

WHM – HISTORY OF COURT CASES & AIRPORT LIABILITY

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INTRODUCTION

→ Definition

A *bird strike* is strictly defined as a collision between a bird and an aircraft which is in flight or on a take-off or landing roll.

The term is often extended to cover other wildlife *strikes* - with bats or different ground animals. In terminology and communication terms bird strike or wildlife strike are usually used as common terms.

CIVIL AND MILITARY BIRD STRIKE HISTORY (WBA conf. – 2018)

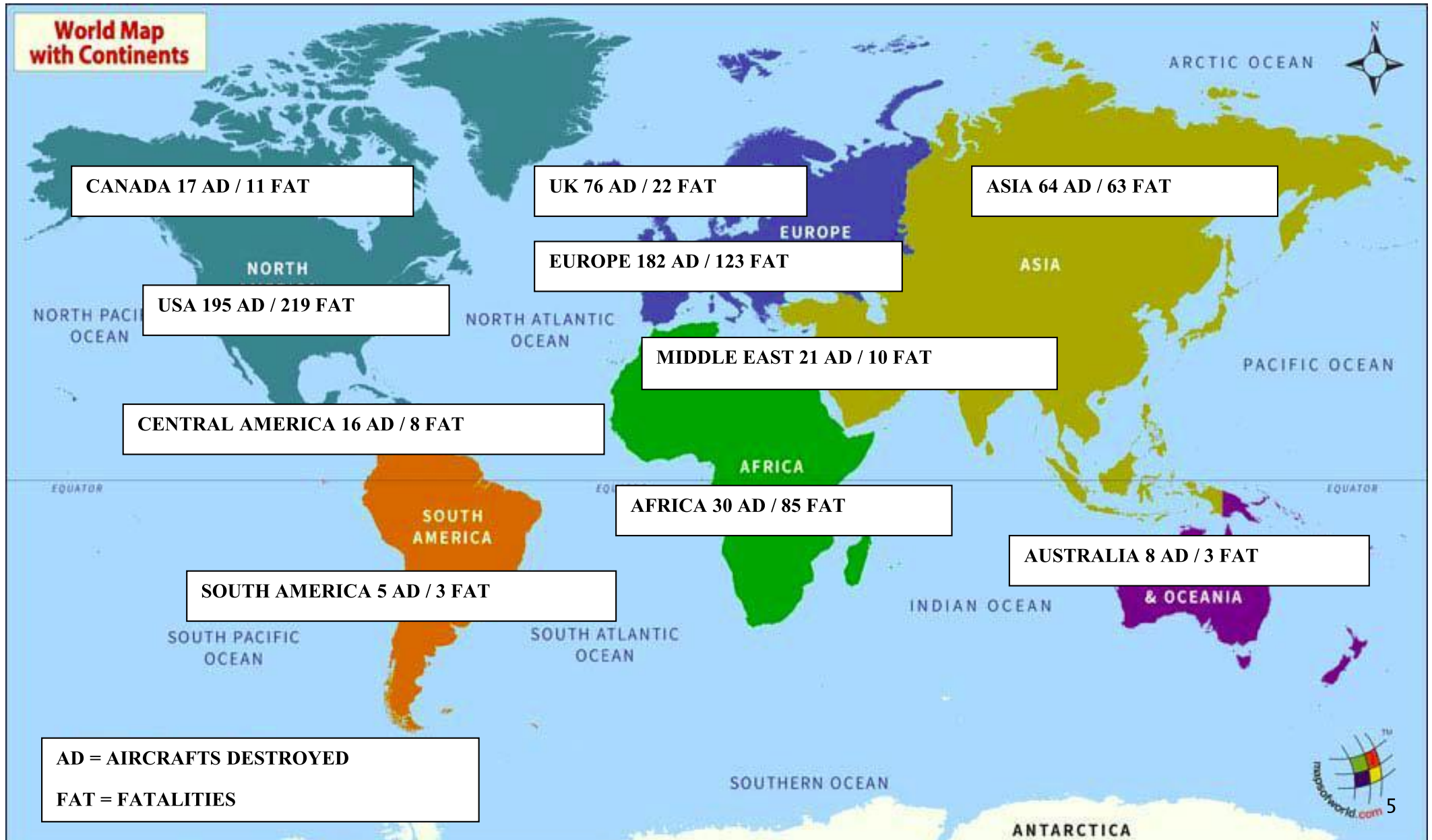
First recorded strike	7. 09. 1905.
First recorded fatal strike	3. 04. 1912.
Aircrafts Destroyed	614
Fatalities	551
Estimated Cost Civil (2018)	USD \$ 2B / year USD \$ 50.325 / strike³

FATALITIES AND DESTROYED AIRCRAFTS – WORLDWIDE (WBA conf. – 2018)

	No. Destroyed Aircrafts	No. Fatalities
Civil	203	319
Military	411	212
Total	614	551

NOTES: Reporting diligence varies significantly, figures are probably grossly underestimated

BIRD STRIKE CAUSED ACCIDENTS BY REGION (C & M) – (WBA conf. – 2018)



?? QUESTIONS ??

