

CLM 2016 Boston Conference  
July 14-15, 2016 in Boston, MA

## **Drones – Not Just a Toy**

### **I. The Growing World of Unmanned Aircraft Systems (UAS) a/k/a Drones**

Everyone has heard of drones, but what are they? The drones that most people think of are “unmanned aircraft systems.” An “unmanned aircraft system” or “UAS” is an aircraft that is not: (1) designed; (2) manufactured; or (3) modified under manufacture; to be controlled directly by a person from within or on the aircraft. In other words, a drone is an aircraft that is being operated and controlled by a person not physically in or on the aircraft.

The drones that people see the most of are the ones flying around in the mall at the shopping kiosk luring kids and their parents to purchase one for entertainment value. Toy drones range in all different sizes, uses, and prices. Some are for indoor use only and others are larger and carry cameras. The key is that drones are affordable and available to anyone who wants one. The Consumer Technology Association called 2015 a defining year for small drones, projecting total U.S. sales of 700,000 units in what would mark a 63 percent increase from 2014.<sup>1</sup> However, drones are not just toys. There are more sophisticated drones that serve a commercial purpose. Drones now provide businesses with a means of photography that was not readily available a few years ago. For instance, surveying companies, real estate agents, aerial photography firms, and the media use drones to get pictures and provide information. Not to be left out, insurance companies are starting to use drones to assist in the adjustment of property damage claims.

With more drones out there means an increased risk that something gets damaged or someone gets hurt. In fact, on April 17, 2016, the first ever collision between a drone and a commercial airliner happened just outside London’s Heathrow Airport. A British Airway Airbus A320 was in route from Geneva and preparing to land in London when the front of the plane struck an unmanned object. The plane was able to land safely with no one getting hurt, but it served as evidence of lawmaker’s worst fears that a drone could potentially cause severe damage and injury to commercial airlines.

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<sup>1</sup> Insurance Journal, *How to Wrap That Toy Drone Christmas Gift in an Insurance Policy* by Justin Bachman, December 15, 2015.

As a result of near misses like the one outside Heathrow Airport, both federal and state governments are instituting laws and regulations to ensure safety of flight and safety of people and property on the ground. However, the increased regulation of drones does not mean that drone use is going to subside in the near future. In fact, part of the goal of the federal regulations is to ensure that the U.S. remains a leader in drone technology and use. With no decrease in drone activity, insurance carriers can expect to see more “drone claims” in the coming years. Most of these, if covered, will be small claims. But policy wording will still be important in how these claims are handled. Finally, insurance carriers can benefit from drone use in the way property claims are adjusted. Drones can be instrumental in observing and videoing damage in places that adjusters cannot get to.

## **II. Government Regulation of Drone Use**

According to the Federal Aviation Administration Office of the Chief Counsel, pilot reports of interactions with suspected unmanned aircraft have increased from 238 sightings in all of 2014 to 780 through August of 2015.<sup>2</sup> Further, during the summer of 2015, the presence of multiple drones in the vicinity of wildfires in the western U.S. prompted firefighters to ground their aircraft on several occasions.<sup>3</sup> Because of situations like this, the federal government has become increasingly involved in regulating the use of drone aircraft.

In Section 333 of the FAA Modernization and Reform Act of 2012, Congress directed the Secretary to determine whether drone operations posing the least amount of public risk and no threat to national security could safely be operated in the national airspace system, and if so, to establish requirements for the safe operation of these systems in the national airspace system. On February 15, 2015, the FAA proposed a framework of regulations that would allow routine commercial use of certain small drones in today’s aviation system, while maintaining flexibility to accommodate future technological innovations. The FAA requires certain drones to be registered in order to operate in the national airspace system. Registering drones will help protect public safety in the air and on the ground, aid the FAA in enforcement of safety related requirements for the operation of drones, and build a culture of accountability and responsibility among users operating in U.S. airspace. Essentially, the FAA wants a means to locate the owner of a drone in the event of an accident or if the drone is lost or stolen. This new registration program is designed to allow the FAA direct access to drone owners for educational outreach and for legal enforcement.

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<sup>2</sup> *State and Local Regulation of Unmanned Aircraft Systems (UAS) Fact Sheet*, Federal Aviation Administration Office of the Chief Counsel, December 17, 2015.

