Airports across the U.S. are testing different strategies to prevent unauthorized drone operations. One approach being tested is the use of anti-drone technology, also known as counter drone technology, to identify and/or combat unauthorized drone use. Another approach various airports are testing is the FAA UAS Data Exchange, which facilitates the sharing of airspace data between the government and the private sector. The first partnership under the UAS Data Exchange is the Low Altitude Authorization and Notification Capability ("LAANC"), which allows LAANC service providers to work with the FAA to develop a UAS traffic management system. The UAS traffic management system will help allow drones and manned aircraft to operate safely in the same air space, such as around an airport. During Fall 2017, there were 45 airports/facilities who participated in LAANC's initial prototype evaluation. Although LAANC is still only in the testing phase, ultimately it is meant to allow a drone operator to apply for the authorization or notify the ATC tower of the intended flight plan with nearly real-time FAA approval for commercial drone operations in controlled airspace.

Conclusion

It is critical that both commercial and recreational drone operators abide by the current regulations and obtain the proper authorization before flying near an airport or anywhere near the flight path of a manned aircraft. As the FAA continues to develop a UAS traffic management system, anyone interested in operating a drone near an airport should remain up-to-date on the evolving regulations, requirements, and technologies to ensure that proper authorization is received and the operations are conducted in a safe manner.

11th Circuit Finds ADA Preemption of Billing Provision in Florida Insurance Statute

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A provision of the Florida Motor Vehicle No-Fault Law requires that automobile insurance policies provide personal injury protection ("PIP") for those injured in automobile accidents. Florida's PIP statute allows an insured to choose one of two methods for reimbursing medical claims under such a policy.[2] Under the first method, the medical provider is allowed to bill an insured for a reasonable fee remaining after an auto insurer pays its portion of the fees.[3] The second method – the "balance billing provision" – prohibits the medical provider from billing an insured for "any amount in excess of such limits, except for amounts that are not covered by the insured's personal injury protection due to the coinsurance amount or maximum policy limits."[4]

In *Bailey v. Rocky Mountain Holdings, LLC*,[5] the Eleventh Circuit addressed whether the Airline Deregulation Act ("ADA") preempts the balance billing provision in Florida's PIP statute as a state law related to an air carrier's price when it limits the amount an air ambulance provider can seek from an automobile insurance policy insured. Affirming the District Court's decision, the Eleventh Circuit held the ADA to have a preemptive effect with respect to this Florida law.

In *Bailey*, plaintiff's son sustained serious injuries in an automobile accident. Defendant Air Methods Corporation ("AMC") transported plaintiff's son by air ambulance from the accident scene to a hospital thirty-seven miles away.[6] The plaintiff owned an automobile insurance policy employing the second method of payment prohibiting medical providers from charging the insured the remaining reasonable fee pursuant to the balance billing provision.[7] When providing emergency services, AMC, a registered air carrier, was unaware of the terms of plaintiff's automobile insurance policy and was required to provide such services under Florida law.[8] AMC charged a reasonable fee for its services and sought to collect fees from the plaintiff that it

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[2] Fla. Stat. Ann. § 627.736.
[3] *Id.*
[4] *Id.*
[5] *Bailey v. Rocky Mountain Holdings, LLC*, 2018 WL 2107176 (11th Cir. May 8, 2018)
[6] *Id.* at *2.
[7] *Id.* at *3.
[8] *Id.* at *10.

could not collect from the plaintiff's insurers.[9] But for the balance billing provision, AMC had a contractual right to collect the fees.[10] The plaintiff brought an action, on behalf of himself and a class of similarly situated individuals, asserting that AMC was seeking "to collect amounts from persons transported by air ambulance that it was statutorily prohibited from collecting."[11]

The 11th Circuit found "without doubt" that the ADA preempted the balance billing provision of Florida's PIP statute.[12] Unlike the first payment method noted above, the balance billing provision restricted AMC from collecting reasonable fees it sought for its services.[13] Accordingly, the balance billing provision had "'the forbidden significant effect' on the prices of an air carrier" falling within the scope of the ADA's preemption provision.[14]

The 11th Circuit further rejected plaintiff's argument that the McCarran-Ferguson Act ("MFA") precluded ADA preemption in the action.[15] The MFA prevents a federal statute from preempting a state's law if "(1) the federal statute at issue does not 'specifically relate to the business of insurance'; (2) the state statute at issue was 'enacted for the purpose of regulating the business of insurance'; and (3) application of the federal statute would 'invalidate, impair, or supersede' the state statute."[16] The 11th Circuit found the MFA to not apply because the balance billing provision – a provision addressing the relationship between an insured and medical provider – did not "relate to the business of insurance."[17]

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[9] *Id.*at *7.
[10] *Id.*
[11] *Id.*at *3.
[12] *Id.* at *8.
[13] *Id.*
[14] *Id.* at *9.
[15] *Id.* at *10-12.
[16] *Id.* at *11.
[17] *Id.* (applying three-part test to determine whether a state law is regulating the business of insurance devised by the United States Supreme Court in *Union Labor Life Ins. Co. v. Pireno,* 458 U.S. 119, 129 (1982)).