- 1. Who will be liable for caused damages?**
- 2. What kind of damages can appear?**
- 3. Who is entitled to demand compensation for the occurred damages?**
- 4. Who will pay compensation?**

DAMAGE IN CASE OF BIRD STRIKE

- 1. Direct damage – material damage of an aircraft**
- 2. Indirect damage**
- 3. Non – material damage**

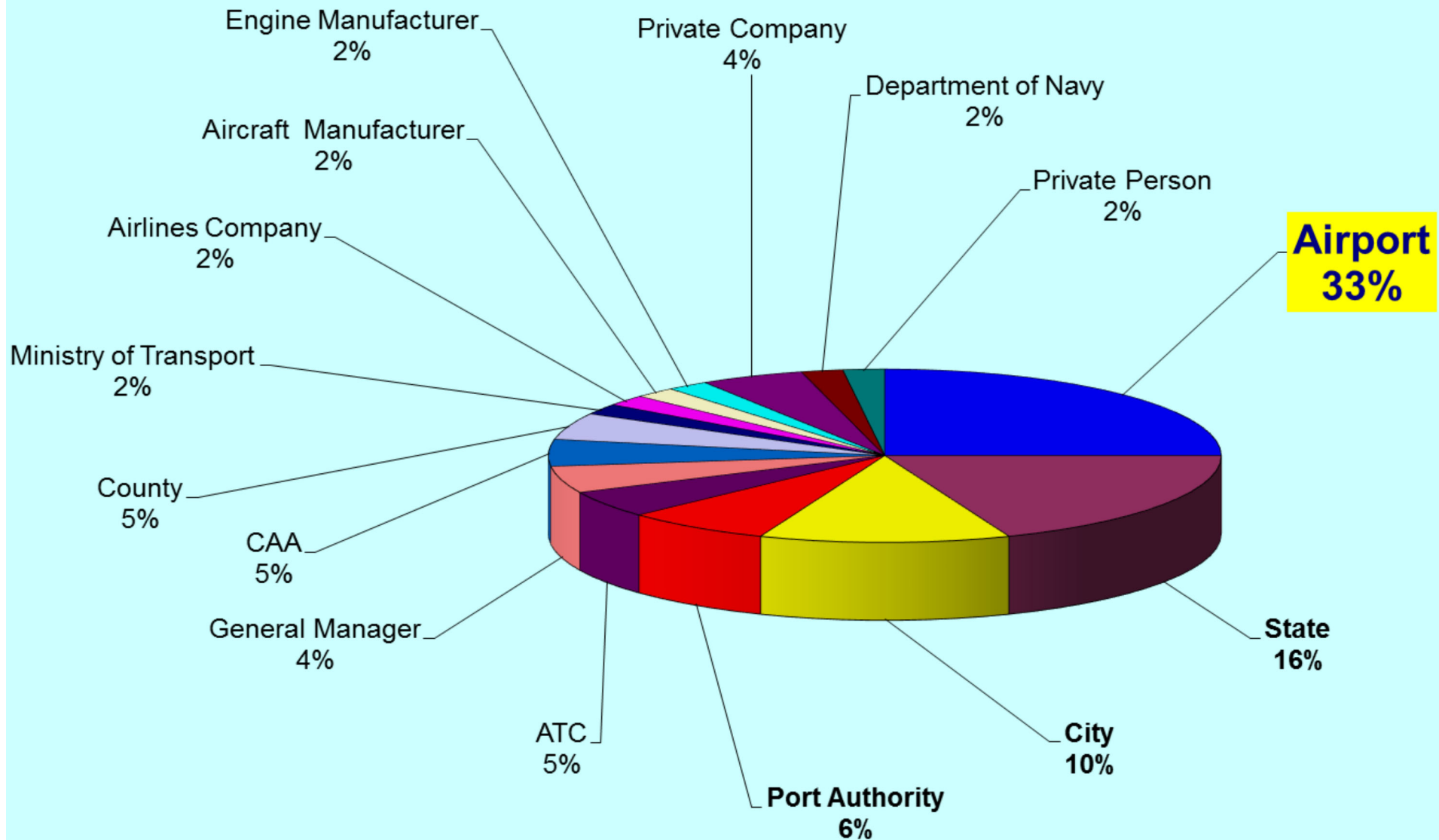
CRITERIA FOR ESTABLISHING OF DAMAGE LIABILITY

