

Winter Board 2012

ITEM 22: LEGAL AFFAIRS COMMITTEE

CHAIR:	Joseph Messina	Philadelphia, PA
VICE CHAIR:	Helen Berkman	Denver, CO
IMMEDIATE PAST CHAIR:	Tim Karaskiewicz	Milwaukee, WI
BOARD LIAISON:	Sue Stevens	Charleston, SC
COMMITTEE SECRETARIES:	James Briggs	ACI-NA
	Monica R. Hargrove	ACI-NA

MISSION STATEMENT: *The Legal Affairs Committee provides airport attorneys with a forum to exchange information about new developments in case law, statutes and regulations affecting airports. The Committee also monitors pending airport litigation. Through its steering group, recommendations are made to the ACI-NA Board and Executive Committee regarding requests that ACI-NA file "friend of the court" briefs at the appellate stage of cases in federal and state court, where those cases are likely to have significant implications for U.S. airports. The Committee reviews and edits draft briefs prior to filing. In addition, the Committee drafts and edits comments filed in proceedings pending before administrative agencies of the federal government, and assists ACI-NA in informal discussions with those federal agencies. The Committee, through the ACI-NA staff, conducts surveys for the benefit of member airports on various airport agreements and practices, and maintains for the use of its members, sample language for various airport legal documents, e.g., policies, RFP's, minimum standards, easements, contract clauses, etc. The Legal Affairs Committee also responds to requests from the ACI-NA Executive Committee, Board of Directors, and other ACI-NA Departments for information regarding legal issues affecting airports, and plans conferences for its members, as well as provides speakers to other ACI-NA committees on a variety of airport legal issues.*

Accomplishments Since Last Report

Committee Members have been involved in a number of activities:

- The Steering Group has monitored developments in the Tinicum Township II appeal pending before a federal appellate court, the Tinicum III litigation challenging the FAA's approval of the airport's Capacity Enhancement Program and pending DOT administrative proceeding, the lawsuit filed by the National Federation of the Blind against the Las Vegas Airport, as well as the LAX III remand proceedings pending before the DOT, and various litigation matters pending against member airports.
- ACI-NA staff and members of the ACI-NA Legal Affairs Committee have also participated in DOT/FAA discussions regarding the administration of airport DBE programs, including the FAA's recent addition of a small business program component.

- ACI-NA legal staff has continued to work with other ACI-NA committee steering groups, including Business Diversity, Finance, Government Affairs, Operations and Technical Affairs, and Public Safety and Security on various regulatory issues and policy matters, and have provided legal assistance on litigation impacting airports in accommodating air travelers with disabilities.
- ACI-NA legal staff has participated in other aviation legal forums to enhance the visibility of airport legal issues, including through service on the Federal Lawyer Editorial Board, the Board of the Federal Bar Association's Transportation and Transportation Security Law Section, the Transportation Security Administration's Aviation Security Advisory Committee, and the Governing Committee of the American Bar Association's Air & Space Law Forum.

Assistance to Airports

- ACI-NA Legal Affairs Committee members have provided useful advice and input on a number of issues of importance to ACI-NA member airports, including, among others: clarification of FAA's policy on payment to airports for airport badges; review of FAA's consideration of changes to reimbursement policies regarding airport noise homeowner sound insulation programs; several FBO consolidation and airport leasing issues, including length of term for new FBO leases; intra-governmental MOU or lease templates; policies regarding art displays at airports; airport complimentary parking policies for government officials; AVI Systems for Airport commercial vehicles; list of disqualifying crimes for purposes of issuance or revocation of airport security badges; post-9/11 ordinances related to violations of vehicle parking in airport security-restricted areas and airport designation by FEMA as a Special Flood Hazard Area ("SFHA").

