

Evolving Insurance Coverage For Drone Losses And Liabilities

By **Marialuisa Gallozzi and Melissa Keech**

Law360, New York (August 2, 2017, 3:10 PM EDT) -- Recreational and commercial use of unmanned aerial vehicles (UAV)[1], commonly known as drones, has skyrocketed across the country. So have concerns about the risks of UAV losses and liabilities. This article focuses on UAV-associated first-party losses and third-party liabilities and examines the need for and availability of different types of insurance coverages UAV operators might need.



Marialuisa Gallozzi

Unmanned Aerial Vehicles

The small size, speed, maneuverability and low cost of UAVs is prompting many industries, including the insurance industry, to incorporate UAVs into their businesses. In 2016, a UAV in Reno, Nevada, carrying a chicken sandwich, hot coffee and donuts completed the first drone delivery in the United States. A few years earlier, a news station sent a camera-equipped UAV to capture aerial footage of the ruins of Chernobyl, nearly 20 years after its nuclear disaster. Potential UAV markets are growing rapidly; agriculture and public safety are expected to make up 90 percent of the UAV uses in the next few years.[2]

The insurance industry not only has new markets for drone-related coverage products but also is incorporating drones into its business. Camera-equipped UAVs can obtain high resolution pictures in hard-to-reach areas, allowing for faster claims handling and easier risk assessment and engineering. In hazardous situations, such as the examination of property damaged by floods, earthquakes or hail, insurers can use drones to assess the damage and avoid risking workers' safety. For example, Travelers used over 60 UAVs to inspect damaged property following a hail storm in Texas and Hurricane Matthew on the U.S. East Coast.

Federal Aviation Administration UAV Regulations

As drone use became more widespread, there were growing calls for regulation to protect public safety.[3] The Federal Aviation Administration (FAA) issued regulations in 2016 governing recreational and commercial uses of "small unmanned aircraft," defined as unmanned aircraft weighing less than 55 pounds. Along with requiring registration of commercially-used UAVs, the regulations (14 C.F.R. § 107.27-51) impose several limits on all UAV flights, including:

- Fly at or below 400 ft and at or below 100 MPH

- Fly during daylight and within the operator's line of sight
- Never fly UAVs near other aircraft, over non-participating individuals, over stadiums or sports events, or near emergency response efforts.

UAV operators can apply for a waiver of some of these operational limitations, such as the height and speed restrictions and to allow nighttime operations.

UAV Risks Create Need for Insurance

The Federal Aviation Administration's regulations do not require UAV owners or operators to buy insurance, even though many have identified the need for coverage given the myriad risks that arise from drone use. The FAA lacks the authority to require either recreational or commercial users to have liability insurance, but it has encouraged operators to "evaluate their existing insurance policies to determine whether they have appropriate coverage."^[4] As the potential uses for UAVs continue to grow, users will need to mitigate their liability risks with insurance, which in turn will continue to spur further developments in the insurance market.

UAV accidents occur as a result of human operational error, software or mechanical failure, local conditions (such as sudden winds or lightening), or some combination of these. The FAA receives nearly daily reports of UAVs flying near manned aircraft.^[5] In one case, a drone nearly collided with an aircraft taking off from Heathrow Airport. In another case, a drone crashed on the White House lawn after losing connection with the drone operator and sparking concerns about future security breaches. The FAA even conducted a UAV "head crash study" that found only a small chance of injury resulting from a falling drone (0.01 to 0.03%).^[6]

In some cases, these mishaps result in injuries to operators or bystanders, giving rise to lawsuits. A UAV owner in Illinois sued the manufacturer after the UAV "spontaneously started, took off, and flew into him" causing significant lacerations and blood loss.^[7] In 2013, a drone crashed into a grandstand at Virginia Motorsports Park, falling on and causing injuries to several spectators. In 2016, a USC fraternity was sued for premises liability and negligence when a drone hit a party attendee in the head.

In addition to physical injuries and property damage, the public has grown increasingly concerned about potential cyber hacks or hijackings of UAVs.

With this growing list of vulnerabilities, UAV operators are considering the scope of their insurance coverage for:

- first-party loss, such as damage to the UAV and to the UAV operators' own property;
- third-party liability for physical injury to others, damage to third-party property and invasion of privacy (including data breaches); and
- first party losses and third party liabilities resulting from cyberhacking and hijacking.