- 1. The exact point of bird strike (inside or outside of airport boundaries)**
- 2. The moment of bird strike – phase of flight (approach, landing, take-off, climb, cruising etc.)**
- 3. The extent and amount of damage (thousands \$ - €/strike)**
- 4. Consequences of bird strike with regard to safety of further flight**
- 5. Actions of all air traffic participants that are taken prior to the concrete bird strike**
- 6. Parties that will be involved in the eventual legal proceedings**

Country	In favour of plaintifs	In favour of defendants	Total
ARGENTINA	1	-	1
CROATIA	3	-	3
FRANCE	1	1	2
GERMANY	1/2	1/2	1
ITALY	3	-	3
MALTA	1	-	1
THE NETHERLANDS	-	1	1
RUSSIA	1	-	1
SPAIN	1	2	3
UNITED KINGDOM	1	1	2
USA	9	5	14
TOTAL	21 + 1/2	10 + 1/2	32

Country	# Cases	Plaintiffs	Defendants
ARGENTINA	1	Airline Company	Airport
CROATIA	3	Insurance Company, Airline Company	Airport (2), Insurance Company
FRANCE	2	Private Company, Insurance Company (7) Airline Company	Airport (2), State, Chamber of Commerce, General Manager
GERMANY	1	Private Company	Private Person
ITALY	3	Airline Company (2), Insurance Company	Airport (2), Ministry of Transport Port Authority ATC, CAA General Manager
MALTA	1	Airline Company	Airport
THE NETHERLANDS	1	Airline Company	Airport
RUSSIA	1	Airline Company	Airport
SPAIN	3	Airline Company (3)	Airport (3)
UNITED KINGDOM	2	Airline Compoany (2)	Airport (2), CAA, County
USA	14	Insurance Company (3), Airline Company (5), Private Person (3), Private Company (2), Bank, City, CAA, Environmental Org. (2), Lawyer Office	Port Authority (2), Airline Company, County, Airport (2), State (8), City (5), CAA, Aircraft Manufacturer, Engine Manufacturer, General Manager, ATC, Ministry of Defence

DEFENDANTS



QUESTIONS

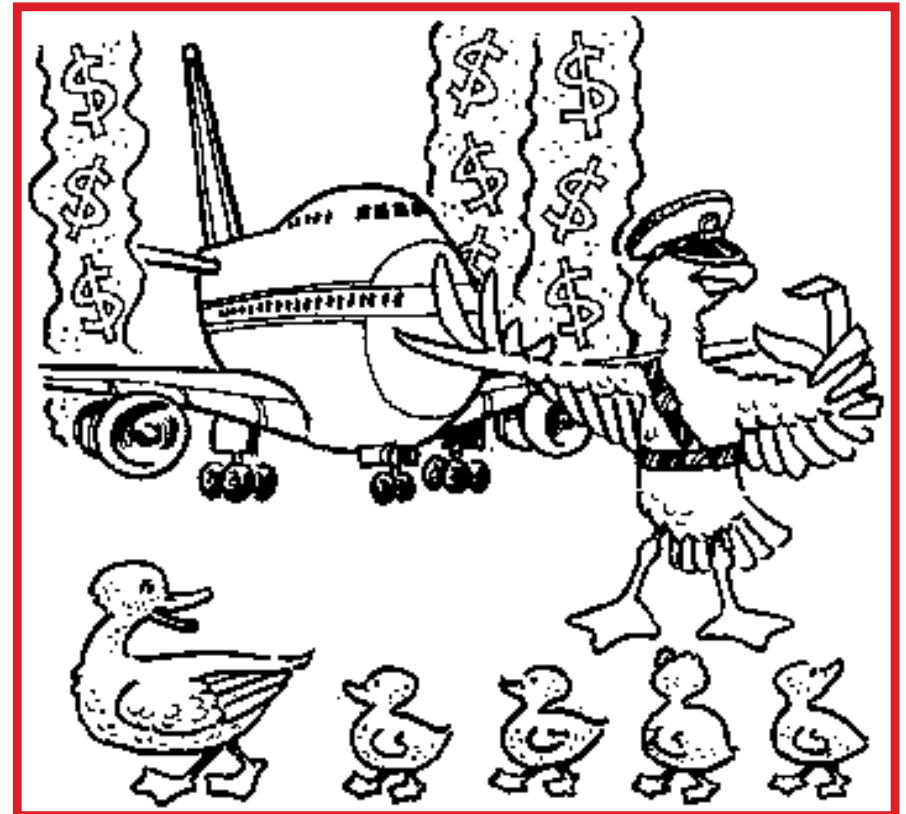
- What are the main reason why airport operator is the first who will be sued?

