LEHIGH VALLEY FLYING CLUB AND LEHIGH VALLEY GENERAL AVIATION ASSOCIATION
VS
LEHIGH NORTHAMPTON AIRPORT AUTHORITY

FORMAL COMPLAINT NUMBER 13-90-9

RECORD OF DECISION

I. INTRODUCTION

This matter is before the Federal Aviation Administration (FAA) based on the Lehigh Valley Flying Club and the Lehigh Valley General Aviation Association's (Club/Association's) formal complaint. The FAA Airport District Office in Harrisburg, Pennsylvania (HAR ADO) conducted an informal investigation beginning in July 1990 which concluded in January 1991. HAR ADO with the concurrence of the FAA Airports Division, Eastern Region, found that the Lehigh-Northampton Airport Authority's (Sponsor's) requirement of $1 million of personal liability coverage as a prerequisite for operation of a personal vehicle in the air operations area did not violate any federal grant agreements. The Region's determination is before this office for review.

II. THE AIRPORT

Allentown-Bethlehem-Easton International Airport (Airport) is a public use airport certificated under Part 139 of the Federal Aviation Regulations (FAR). The Airport has approximately 96 based aircraft and over 137,000 annual operations, including air carrier, commuter, general aviation and military operations. [See Form 5010-1, dated 3/2/90, Attachment 12] The Airport is owned and operated by the Lehigh-Northampton Airport Authority (Sponsor). [See Airport Operating Certificate, Attachment 11] During the six year period of 1983-89, traffic at the airport increased 88.3%. [Exhibit 5 of Attachment 1 at page 1787]

The Sponsor has received over $7.5 million in Federal grant funds under the Airport Improvement Program. These funds were used to fund numerous projects and improvements at the Airport. The Sponsor recently entered into grant agreements for additional funds to acquire land for airport development and to plan the reconstruction and overlay of Taxiways E, W and A. [See Grant History, Attachment 13]

Lehigh Valley Flying Club (Club) is a tenant on the Airport. Lehigh Valley General Aviation Association (Association) represents certain Airport tenants, including the Club, but is not in and of itself a tenant on the Airport.

Consistent with an FAA-approved Safety and Security Program, the Sponsor permits general aviation aircraft owners and pilots with aircraft stored in the Airport's T-hangars to drive their vehicles to the hangars. The Sponsor requires these pilots and owners to provide proof of $1 million personal liability insurance coverage to Airport personnel prior to being granted permission to operate motor vehicles in any air operations area. Due to the design of the Airport, the pilots and owners must drive on an Air operations area, specifically, the general aviation taxiway, in order to reach their aircraft stored in the T-hangars. [See Airport and T-hangar Parking Lot Layout Plans, Exhibit 1 of Attachment 5 and Attachment 14]

III. BACKGROUND

A. Sponsor's Safety and Security Program

In 1987, the Sponsor instituted an Airport Safety and Security Program (Program). This Program would be phased-in during the following two years. The Sponsor initiated this Program in reaction to the FAA's increased emphasis on alleviating vehicle incursions on aircraft movement areas. [Exhibit A of Attachment 1]

The Program included revision of the Airport Security Plan, improvement of access control to the Air Operations areas, and development of a central communications system. The final stage of the Program established a driver education, licensing, and financial responsibility program for all vehicle and equipment operators on the Airport.

An insurance requirement for any person operating motor vehicles on the Air operations area was included in this final stage of the Program. Specifically, the final stage requires "any individual, partnership, corporation, joint venture or other business operating a motor vehicle on the air operations area" to hold an A-B-E Driver permit, pass a driving test, place a placard in their vehicle when necessary, and obtain personal liability insurance. [See Attachment 10]

The driver education, licensing and insurance program was implemented in the airline terminal ramp in 1987, in the FBO ramp area in 1988, and in the general aviation T-hangar area in 1989.

