

Liability from above?

The potential benefits and liability concerns arising out of the use of drones

By Jason M. Hill

In addition to recreational use, drones are poised to become everyday tools of farmers (crop spraying and imaging), law enforcement, surveyors, bridge inspectors, utility inspectors, photographers, firefighters, first responders, and potentially, even retailers such as Amazon. As with any new technology, however, drones will bring a significant change to the legal landscape, and in the context of insurance and litigation defense, drones will create significant questions for insurers and insureds alike.

Liability Concerns

The benefits of the use of drones (also referred to as “Unmanned Aircraft Systems” or “Unmanned Aerial Vehicles”) will come with the potential for significant liability exposure. As with any aircraft, bodily injury and property damage will occur as a result of mechanical failure, pilot error, poor weather, or loss of control of the drone. In the era of massive security breaches, there is also the possibility that the control of a drone could be hijacked. Therefore, businesses and governmental entities deploying drones should be prepared with policies addressing (1) training, (2) intended use, (3) cybersecurity, (4)

maintenance, and (5) compliance with federal and state regulations that will likely change with the pace of advancing technology.

Perhaps the most significant liability concern will arise out of invasion of privacy claims. In Minnesota, invasion of privacy claims include the tort of intrusion upon seclusion, in the event the intrusion would be highly offensive to a reasonable person. *Lake v. Wal-Mart Stores, Inc.*, 582 N.W.2d 231, 235 (Minn. 1998). In Wisconsin, an invasion of privacy claim is recognized by statute at Wisconsin Statutes § 995.50, which provides that invasion of privacy includes “intrusion upon the privacy of another of a nature highly offensive to a reasonable person, in a place that a reasonable person would consider private or in a manner which is actionable for trespass.” In *Lake*, a nude photograph taken in a shower was circulated in the community, and the invasion of privacy claim was allowed to proceed. The ability of drones equipped with a technologically advanced camera, or cameras, to gain access to the interior of a home or other areas people consider private is of significant concern. Additionally, the ability to rapidly disseminate photographs or video

Firm News

The Firm welcomes Robert I Yount as a new Associate.



Before joining the firm, Robert clerked for the Honorable Diane B. Bratvold in Hennepin County.

Throughout law school, he worked as a certified student attorney with the Ramsey County Attorney’s Office, and served as an intern for Federal Magistrate Judge Steven E. Rau and for the U.S. Attorney’s Office.

Robert grew up in Minnesota, where he earned his B.A. in Political Science and Philosophy from the University of Minnesota Duluth, and his J.D. from William Mitchell College of Law.

over the internet and social media only increases the potential exposure.

Coverage Concerns

With the development of drone technology, insurers will also need to address first-party and third-party coverage under existing policies and whether standard policy language will need to be amended to allow for, or to deny, coverage. Typically, drones are considered to be aircraft, barring any language to the contrary. The standard ISO commercial general liability policy does not include bodily injury or

(Continued on page 3)

ADA Accessibility “Tester” Lawsuits

By Hannah G. Felix

The ADA, 42 U.S.C. § 12182 and the Minnesota Human Rights Act (“MHRA”) under Minnesota Statute § 363A.11, require full and equal enjoyment of public accommodations and prohibit discrimination on the basis of disability.

ADA Accessibility lawsuits have been demanding attention as they increase in number and frequency around the state. With well over a hundred cases in state and federal court within the last few years, the question has been raised whether the objective of the Plaintiff’s side is primarily about generating fees through settlement instead of increasing accessibility.

The Minnesota legislature addressed accessibility accommodation during the 2016 legislative session, with a bill setting forth affirmative defenses for public accommodations and a non-mandatory statutory notice requirement for lawsuits involving architectural barriers that limit accessibility. The bill was signed into law by Governor Mark Dayton on May 22, 2016. The law provides a public accommodation with an affirmative defense to conduct that may otherwise have been a Minnesota Human Rights Act violation, if it can establish that (1) the architectural barrier has been removed, (2) compliance with the accessibility law is not readily achievable or accomplishable by other means, or (3) the alleged architectural

barrier does not violate accessibility standards under law.

Additionally, the law sets forth certain requirements for a notice sent by an attorney prior to bringing suit for removal of an architectural barrier, as well as a statutory short form demand letter. The demand letter is not mandatory, and a party may bring a lawsuit without providing any demand letter. However, if a demand letter is sent, it may not demand a monetary settlement. The statutory short form notice gives the business the information needed to evaluate the claim, and quickly make any necessary changes or repairs, including:

- a) a citation to the law alleged to be violated; or
- b) identification of the alleged barrier;
- c) identify the date of the alleged encounter; and
- d) provide 30 days for a response.

The notice requirements were designed to make it simpler to notify a business that it has issues with accessibility, with the goal of making it easier to accomplish changes without the need to resort to litigation.