OMISSIONS



&

CONSEQUENCES



- What are the possibilities of exoneration of airport from liability in case of bird strike?

Q U E S T I O N ?

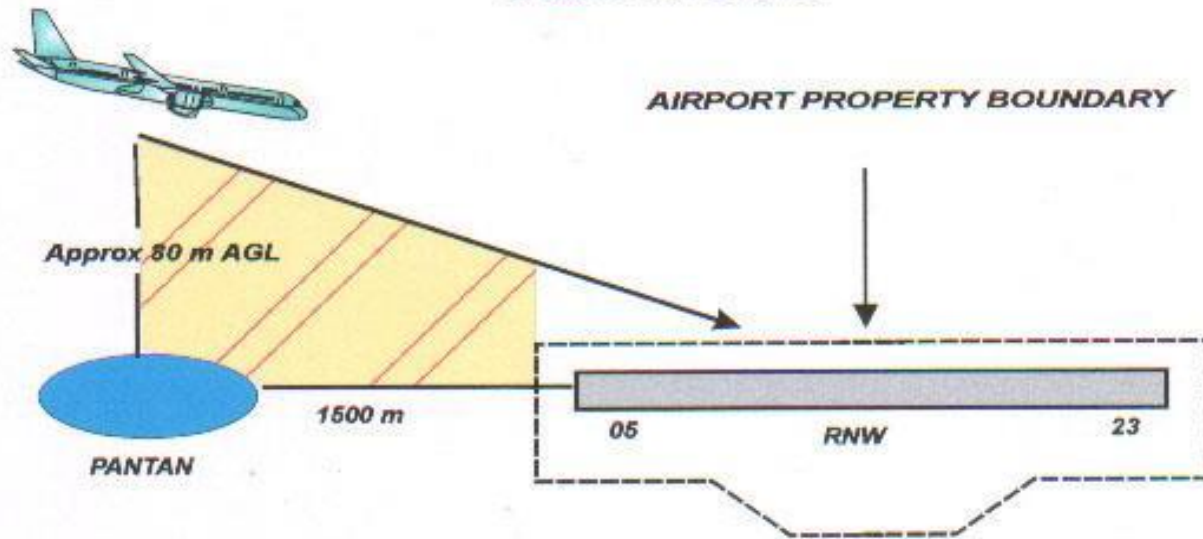
Whom an airline my claim damage compensation from in case of bird strike outside an airport boundaries?