B. Sponsor's Determination of Insurance Amount

The Program requires any person driving in the air operations area to have personal liability insurance. The Program does not specify the amount of insurance required; however, the amount of insurance is to be "specified by the Airport Authority from time to time". [Exhibit 1 of Attachment 10]

On September 18, 1989, the Sponsor's insurance agent wrote to the Sponsor and recommended instituting specific insurance amounts to be carried by various airport tenants. These recommendations included amounts of $1 million for airport tenants, $10 million for single service FBOs and $1 million for transportation companies. [Exhibit 3 of Attachment 4]

In a meeting on November 28, 1989, the Sponsor's Business Committee decided to require $1 million personal liability insurance coverage for all airport users operating vehicles in the air operations areas. The Club/Association and other interested parties were present and objected to this requirement. [Exhibit 1 of Attachment 4] The Sponsor's attorney attended this meeting and reported the results of his informal survey of other airports. He found that the airports he surveyed either prohibited operation of personal vehicles in the air operations area, required an escort vehicle, or had insurance requirements equal to or greater than $1 million. [See, Exhibit 1 of Attachment 5]

On January 23, 1990, some Club/Association members attended the Sponsor's Board of Governors Meeting and offered objections to the insurance requirement. [Exhibit 5 of Attachment 4 at page 1784] In response, Chairman Wartrell noted that other airports require liability insurance coverage in amounts greater than $1 million. He further noted that some airports entirely prohibit personal motor vehicles in the air operations area. [Exhibit 5 of Attachment 4 at pages 1784-5] The Chairman pointed out that the Sponsor was taking this action based on the recommendation of its insurance carrier. [Exhibit 5 of Attachment 4 at page 1785] At this meeting, options aimed at alleviating the hardship on the T-hangar tenants were discussed but were eliminated as inadequate or unsatisfactory to the Sponsor's insurance agent's concerns. [Exhibit 5 of Attachment 4 page 1785]

On November 9, 1990, Engineering Analytics, Incorporated conducted an Air Operations Area Perimeter Safety and Security Survey at the Airport. The Study was prepared at the request of the Airport's insurance agent. The report made various recommendations regarding ways for the Sponsor to improve airport safety and security. [Attachment 6] This report noted

that many other airports prohibit vehicular access in air operations areas unless accompanied by an escort vehicle. The report also found that airports allowing unescorted vehicles on the air operations areas require between $1 and $5 million of liability coverage. This report recommended that "the appropriate solution from a security as well as cost effectiveness point of view would be to eliminate all unescorted vehicles and pedestrians" in the air operations area. [Attachment 6]

C. Implementation of Requirement on All Airport Tenants

The Program provides for the gradual implementation of the insurance requirement on all persons who have a need to operate motor vehicles in any air operations area. The Freight, Cargo and Mail Delivery Companies were notified on February 20, 1987, that an A-B-E driving permit and liability insurance in the amount of $1 million would be required for access to the Airline Freight Loading and Unloading area. [Exhibit 1 of Attachment 15] Suburban Ramp Tenants were notified on May 26, 1987 and January 22, 1987 that they must obtain a $1 million insurance policy in order to operate on the Airport airfield and ramps. [Exhibits 3 and 4 of Attachment 15]

On October 18, 1989, the Airport T-hangar tenants and the General Aviation sub-tenants were notified that they must obtain an A-B-E driver permit, proof of aircraft ownership or pilot's license, pass a written ground vehicle test and obtain $1 million liability insurance for their vehicle. These requirements concerning the driving test and A-B-E driver permit were also imposed on all other tenants.

D. Accommodation of Tenants' Needs

The Sponsor built a new General Aviation parking lot directly adjacent to the T-hangar area. The Sponsor built this parking lot in response to tenant input about aircraft access problems gathered in meetings and correspondence with the Club/Association and others tenants. Therefore, general aviation tenants may either obtain the required vehicle insurance or walk a maximum 100 yards from the parking lot to the furthest T-hangars. [Airport and T-hangar Parking Lot Layout Plans, Exhibit 1 of Attachment 5 and Attachment 14] Currently, twenty-five members of the Club/Association are parking in this lot. Twenty-seven members have obtained the required insurance.

In response to tenant concerns about safety and inconvenience as a result of the conditional access regulations, the Sponsor offered to provide a personal escort to anyone who requests an

escort. The escort would accompany the owner, pilot or passenger to their vehicle or escort the individual from the parking lot to their aircraft. The Airport has had no requests for this escort service. [Attachment 5] No person has been denied access to his or her aircraft due to the implementation of the Program.