<sup>3</sup> *Id.*

According to the FAA, almost any drone used outdoors must be registered. Anyone who owns a small unmanned aircraft that weighs more than 0.55lbs and less than 55lbs must register with the FAA "UAS" registry before they fly outdoors. This registration focuses on "model aircraft" which is defined as an unmanned aircraft that is (1) capable of sustained flight in the atmosphere; (2) flown within visual line of sight of the person operating the aircraft; and (3) flown for hobby or recreational purposes. People who do not register could face civil and criminal penalties. The owner must be 13 years of age or older and a U.S. citizen. If the owner is younger than 13, then someone at least 13 years old must register the drone. This registration process can be done online at <http://www.faa.gov/uas/registration>.

Owners of commercial drones or drones larger than 55lbs must register their drones through the FAA by paper like other aircraft. An owner of a commercial drone can get a special airworthiness certificate in the experimental category for civil aircraft to perform research and development. Another way to get FAA approval is through a special airworthiness certificate in the restricted category (14 CFR § 21.25(a)(1) or §21.17). Probably the most popular way to gain FAA approval for commercial drone use is a petition for Section 333 exemption with a certificate of waiver or authorization to perform commercial operations in low-risk controlled environments. Section 333 exempt aircraft are aircraft which the Secretary of Transportation has determined doesn't need an airworthiness certificate to operate commercially. The Section 333 exemption typically provides the speediest process for approval.

Recently, the FAA issued updated rules for commercial drones, doubling their operational ceiling and streamlining the online application process for pilots registering their drones. The first update applies to Section 333 exempt drones. These drones are now authorized to fly 400 feet. Prior to the update, the drones were limited to 200 feet. These Section 333 exempt drones are still restricted from operating in restricted airspace and major cities. Pilots of Section 333 exempt drones are also restricted to flying during the daytime and stay away from airports. The other update now allows Section 333 exempt drones to register online instead of with the FAA's offices in Oklahoma City. Section 333 exempt drones can register for \$5 which is the same cost for registering model airplanes.

One man has actually filed suit in Federal Court to challenge the FAA regulations. The suit was filed in the Court of Appeals for the District of Columbia. The lawsuit challenges the requirement that model aircraft owners and owners of small drones have to register with the FAA if such craft are solely flown for hobby or recreational purposes. Interestingly though, other hobby groups or individuals have not filed suit. Even the Academy of Model Aeronautics has not joined in the suit or filed a suit of its own even though it has been outspoken against the FAA's new registration requirements.

State and local governments have also gotten involved in the regulation party. For instance, Texas has a drone statute. Section 423.003 of the Texas Government Code imposes criminal penalties for the use of drones to conduct “surveillance” of persons or property without consent. That being said, the Texas Drone Statute allows for photography of public property and even private property with the owner’s consent. North Dakota also provides for limitations for the use of drones in surveillance (HB 1328). In Tennessee, HB 153 prohibits certain use of an unmanned aircraft to intentionally capture an image over certain open-air events and firework displays; and prohibits the use of unmanned aircraft over grounds of a correctional facility. In Oregon, HB 2534 was enacted which prohibits the use of drones for angling, hunting, trapping, or interfering with a person who is lawfully angling, trapping, or hunting. West Virginia has a similar bill prohibiting hunting with drones (HB 2515). As can be seen from the different variations of laws, different states see different potential for use and harm from drones and there laws follow suit.

The courts are also going to get their chance to create law as it relates to drones. In addition to the courts dealing with small property damage claims, courts are also going to have to address issues related to privacy. For instance, in Louisville, Kentucky, a drone owner filed a civil suit against a neighbor that shot down his drone. The drone was over the neighbor’s property when the neighbor shot it down. The neighbor alleges that the drone owner was watching his teenaged daughters on the back porch with the drone. The drone owner alleges that he was not spying on his neighbors and filed suit to protect the right to fly responsibly without fear of being shot at. The drone cost \$1,800.00. The issue for the court is where does private property end, along with a homeowner’s right to privacy, and the open sky begin. According to the drone owner, the drone was flying at about 200 feet. The neighbor alleges the drone was 10 feet over his roof line. The civil suit has not been decided yet. The neighbor was however charged criminally for firing a gun within city limits, but the judge dismissed the criminal charges because the judge felt the neighbor was within his rights when he shot down the drone.