RNW 05

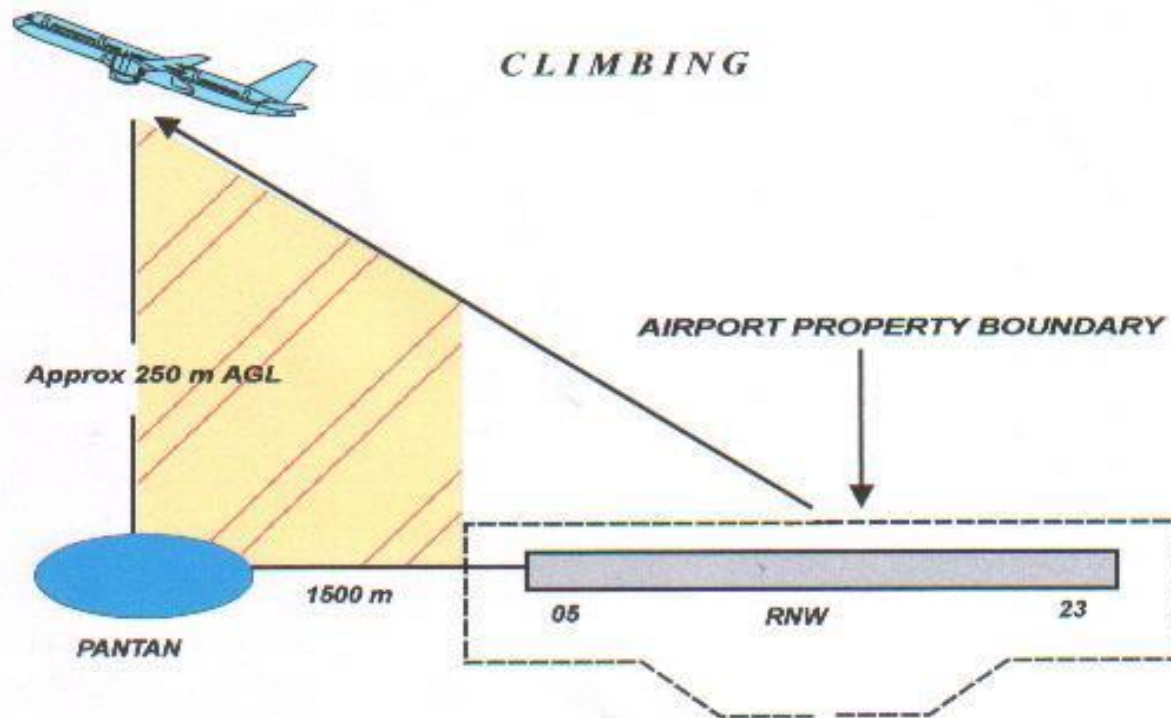
Airport boundary

**m a r s h l a n d
PANTAN**

DESCENDING



CLIMBING



ELEMENTS

- Prevention at, or in the vicinity of an airport
- Successful defence
- Knowledge and experience of the judge in this matter
- Sufficient number of qualitative proofs

QUALITATIVE PROOFS

1. To establish all facts completely and correctly
2. To prove that everything that had to be done was done, and that eventual damage occurred without the fault of a defendant

Airport operator shall not be liable for damage occasioned by bird strike if it proves that it had taken all available measures and activities that could reasonably be required to avoid that strike, or if it proves that it had been impossible to take such measures or activities, especially due to safety reasons.

BIRD STRIKE = EVENT —————> caused by

**EXTRAORDINARY
CIRCUMSTANCES**

The extraordinary circumstances justifying airport operator behaviour at the moment of bird strike must be extraordinary in the sense of necessity to maintain total safety of flight.

Meteorological conditions



unusual



**with birds' behaviour and
with operation of the concerned flight**

**EXTRAORDINARY
CIRCUMSTANCES**

&

**BIRDS'
BEHAVIOUR**

**MITIGATING
CIRCUMSTANCES**

THE EVENT

13 September 1996 at 3,11 p.m.

B-737-200 reg. 9A-CTB

Pula Airport

Seagull



PARTIES & COURTS

- ➔ **PLAINTIF: CROATIA INSURANCE Co.**
- ➔ **DEFENDANT: PULA AIRPORT Ltd.**
- ➔ **AMOUNT OF COMPENSATION:**
USA \$ 140.123,69
- ➔ **1st INSTANCE COURT:**
MUNICIPAL COURT IN PULA
- ➔ **2nd INSTANCE COURT:**
COUNTY COURT IN PULA

FINAL COURT DECISION

On 18th April 2000 the Pula County Court reaches the verdict in which it dismisses the appeal of the defendant and confirms the 1st Instance Court verdict.

The attitude that supported the settling of the litigation by stating the defendant's liability is explained in the following way:

- The 1st Instance Court stated the facts regularly and precisely, and that it applied the valid material legislation;
- The accused airport is not liable on the grounds of objective liability, but it is liable on the ground of *presumed – subjective*

liability

SUBJECTIVE LIABILITY

- **The carrier must prove the presence of general conditions for liability:**
 - **damage event,**
 - **loss and cause-and-connect connection between damage event and loss.**
- **Airport operator:**
 - **in order to exempted from liability must prove that he is not guilty for damage, i.e.**
 - **that he has taken all available measures to prevent or reduce the presence of birds in the airport area for concrete event.**





**WHAT HAPPENS IF A BIRD
FLIES INTO A PLANE ENGINE?**

CONCLUSION

- ➔ *From the aspect of presumed liability it is important that potentially liable airport, whose liability is actually presumed, proves that it undertakes all measures predicted for prevention of such events.*
- ➔ *Every singular case of bird strike actually represents the possibility for evaluation of protective and preventive measures to avoid bird strike.*

CONCLUSION

- ➔ *Airports must do so much in prevention to avoid this problem*
- ➔ *AWARENESS + PREVENTION ➡ ZERO TOLERANCE in the wildlife strikes*
- ➔ *T. Scorer: “**Prevention is better than legal liability**”*



*Thank you very much for
your attention*

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