E. Part 13 Complaint

On February 2, 1990, Lehigh Valley Flying Club and Lehigh Valley General Aviation Association (Club/Association) filed a complaint pursuant to 14 C.F.R. section 13.5.

The complaint alleges that the Sponsor's $1 million insurance requirement violates "the FAA's Airport Compliance Requirements and its policy regarding exclusive rights" by limiting access to only those persons who can afford the insurance rate. [See, Complaint at Issue I on page 2]. The complaint also questions whether the insurance requirement infringes upon or is "deleterious to the interests of pilots and aircraft owners who lease T-hangars. . . .". [See, Complaint at Issue II on page 2]

In addition, the complaint also states that the imposition of the insurance requirement on the Club/Association members will infringe the rights of 130 persons who use and lease the T-hangars. The Club/Association alleges that members will have no right to access their aircraft for loading or unloading baggage and passengers or transporting tools and materials for user maintenance. [See, Complaint at page 5]

Furthermore the Club/Association states that the application of equal insurance requirements on all airport users is discriminatory, unfair and results in an unreasonable term or condition because there is "grossly unequal use and access" by the individual airport users. [See, Complaint at page 5]

In sum, the Club/Association alleges three distinct issues. First, the $1 million insurance requirement violates the prohibition on exclusive rights. Second, the $1 million insurance requirement is an unreasonable and discriminatory term or condition imposed on the T-hangar tenants. Lastly, the $1 million insurance requirement denies the T-hangar tenants access to their aircraft for user maintenance. The Federal grant assurances at issue are Assurances 23, 22(a) and 22(f).

On May 16, 1990 the Sponsor answered the complaint and requested that the complaint be dismissed without investigation. The Sponsor contends that it possesses the right, as an airport proprietor, to set reasonable insurance

requirements for persons operating vehicles in the air operations areas. [See, Answer, Attachment 4 at page 2] The Sponsor's answer also asserts that the Complainant has failed to state a claim under Federal law or in violation of the grant assurances therefore the compliant should be dismissed without investigation. [See, Answer at page 2]

The Sponsor states that the imposition of the insurance requirement is a permissible action under Assurance 22(h). The Sponsor claims that Assurance 22(h) allows Sponsors to implement conditions on all airport users that are necessary for the safety and efficiency of the airport. The Sponsor further states that there is no restriction of any "aeronautical activity" therefore the exclusive rights prohibition does not apply to this case.

F. Harrisburg Airport District Office Investigation

On July 17, 1990, Washington headquarters Airports Safety and Compliance Branch, AAS-310, sent letters to all parties advising them that all documents in this matter had been forwarded to the ADO for informal investigation. On October 10, 1990, the ADO met with the Club/Association representatives and with the Sponsor's Chairman and Airport Director. On January 17, 1990, the ADO concluded the informal investigation and determined that the Sponsor was not in violation of its grant assurances. The ADO found that the Airport has the right and responsibility to protect itself from loss in cases where it becomes liable for awards in excess of a tenant's insurance coverage. The increased insurance requirement would protect the Sponsor against liability for any injury to persons or property that might be caused by personal vehicles operating on the airport. The HAR ADO further found no basis to link insurance increases with the improvement of airport safety and security. The FAA Airports Division in the Eastern region concurred with the HAR ADO's findings.

IV. LEGAL AND POLICY GUIDANCE

1. FAA Mandate To Assure Airport Compliance With Federal Grant Agreements and Statutory Requirements

The FAA has a statutory mandate to enforce Section 308(a) of the Federal Aviation Act (FAAct) of 1958, as amended; its counterpart grant assurances; and other assurances under grant agreements that airports have entered into with the Federal Government. See Section 1002 of the FAAct, as amended, and Section 509(b)(1)(E) and Section 511 of the Airport and Airway Improvement Act (AAIA).

The FAA issued FAA Order 5190.6A, "Airport Compliance Requirements," dated October 2, 1989, to establish policies and procedures governing the FAA's airport compliance program. The Order covers all matters except enforcement procedures. Enforcement procedures continue to be governed by the predecessor agency order, FAA Order 5190.6, Chapter 5, Section 3, issued on August 24, 1973. The Order 5190.6 procedures govern the handling of airport compliance issues absent a formal Part 13 complaint.