Available Insurance Coverage

For recreational UAV users, homeowner's insurance may be the first line of coverage. Homeowners insurance has traditionally covered radio-controlled aircraft as part of the category of covered "personal property." Homeowner's insurance can also provide liability coverage for injury to third parties and

damage to third party property, but homeowners insurance is unlikely to cover liabilities arising from commercial UAV use.

The applicability of other existing insurance policies to UAV activities is uncertain, but aviation- or UAV-specific insurance may be needed. Commercial General Liability (“CGL”) policies may exclude UAV-associated liabilities as many CGL policies contain aviation exclusion. The FAA defines UAVs as “aircraft,” so CGL insurers may argue that “aviation” exclusions function to preclude coverage for UAV-related liabilities. Likewise, the Insurance Services Office (ISO)[8] in 2014 developed policy language to exclude coverage for UAVs. Conversely, aviation insurers such as Unmanned Risk Management may incorporate drone coverage under their aviation risk policies.

Insurers are now offering products that provide both first-party and third-party coverage specifically for commercial drone use. Some examples are:

- Verify: On demand, hourly insurance coverage up to \$5 million for first and third party injury and property damage, as well as terrorism insurance.
- The Academy of Model Aeronautics offers up to \$2.5 million for third party liability and \$25,000 for first party injury.
- AIG provides limited coverage for electronic malfunctions, physical damage to the aircraft equipment and optional war/hijacking/terrorism coverage.
- Travers Aviation offers liability insurance for bodily injury and property damage, including physical damage to drone itself.

Conclusion

Both the uses of drones and related insurance exclusions and specialty coverages are evolving rapidly. As the risk profile evolves, individuals and companies using drones for recreational or commercial purposes will need to ensure that their insurance coverage protects them against potential losses and liabilities.

Marialuisa Gallozzi is a partner with Covington & Burling LLP in Washington, D.C. Melissa Keech was a summer associate with the firm and attends Georgetown University Law Center. The authors thank Duncan Mulgrew for his insights into the evolution of drone use.

The opinions expressed are those of the author(s) and do not necessarily reflect the views of the firm, its clients, or Portfolio Media Inc., or any of its or their respective affiliates. This article is for general information purposes and is not intended to be and should not be taken as legal advice.

[1] Unmanned Aircraft, also referred to as unmanned aerial vehicles (UAV), unmanned aerial systems (UAS) or drones, are “aircraft without the possibility of direct human intervention from within or on the aircraft.” 14 CFR § 107.3 (2016).

[2] Darryl Jenkins & Bijan Vasigh, The Economic Impact of Unmanned Aircraft Systems Integration in the United States, (2013) https://higherlogicdownload.s3.amazonaws.com/AUVSI/958c920a-7f9b-4ad2-9807-f9a4e95d1ef1/UploadedImages/New_Economic%20Report%202013%20Full.pdf.

[3] See Melissa Quinn, *Why the Drone Industry Actually Wants More Regulation*, Washington Examiner, (July 10, 2017), <http://www.washingtonexaminer.com/why-the-drone-industry-actually-wants-more-regulation/article/2627819>.

[4] Supplementary Information, FAA Part 107 Rule, 497 https://www.faa.gov/uas/media/RIN_2120-AJ60_Clean_Signed.pdf.

[5] Drone Use Takes Off Despite Safety Concerns, Restrictions, Insurance Journal, (Nov. 17, 2014), <http://www.insurancejournal.com/news/national/2014/11/17/346974.htm>; Nathan Bohlander, *Here Come the Drones - And the Legal Headaches*, Law360, (Feb. 24, 2017, 11:09 AM), <https://www.law360.com/articles/890574/here-come-the-drones-and-the-legal-headaches>.

[6] See Nick Lavars, *Head Injury From a Falling Drone? Crash Test Study Suggests Chances are Slim*, New Atlas, (May 1, 2017), <http://newatlas.com/head-injury-falling-drone/49295/>.

[7] Complaint at 1, 6, *Frost v. Horizon Hobby Distributors*, No: 2:16-CV-2121, 2016 WL 8997177 (C.D. Ill May 5, 2016).

[8] ISO, a subsidiary of Verisk publishes standard form insurance policies that is member companies use to sell insurance.