Coordination with Regulators

- Proposed Modifications to FAA Part 16 Procedures: ACI-NA staff and representatives of the Legal Affairs Committee have continued to monitor the FAA's progress in considering recommendations submitted for consideration of modifications to FAA's Part 16 formal complaint procedures, including the streamlining of actions on complaints filed with the FAA. We understand that the FAA is in the process of working on a notice of proposed rulemaking which should be issued to address our recommendations.
- Passengers with disabilities: ACI-NA staff has continued efforts with Airlines for America staff on issues related to air passengers with disabilities and airport and air carrier access issues under CFR Part 382. ACI-NA has served as the sole airport representative in both the US Access Board's and the National Council on Disability' evaluations and discussions of airport-related issues pertaining to air passengers with disabilities. Further, ACI-NA legal staff has attended meetings on issues impacting air travelers with disabilities, including meetings of federal agency officials from the DOT, FAA, and the Department of Justice, to ensure that airport legal interests are understood and addressed. On November 28th, ACI-NA filed comments with DOT regarding the Department's proposed rule imposing new obligations on airport operators to establish relief areas for service animals that accompany passengers with disabilities departing, connecting, or arriving at U.S.

airports. On January 9th, Airports Council International-North America (ACI-NA), Airlines For America (A4A), and the International Air Transport Association (IATA) filed extensive joint comments on DOT's proposed rule requiring airport and airline automated kiosks and airline websites to be accessible to passengers with disabilities.

- **DBE issues:** ACI-NA staff has served as a stakeholder in DOT and FAA meetings regarding the administration and evaluation of various aspects of the DOT's and FAA's DBE/ACDBE programs.
- **General airport legal issues:** ACI-NA legal staff has consulted with federal regulators and government agencies, and maintained legal contacts within various offices of the Department of Justice's Antitrust and Civil Rights Divisions, DOT, FAA, Federal Communications Commission, Government Accountability Office, DOT Office of the Inspector General, National Council on Disability, the National Transportation Safety Board, the TSA, and the U. S. Access Board, among others, to ensure that airport legal interests are understood and that agency officials have access to airport legal professionals on issues of interest to them.

Update on Recent Litigation in Which ACI-NA has Participated

Participation as amicus curiae a pending case involving liability for damages for diminution in value of property from taking of airspace at McCarran International Airport (*70 Limited Partnership vs. McCarran International Airport*). The Nevada Supreme Court granted ACI-NA the right to participate in the proceeding by the filing of a brief; oral argument has not yet been set by the Nevada Supreme Court.

Participation as amicus curiae in a pending case involving airport's liability for damages for airfield operations at Seattle-Tacoma International Airport (*Brandon Apela AFOA v. Port of Seattle*). ACI-NA's brief was submitted in this case, and oral argument is scheduled for February 16, 2012 before the Washington State Supreme Court.

LAX III - *Alaska Airlines, Inc., et al. v. U.S. Department of Transportation* (D.C. Circuit, 2008). DOT continues to issue Orders granting interim stays of the Proceedings. The parties filed their most recent motion for continued stay of the proceedings on December 1, 2011, requesting that LAX III parties be allowed to further pursue settlement discussions through June 30, 2012.

Assistance Provided to the Board:

- Nominating Committee Matters.
- Board Minutes and other Matters.
- Integration of CAC into ACI-NA.

Upcoming Actions and Events

- The Legal Steering Group met on January 27 in Denver, CO to plan the Spring Legal Issues Conference, which will take place from April 25-28, 2012 in Charleston, South Carolina.

Potential Concerns and Issues

- Judicial ruling involving airspace takings in the Nevada Supreme Court
- Outcome of Port of Seattle litigation matter
- DOT's handling of the Air Incentive Petition Request of the Clark County Department of Aviation

Board-Requested Activities Update

None at this time.

2012 Legal Affairs Committee Work Plan

Meeting Schedule

- a. Steering Group planning meetings:
 - i. January 27: meeting in Denver, Colorado
 - a) Establishment of new leadership—Chair, Vice-Chair, Board Liaison
 - b) Discuss and establish agenda, assign committee liaisons for seminars, and propose speakers for Spring Legal Conference in Philadelphia, Pennsylvania, April 25-28, 2012
 - c) Discuss pending legal matters of potential concern to members
 - d) Discuss criteria for filling open Steering Group position
 - e) Report of the TSA Working Task Force
 - f) Update on Part 16 Working Task Force Work
 - g) Identification of Members interested in working on a task force to review the FAA's 2010 Airport Incentives Guidebook
 - h) Review of Committee Meeting Concerns and development of standards for exclusions from attendance during Airport-Only Meetings, as well as articulation of policies for acceptance of amicus status on behalf of member airports in litigation in which member airports are involved
 - i) Marketing ideas for the Spring Legal Conference:
 - Target law student registrants at discounted rates
 - Target academic speakers from Charleston area law schools and market to law schools
 - Consider offering special discounts for multiple lawyers registering from the same organization, or for young lawyers (those practicing less than five years)
 - Consider South Carolina law firms that are not ACI-NA Associate Members
 - ii. April 25: meeting in Charleston, South Carolina
 - a) Review plans for Spring Legal Conference
 - b) Discuss ideas for preliminary agenda, assign committee liaisons for development of seminar ideas and to propose