The FAA has also promulgated 14 C.F.R. Part 13 to administer the adjudication and enforcement powers of the FAA under Section 1002 and to enforce the assurances set forth in the Federal grant agreements. The FAA Dockets section serves formal complaints meeting the requirements set forth in Section 13.5(b) of the FAR. After the complaint has been answered by the airport and the other persons named in the complaint, or the time allotted for answering the complaint has expired, the FAA determines whether there are reasonable grounds for investigating the complaint. 13 C.F.R. 13.5(g).

If the FAA determines that reasonable grounds exist for investigating the charges contained in the complaint, the FAA may initiate an informal investigation or may issue an order of investigation in accordance with Subpart F of the FAR, or both. 14 C.F.R. 13.5(i). If the FAA determines that the complaint does not state facts which warrant investigation or action, the complaint will be dismissed and the person filing the complaint will be advised in writing of the reasons for the dismissal. 14 C.F.R. 13.5(h).

2. "Aeronautical Activity"

The term "aeronautical activity" is defined as "any activity which involves, makes possible, or is required for the operation of aircraft, or which contributes to or is required for the safety of such operations." [See, Order 5190.6A (Order) at Appendix 5] Aeronautical activities include, but are not limited to, air taxi operations, pilot training, aircraft rental, aircraft sales and service, aircraft storage, and repair and maintenance of aircraft. [See, Order at Appendix 5] Activities considered non-aeronautical activities are ground transportation (taxis, car rental, limosines); restaurants; catering and auto parking lots. [See, Order at Appendix 5] In order for there to be a violation of the exclusive rights assurance, an aeronautical activity must be implicated. [See, Order @ 3-8(a)]

3. Prohibition Against Exclusive Rights

Section 308(a) of the Federal Aviation Act of 1958, as amended, states that "there shall be no exclusive right for the use of any landing area or air navigation facility upon which Federal funds have been expended."

Under the provisions of the AIAA as amended by the Airport and Airway Safety and Capacity Expansion Act of 1987, 49 U.S.C. App. Section 2201, the Secretary of Transportation must receive certain assurances from the airport sponsor as a condition of approval of a sponsor's grant applications. As a condition to approval of an airport development project, the Secretary must receive assurances that there will be "no exclusive right for the use of the airport by any person providing, or intending to provide, aeronautical services to the public." See, Section 511(a)(2) of the Airports Act.

Section 511(b) directs the Secretary to prescribe project sponsorship requirements to insure compliance with Section 511(a). Grant Assurance 23, entitled "Exclusive Rights" is included in all federal grants to public use airports in order to implement the legislative mandate with respect to exclusive rights.

By receiving Federal funds, the sponsor, pursuant to Assurance 23, agrees that it "will not, either directly or indirectly, grant or permit any person, firm or corporation the exclusive right at the airport. . . . to conduct any aeronautical activities," including any activities with a direct relationship to the operation of aircraft.

FAA Order 5190.6A (Order), "Airport Compliance Requirements," dated October 2, 1989, establishes policies and procedures governing the FAA's airport compliance program. The Order describes in detail the responsibilities assumed by owners of public use airports developed with federal funds and explains how these commitments apply to airports.

Chapter 3 of the Order, entitled "Exclusive Rights", enjoins the airport owner "from granting any special privilege or monopoly in the use of public use airport facilities." [Order @ 3-1]

As discussed below, sponsors may impose minimum standards on those who engage in aeronautical activities, however, the application of an unreasonable requirement or any requirement which is applied in a discriminatory manner constitutes a constructive grant of an exclusive right. [See, FAA Order 5190.1A, Par. 11.c.]

4. Availability of the Airport on Fair and Reasonable Terms Without Unjust Discrimination

In order to obtain Federal grant funds under the Airport Improvement Program, airport sponsors are also required to agree to operate the airport for the use and benefit of the public on fair and reasonable terms, and without unjust discrimination pursuant to Section 511(a)(1) of the Airport Act.

Grant Assurance 22(a) of the prescribed sponsor assurances, entitled "Economic Nondiscrimination", states in subsection (a) that the sponsor of a publicly obligated airport will "make the airport available as an airport for public use on fair and reasonable terms, and without unjust discrimination, to all types, kinds and classes of aeronautical uses.