### **III. Policy Language and Drones**

The insurance industry is also addressing the growing concern of drone use and how that affects the risks that carriers take on. Drones have the potential of implicating coverage on a number of different levels. Drones can cause injury to people or objects. There can also be design/manufacture defect issues with respect to the drone itself. Drones can also implicate coverage with respect to invasion of privacy, trespass, defamation, first-party property damage, hacking, and business interruption losses.

Part A of current CGL policies typically excludes coverage for “bodily injury” or “property damage” arising out of the use of any aircraft. However, what if a drone owner gets a Section 333 exemption, then the FAA does not classify the drone to be an aircraft. As a result, an insurer would have a tough time applying that exclusion to any drone that the FAA does not classify as an aircraft.

Some policies now carry endorsements closing ambiguities and excluding coverage for unmanned aircraft. For instance, the endorsement titled “Exclusion – Unmanned Aircraft (Coverage A Only)” provides that the policy does not apply to “bodily injury” or “property damage” arising out of the ownership, maintenance, use or entrustment to others of any aircraft that is an “unmanned aircraft.”<sup>4</sup> The exclusion applies even if the claims against the insured allege negligence or wrongdoing in the supervision, employment, training or monitoring of others by the insured, if the “occurrence” which caused the “bodily injury” or “property damage” involved the ownership, maintenance, use or entrustment to others of any aircraft that is an “unmanned aircraft.”

Typical language in Coverage Part B (Personal and Advertising Injury) does not contain an exclusion arising out of the use of any aircraft. However, like that for Part A, there is an endorsement titled “Exclusion – Unmanned Aircraft (Coverage B Only)” which applies to “personal and advertising injury” arising out of the use of “unmanned aircraft.”<sup>5</sup> Other endorsement language is also being considered, and the endorsements are undergoing revisions to better suit them for the particular coverage needs. For instance, a carrier can provide limited coverage for designated unmanned aircraft for either Coverage A and/or Coverage B through a schedule of unmanned aircraft and a description of the operations of that aircraft. One thing for sure, as drone activity increases, carriers are going to have to evaluate their policies and make sure their policies specifically address whether damage arising from drones is covered or not.

#### **IV. How Drones Can Change the way Insurance Carriers Adjust Claims**

Looking past just the coverage concerns, drones can provide a benefit for insurance carriers in how claims are adjusted. There are many instances when an adjuster is inspecting a property where he or she cannot gain access to certain areas on a roof or other building material because it is not safe. Now, adjusters can deploy drones to analyze hazardous situations without sacrificing sure footing. Adjusters can use drones to capture better photos, including close-ups, of areas that might have been off limits to the adjuster. Further, drones make it possible for adjusters to consult remote specialists in real-time with live visuals and audio for further guidance and more accurate decision-making. Drones also provide the ability to video a damaged property. Most adjusters simply photograph the damage. Drones can provide a video recording of the entire exterior of the property, and software can allow adjusters to single out and enhance damage that they see in the video.

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<sup>4</sup> See CG 21 10 06 15

<sup>5</sup> See CG 21 11 06 15

Drones can also benefit insurance companies by eliminating the need for multiple site visits and reduce the cost and time for completing risk-assessment reports. This is especially true when it comes to catastrophic claims where adjusters are stretched thin or are limited in their ability to access an area due to damage. Drones can provide an insurance carrier the opportunity to access the damage from the sky from a general overview. Drones can clarify what areas were hit by the catastrophic storm, and which areas show signs of less damage.

## **V. Conclusion**

Drone use is not something that should be discouraged, but rather encouraged. It is the way of the future. It is possible that retailers may soon look to drones to deliver items to its customers. For instance, Amazon Prime Air is a service that will deliver packages up to 5 pounds in 30 minutes or less using small drones. With that being said, regulation is needed. The national airspace system in the U.S. is the most complex in the world and drone activity takes place in that system. Carriers also need to adapt and be ready to accept that the future of drones is now. Drones are a technology that needs to be addressed in policies of insurance. Drones are also a technology that needs to be adopted by carriers when handling property claims as a more efficient and accessible way to inspect properties. Drones are not just a toy, they are a tool that will advance civilization and probably be a part of every household in the U.S.