speakers for Fall Legal Conference in Calgary, Canada, September 8-9, 2012

- c) Remind steering group members to identify and encourage airport legal affairs committee members to express interest in being considered for membership on the steering committee
 - d) Reports of Legal Steering Group Task Forces
 - e) Review other committee updates and issues
- iii. June 2012: Boston (?)
- a) Review Feedback from Spring Legal Conference
 - b) Finalize decision on person for open Steering Group position
 - c) Develop Final Agenda for Fall Legal Conference
 - d) Reports of Legal Steering Group Task Forces
 - e) Review other committee updates and issues
 - f) Solicit expressions of interest in service as Vice-Chair of the Steering Group
- iv. October 15: meeting in Calgary, Canada
- a) Review plans for Fall Legal Conference
 - b) Review Steering Group nominations (if any available open positions)
 - c) Reports of Legal Steering Group Task Forces
 - d) Establish date and location of January 2013 Steering Group meeting
 - e) Review other committee updates and issues
- b. 2012 Spring Legal Conference:
- i. Support ACI-NA with identification of topics and speakers for the conference: April 25-28, 2012 in Charleston, SC
 - ii. Full steering group meeting to review issues and updates, as well as to plan for Fall Conference, on April 25, from 9 a.m. to 12 noon.
- c. Annual Conference/Fall Legal Conference - San Diego, CA, September 8-9, 2012
- i. Support ACI-NA with identification of topics and speakers for the conference: September 8-9, 2012
 - ii. Full steering group meeting to review issues and updates, as well as to review plans for 2012 Fall Legal Conference

- d. Conference calls will be scheduled on an as-needed basis should other issues arise that require the interim attention of the Legal Steering Group.

Member Coordination

- a. **As Requested:** Respond to incoming inquiries from membership by circulating such inquiries to all committee members and providing responses to airport member initiating the request
- b. **Weekly Legal Briefing:** Provide weekly e-mail updates on regulatory, governmental, and judicial developments of interest to membership
- c. **As deemed important by Steering Group:** Establishment of webinars to update membership on time-sensitive legal developments that may be of general interest to membership

ACI-NA Committee Support

Through Legal Committee liaisons with some ACI-NA committees, provide legal support on issues of importance to airports.

- a. ASSIST-Sustainability Working Group: Tim Karaskiewicz
- b. Business Diversity Committee: Louisa Goldstein
- c. Environmental Committee: Bret Lobner
- d. Finance Committee: Emily Neuberger
- e. Government Affairs Committee: Bob Watson
- f. Human Resources: Carlene McIntyre
- g. Safety and Security Committee: E. Lee Thomson

Aviation Legal Group Liaisons

Through ACI-NA staff and /or Legal Steering Group liaisons, provide input on airport related issues and serve as a point of contact with other aviation legal groups.

- a. ABA Air and Space Law Forum
 - i. ACI-NA Staff: Monica Hargrove (on Governing Committee)
 - ii. Bret Lobner: ACI-NA Legal Steering Group Liaison
- b. ACRP Legal Research Panel
 - i. ACI-NA Staff: Monica Hargrove
 - ii. Carlene McIntyre, Lee Thomson and Tim Karasckiewicz: Legal Steering Group
- c. AMAC
 - i. ACI-NA Staff: Monica Hargrove (ACI-NA staff contact)
 - ii. Louisa Goldstein: ACI-NA Legal Steering Group Liaison
- d. Federal Bar Association Transportation and Transportation Security Law Section
ACI-NA Staff: Monica Hargrove, Secretary
James Briggs, Member

- e. National Council on Disability
ACI-NA Staff: James Briggs
- f. Transportation Research Board Law Committee
ACI-NA Staff: Monica Hargrove
- g. U.S. Access Board
ACI-NA Staff: James Briggs

Maintain Periodic Discussions on Issues of Mutual Interest with ATA Litigation Committee Members

Increase Participation in ACI-NA Legal Affairs Committee Conference and Meetings by Airport Members in the Southeastern United States and Canada