Grant Assurance 22(h) provides that a public airport sponsor may establish such "fair, equal, and not unjustly discriminatory conditions to be met by all users of the airport as may be necessary for the safe and efficient operation of the airport."

5. Restrictions on Self-Service

Grant Assurance 22(f) prohibits a Sponsor from granting "any right or privilege which operates to prevent any person, firm, or corporation operating aircraft on the airport from performing any services on its own aircraft with its own employees (including but not limited to maintenance, repair, and fueling) that it may choose to perform."

The Order also prohibits establishment of any unreasonable restriction on the owners or operators of aircraft regarding the servicing of their own aircraft. The Order also prohibits establishment of any unreasonable restriction on the owners or operators of aircraft regarding the servicing of their own aircraft and equipment. [Order @ 3-9e(1)] Aircraft owners must be permitted to fuel, wash, repair and otherwise take care of their own aircraft with their own personnel, equipment and supplies. The sponsor, however, is obligated to operate the airport in an efficient manner. The establishment of fair and reasonable rules, applied in a not unjustly discriminatory manner, governing the introduction of a non-aeronautical equipment onto the airport would not be unreasonable.

ANALYSIS

As previously summarized on page 5 of this Order in the Part 13 Complaint, the Club/Association raises three alleged violations. First, that the $1 million insurance requirement

violates the prohibition on exclusive rights. Second, that the $1 million insurance requirement is an unreasonable and discriminatory term or condition imposed on the T-hangar tenants. Lastly, that the $1 million insurance requirement denies the T-hangar tenants access to their aircraft for user maintenance. This office has reviewed these three issues and finds as follows.

1. The opportunity to drive one's personal vehicle to his/her own aircraft is not an aeronautical activity and therefore is not subject to exclusive rights prohibitions.

An aeronautical activity, as pointed out in the Legal and Policy section, is applied only to activities that "involve or make possible or is required for the operation of aircraft, or which contributes to or is required for the safety of such operations." [See, Order @ Appendix 5] The activity of driving one's personal vehicle to one's aircraft is not required for the operation of such aircraft. Driving to one's aircraft is neither required nor contributes to the safety of aircraft operations.

The Club/Association argues that "the driving of an automobile to an airplane is an aeronautical activity." [See, Attachment 16 at page 5] The Club/Association justifies its position by stating that "in today's environment . . . the automobile is considered an essential part of all of our activities." [See Attachment 16 at page 5] The Club/Association further state that "[p]assengers, both air carrier and general aviation expect, demand and require reasonable access to the airport to which they are boarding. [See, Attachment 16 at page 5]

The fact that the act of driving to one's aircraft allows more convenient access to one's aircraft does not make the activity an aeronautical activity within the meaning of Appendix 5 of the Order. Furthermore, the fact that the final destination for driving the personal vehicle is an aircraft does not make the activity aeronautical. As stated in the Order, the grant of an exclusive right to conduct an aeronautical activity at an airport on which Federal funds have been expended is considered a violation of 308(a) of the FAAct. In order to trigger the exclusive right prohibitions, an aeronautical activity must be at issue.

We find that imposition of the $1 million insurance requirement does not result in establishment of an exclusive right. The ability to drive one's personal vehicle on the airport is not an aeronautical activity. While it may be useful to have convenient access to aircraft, driving to one's aircraft does

not have a necessary and direct relationship to to operation of aircraft. In sum, driving one's personal vehicle on an active air operations area is not an aeronautical activity and therefore the Sponsor's imposition of $1 million of personal liability insurance on such drivers does not violate the exclusive rights prohibitions under the Sponsor's grant assurances or Section 308(a) of the FAAct.

2. The Sponsor's imposition of $1 million personal liability insurance coverage does not deny aircraft owners and pilots from servicing or maintaining their aircraft and therefore does not result an unreasonable restriction on self-servicing of aircraft.

FAA Order 5190.6A prohibits establishment of any unreasonable restriction on the owners or operators of aircraft regarding the servicing of their own aircraft and equipment. [Order @ 3-9e(1)] The Club/Association asserts that "[p]assengers, both air carrier and general aviation expect demand and require reasonable access to the airport to which they are boarding. [See, Attachment 16] The Club/Association continues that the transportation of tools required in the maintenance of the aircraft permitted under lease agreement and protected by 22(f) necessitates automobile access to the aircraft.

