

# Case Alert



## The FAA Draws its Regulatory Red Line in the... Air; Which Apparently Goes All the Way to the Sand

The District Court of Connecticut in *Huerta v. Haughwout*<sup>1</sup> recently granted an early win to the Federal Aviation Administration (“FAA”) as it seeks to establish the breadth of its investigatory and enforcement powers.

The Court found that the FAA was acting appropriately when it issued subpoenas seeking information from the operators of a floating remote controlled fire-arm and hand-built flying flamethrower<sup>2</sup>. Specifically, the Court found that the FAA had a legitimate purpose when it served subpoenas to investigate the use of weaponized drones, and as a result the operators were obligated to respond to those subpoenas. Based on the broad statutory language of the FAA Modernization Act of 2012, the Court held that “it is plausible to believe that the [defendants’] devices fall within the definition of an aircraft for the purposes of federal law.”

The defendants argued that the FAA did not have a legitimate purpose for its investigation since their drone was not property subject to regulation as an “aircraft”. The Court acknowledged that Congress gave the term “aircraft” an exceedingly broad definition: “any contrivance invented, used, or designed to navigate, or fly in, the air.” 49 U.S.C. § 40102 and 14 C.F.R. § 1.1, where “aircraft” is described as “a device that is used or intended to be used for flight in the air.”

Crucially, the Court pointed out that the defendants did not argue that their drones fell outside the scope of this broad definition. Rather, they argued that the FAA could not move forward with its investigation or any enforcement until it defined the actual limit of its interpretation of “aircraft”. In rejecting the defendants’

argument in this instance, the Court acknowledged the possibility that the FAA regulatory reach might not extend to other drones over private property which pose “no plausible threat to or substantial effect on air transport or interstate commerce in general.” It also cast considerable doubt on the FAA’s apparent position that it has regulatory authority, “over every cubic inch of outdoor air in the United States (or at least over any airborne objects therein).” *Id.*

While on its surface this case could be held up as vindication of the FAA, all that has been definitively established is that flying handguns and flamethrowers might be dangerous and warrant scrutiny by the FAA. It remains to be seen how far the FAA’s regulatory reach really goes for other less extreme examples of drone use.

This is significant from an insurance coverage perspective because the FAA’s ability to classify drones as “aircraft” and its authority to regulate them, can determine how various insurance policies respond to drone related claims.

For example, if the FAA classifies most drones as aircraft, then business owners seeking coverage under their commercial general liability (“CGL”) policies face potential denial for bodily injury and property damage claims. Exclusion g. of the standard policy states that there is no coverage for damage arising out of ownership and use of aircraft. Although Coverage Part B (personal and advertising injury) does not have a specific drone exclusion, exclusion d. (Criminal Acts) may preclude coverage if an insurer determines there was a violation of current FAA rules or individual state drone statutes.

The coverage uncertainty extends to homeowner's policies where distinct differences in individual policy language combined, with a lack of claims history and relevant case law, means that individual policyholders should discuss drone coverage with their insurance agent.

For further information, or to discuss the possible ramifications of this case, please contact Brendan C. Holt at [bch@sdvlaw.com](mailto:bch@sdvlaw.com) or (203) 287-2124.

1. Huerta v. Haughwout, 2016 U.S. Dist. LEXIS 92866 (D. Conn. July 18, 2016)
2. The use of these two modified drones came to the attention of the FAA and various media outlets after videos of their use were posted to YouTube and became widely viewed. [<https://www.youtube.com/watch?v=lmD3rXURlTw>]