FUN PAGES[1]

Tesla Roadster in Outer Space[2]

"A Tesla Roadster launched by SpaceX's Falcon Heavy rocket glides out of Earth's orbit on Feb. 6, 2018." https://www.cbsnews.com/news/spacex-elon-musks-tesla-roadster-wont-hit-earth-anytime-soon/

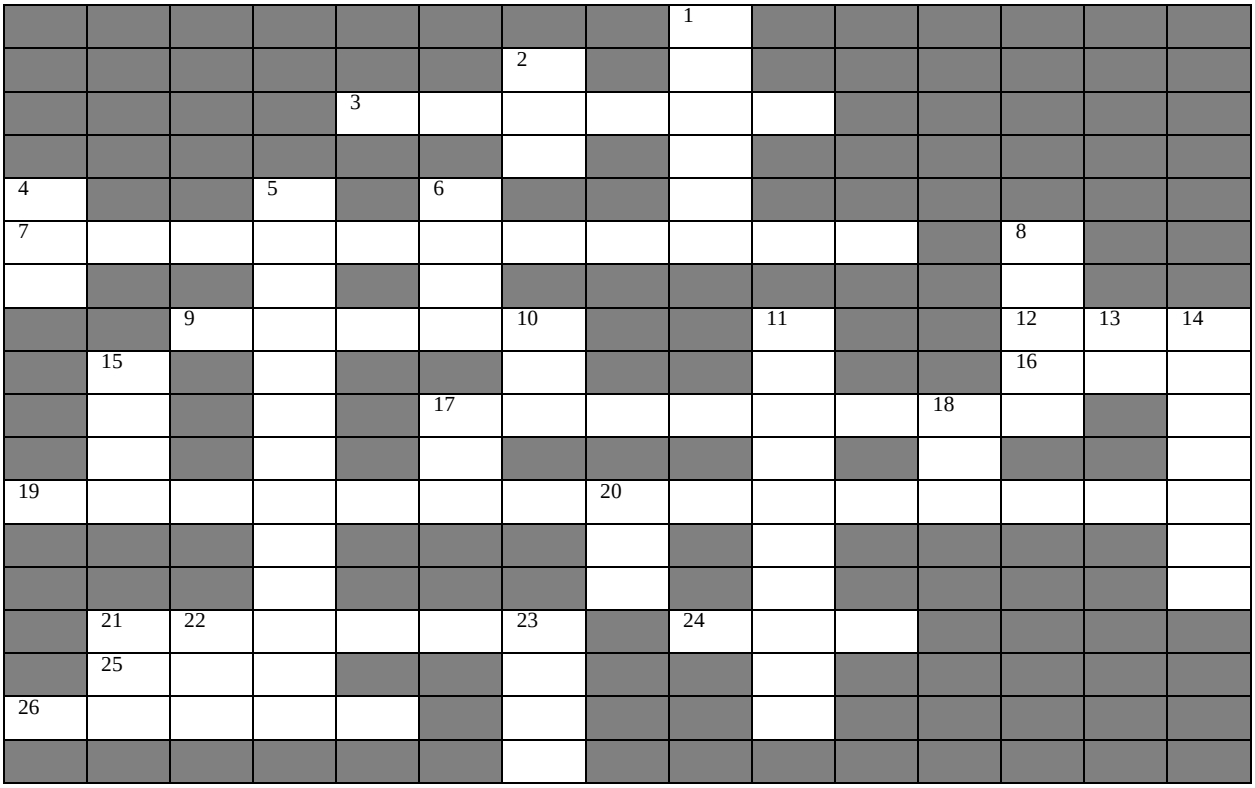
Other Space News[3]

The Australian Government has announced the establishment of the "Australian Space Agency," which is scheduled to begin operations on July 1, 2018. *See* https://www.industry.gov.au/INDUSTRY/IndustrySectors/SPACE/Pages/default.aspx; https://en.wikipedia.org/wiki/Australian_Space_Agency; https://www.engadget.com/2018/05/03/australia-is-forming-its-own-space-agency/.

[1] Readers are encouraged to please submit (via email to areitzfeld@gmail.com) aviation-related original cartoons, other works of art (especially airplane doodles), poems, photographs, puzzles, etc. for the Fun Pages.
[2] Thanks go to Regulatory Subcommittee Chair Racquel H. Reinstein for mentioning this development. See her related article in this issue on "The National Space Council Issues Recommendations to Reform Space Law."
[3] Thanks go to Aviation Finance Subcommittee Chair Michael P. Peck for mentioning this development.

Crossword Puzzle

By Michael Davies, Chair of the Drone/UAS Regulation & Licensing Subcommittee



Across

3. Crowded airspace generally unavailable to drones
7. Drone operator
9. His company hopes to deliver packages by drone some day
12. Artichoke or onion
16. Residue
17. U.S. Military drone
19. Altitude limit for most drones
21. Airspace drones have no problem flying in
24. Drone acronym
25. ___ sequitur
26. They created a light show using 1200 drones in PyeongChang

Down

1. The "V" in BVLOS
2. Alternative drone acronym
4. Ford ___ Motor, early airliner
5. Hobbyist's drone forerunner
6. "____ Dark Thirty"
8. Technology used by drones and self-driving cars
10. Big ___
11. Drone video is used to sell this
13. "It depends on what the meaning of the word __ is." Pres. W. J. Clinton
14. Popular drone model
15. Head of agency that oversees drones
17. Nittany Lions' home
18. Mosquito repellent
20. Big drone maker
21. News organization allowed to fly drones over people
22. Polish airline
23. It comes after foxtrot

Committee Secretary Sarah G. Passeri With a Gift for Committee Chair Alan D. Reitzfeld at his Recent Holland & Knight Retirement Party

What happens to aircraft when they retire?

See https://www.cnn.com/travel/article/planes-retired-what-happens/index.html

Why leaving the gate isn't always a good indication of an on time take off. [4]

[4] Thanks go to Fuel Subcommittee Chair Patrick Ryan Morris for this photo.