We find that the Sponsor is not in violation of the Order's policy guidance. No one, including Club/Association members, has been denied the right to access or service his/her aircraft. Imposition of this insurance requirement does not deny entrance to the T-hangar areas. The Sponsor has offered to escort passengers or aircraft owners or pilots to and from their aircraft.

Although access for those members not wishing to purchase the required insurance may be less convenient, the Sponsor has the obligation to manage the airport in an efficient manner. The Sponsor has not infringed on the aircraft owners' rights to service their aircraft but merely has required financial responsibility of those persons wishing to directly drive in the air operations area to reach their aircraft.

3. The Sponsor's business decision requiring $1 million of personal liability insurance for any person driving a vehicle in an air operations area is a fair, reasonable and not unjustly discriminatory term or condition imposed on all airport users.

Prior to adopting the subject minimum liability insurance requirement, the Sponsor solicited risk assessment information

and recommendations from a variety of sources in the insurance and aviation industries. [Exhibit 1 of Attachment 4] The Sponsor relied on insurance recommendations from its own insurance carrier, a telephone survey conducted by the Sponsor's attorneys concerning other airports' requirements and subsequently hired a consultant to perform a safety and security survey of the airport.

All of these sources provided information about appropriate levels of insurance and airport procedures. As a result of these inquiries, the Sponsor found that comparable airports allowing owners and pilots to drive on the airfield required insurance in amounts equal to or greater than $ 1 million. [See, Exhibit 5 of Attachment 4 at pages 1784-85 and Attachment 6] The Sponsor also found that many airports do not even allow pilots or owners to drive to their aircraft. The Sponsor determined that an outright prohibition of this practice was unnecessary at this time. [Exhibit A of Attachment 1] Accordingly, the Sponsor selected the amount of insurance advocated by its insurance agent which was in agreement with industry practice and it consultants' concerns.

The Club/Association claims that imposition of an equal requirement of liability insurance to users with allegedly disproportionate use results in unjust discrimination. [Attachment 1 at page 5] The Club/Association states that the T-hangar tenants make only occasional use of the airport and operate only in areas where the maximum aircraft value is about $250,000. [Attachment 1 at page 5] The Club/Association state that it is unfair for the T-hangar tenants to carry the same $1 million liability policy as the air carriers and other tenants. [Attachment 1 at page 5]

No fence or other physical barrier exists to prevent a vehicle operating in the general aviation taxiway from driving onto Taxiway S or Runway 6/24. [See Exhibit 2 of Attachment 4] In short, once a vehicle enters the air operations area the vehicle is not physically prevented from travelling to any of the air operations areas. Therefore, the Sponsor may reasonably assume that any vehicles entering the air operations area could come in contact with aircraft worth over $1,000,000.

Furthermore, aircraft damage is only one of the possible injuries that could occur on the air operations area. Other injuries include personal injury, and property damage to airport facilities which could result in losses greater than $1 million. Vehicle hazards are not just limited to collisions and accidents. Foreign Object Damage (FOD), including leaking oil on the runway or dropping parts of the vehicle on the runway, is a real danger in any air operations area.

We find that the uniform liability insurance requirement for all users with access to any of the air operations areas is not unjust because of the ability of all permit holders to travel in all air operations areas and the potential for tremendous losses in each air operations area of the airport.

The Club/Association asserts that the new requirements implemented by the Lehigh-Northampton Airport Authority will prohibit vehicular access to the T-hangars to those who previously exercised that privilege. They assert that only a chosen few who can pay a monetary price have access. [Complaint, Attachment 1 at page 3] In short, "wealthy pilots are still driving - the rest of us are walking." [Club Letter, Attachment 2] They assert that this situation clearly violates government standards with respect airport sponsor obligations.

The imposition of the insurance requirement applies to all tenants and their employees, personnel or members. The driver education, licensing and insurance program is uniformly applied to all who have a need to operate motor vehicles in an aircraft operations area. [Airport Director Letter, Attachment 1, Exhibit A] Furthermore, the Sponsor responded to tenants' complaints by building a General Aviation parking lot adjacent to the T-hangars to accomodate those members not wishing to purchase the required insurance.

This Program was phased in over a period of three years with additional classes of tenants being included as time progressed. These requirements are applied equally to each class of airport user, including the Club/Association. All other tenants at the Airport must comply with these requirements.

The Club/Association's main concern is the individual cost of this insurance. However, the Airport does not determine the rates for insurance coverage. Insurance rates are determined by insurance agents with regard to potential risk and threat of harm.

It is clear that some of the Club/Association members do not wish to pay for the increase in their car insurance premiums. However, as stated earlier, the Sponsor has tried to accomodate the needs of its General Aviation tenants, especially the T-hangar tenants, by building an parking lot adjacent to the T-hangar area. At least 25 members are parking in this lot built in response to their complaints. [Attachment 5]

We find that imposition of this insurance requirement on all tenants with access to the air operations area creates no

unjust discrimination with respect to the T-hangar tenants. In sum, we find that the Sponsor did not impose unreasonable, unfair or unjustly discriminatory requirements on the Club/Association by requiring them to comply with the uniform requirement imposed on all airport tenants with regard to ground vehicle operations.

Moreover, the establishment of liability requirements is clearly within the scope of the Sponsor's responsibility to ensure the financially responsible operation of the airport. The Club/Association has agreed that the Airport Authority has the right to set reasonable insurance requirements for persons operating automobiles in the Airport Operations Area but only for reasons of financial responsibility, not for reasons of safety and security. The requirement of liability insurance coverage prior to authorizing the operation of vehicles on the airport is a matter appropriately left to the exercise of prudent business judgment by the sponsor, provided that the amount required is reasonable, and is not applied in a unjustly discriminatory manner to users of the airport.

We find that the Airport clearly has the right to require airport users to carry a reasonable amount of insurance in order to protect the sponsor from liability for actions of airport users. We concur with the HAR ADO's determination that the Airport has the right and responsibility to protect itself from loss in cases where it could become liable for awards in excess of a tenant's insurance coverage. The insurance requirement at issue reasonably protects the Sponsor against liability for injuries to persons or property that might be caused by personal vehicles operating on the airport.

ORDER

Under the specific circumstances at the Airport, we find that the Sponsor's establishment of a minimum liability insurance requirement as a prerequisite for operation of personal vehicles on the Airport Operations area does not violate the Sponsor's grant assurances. The act of driving on an air operations area in order to reach one's aircraft is not an aeronautical activity and is therefore not covered by the exclusive rights prohibitions of Section 308(a) of the FAAct.

The insurance requirements at issue here are part of a program to establish a uniform set of conditions for all airport users. The airport's policy permits it to protect itself from liability for tenant vehicle-related injury to persons or property at the Airport. An airport sponsor clearly has the right to set reasonable insurance requirements for persons operating personal vehicles in the Air operations area.

The airport's insurance requirement and its amount do not deny any tenant access to his or her aircraft. The insurance requirement merely seeks to identify who wishes to use the air operations areas and requires those individuals to be adequately covered in the event of an accident. The Club/Association members may either obtain the required insurance or park their vehicles in the lot designated solely for their use and walk to their aircraft. Personal escort service is offered by the sponsor upon request. Public use of the T-Hangar area is not prohibited by this insurance requirement.

We find that the insurance coverage requirement of $1 million does not violate the requirement under the Federal grant assurances to allow access on fair and reasonable terms, without unjust discrimination or the prohibition against granting exclusive rights under the Federal grant assurances and Section 308(a) of the Federal Aviation Act, as amended. Therefore, based upon the evidence in its entirety, we find that the Sponsor's decision was reasonable, nondiscriminatory, and non-arbitrary and not in violation of Federal law or the Sponsor assurances. Accordingly, the complaint is hereby dismissed.

This determination is made under Sections 307, 313(a) and 1006(a) of the FAA Act, 49 U.S.C. App. Sections 1348, 1354, and 1486, respectively, and Sections 509, 511 and 519 of the Airport Act, 49 U.S.C. App. Sections 2208, 2210 and 2218, respectively.

RIGHT OF APPEAL

This order constitutes final agency action under 49 U.S.C. App. Section 1486. Any party to this proceeding having a substantial interest in this order may appeal the order to the courts of appeals of the United States or the United States Court of Appeals for the District of Columbia upon petition, filed within 60 days after entry of this order.

Leonard E. Mudd
Director, Office of Airport Safety
and Standards

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