At this time it is not clear exactly how courts will apply the recent law to ADA Accessibility Lawsuits. However, given the numerous ADA Accessibility Lawsuits that continue to be brought, it will not be long before the courts will be faced with applying the new law.

Our firm has been involved in handling several claims brought by repeat Plaintiffs/Attorneys asserting ADA Accessi-

bility Lawsuits by the dozens in both state and federal court. Attorney Hannah Felix was involved throughout the legislative process of the ADA Accessibility legislation. For more information regarding ADA Accessibility “Tester” Lawsuits, a more in-depth article will be published in the soon to be issued Minnesota Defense Magazine for Summer 2016. ●



Congratulations!



Congratulations to Pat Collins for successfully obtaining summary judgment on behalf of the Defendant in the

case of *Reinhardt v. City of St. Paul Park*. The Plaintiff sought trespass damages against the City based on a municipal waterline that was allegedly installed on his property without permission. However, the waterline was installed before the plaintiff owned the property, and therefore, the City argued that any trespass damages were personal to the prior owner. Also, because the waterline was installed in 2003, and was considered a permanent trespass, the six year statute of limitation had expired on any trespass claim. The judge granted summary judgment in favor of the City based on the Plaintiff’s lack of standing and the running of the statute of limitations.

Employment Newsflash

Minnesota Fair Labor and Standards Act Recent COA Decision

Burt v. Rackner, Inc. d/b/a Bunny’s Bar & Grill A15-2045

Under the Minnesota Fair Labor and Standards Act, employees can claim wrongful discharge as well as back pay for termination as a result of refusing to comply with employer’s illegal employment condition (i.e. tip sharing). <http://mncourts.gov/mncourtsgov/media/Appellate/Court%20of%20Appeals/Standard%20opinions/OPa152045-062716.pdf>

(Continued from page 1)

property damage coverage for losses arising out of the use of an aircraft, but the policy does not define “aircraft.” Additionally, there are policies in which “aircraft” is defined as a vehicle designed to transport persons or property through the air, and therefore, in the context of an aircraft exclusion, drones deployed solely with a camera may not be considered an “aircraft” and coverage would be available.

In the context of insurance coverage, aviation insurers may step in to fill the void, and other insurers may begin to offer endorsements applicable to the use of drones. It is very apparent that coverage issues arising out of the use of drones will develop as the technology and the law develop.

FAA and State Regulations

The most important legal developments in the upcoming months and years governing the use of drones will involve regulations developed by the Federal Aviation Administration and by state governments. The FAA categorizes three areas of use: (1) model aircraft, hobby or recreational, (2) civil (or commercial), and (3) public (government/law enforcement). The FAA recently issued registration requirements for hobby or recreational use drones weighing less than 55 pounds. Additionally, it provides the following guidelines with regard to recreational use:

- Fly below 400 feet and remain clear of surrounding obstacles
- Keep the aircraft within sight
- Do not fly within five miles of an airport
- Do not fly near people or stadiums
- Do not fly near manned aircraft

The recreational use of drones has increased dramatically. For reference, the FAA’s registration data for recreational users identifies more than 300 registered drones in Minneapolis, Minnesota and 93 in Apple Valley, Minnesota.

The commercial use of drones (including Amazon’s proposed drone delivery service) allows for the most rapid expansion of the use of the technology, but as it stands, commercial use is relatively limited in light of existing FAA regulations. Specifically, commercial users are able to obtain authorization from the FAA for the use of drones, but the operators of the drones must have a special FAA pilot certification and the operators must keep the drone in sight. The FAA is on the verge of releasing new regulations regarding commercial use, and the expanded use and development of the technology may depend significantly upon the scope of those regulations.

Public entities are also able to obtain an authorization for the use of drones, but use by public entities, and specifically law enforcement, has also been relatively limited. While law enforcement agencies and other governmental entities see the potential to improve the provision of services and potentially reduce costs, they also must consider the potential liability exposures, including potential civil rights litigation arising out of the use by law enforcement, and most are awaiting guidance from their respective states.

Minnesota has not enacted drone legislation, but there have been bills introduced prohibiting the use of drones to hunt or harass wild animals (SF2507) and placing significant restrictions on the use of drones by law enforcement,

including a warrant requirement for use, with limited exceptions, restrictions limiting the use to a clearly defined target, and prohibiting the use of facial recognition or other “biometric-matching technology.” Wisconsin has enacted legislation that states the following: “No Wisconsin law enforcement agency may use a drone to gather evidence or other information in a criminal investigation from or at a place or location where an individual has a reasonable expectation of privacy without first obtaining a search warrant under s. 968.12. This subsection does not apply to the use of a drone in a public place or to assist in an active search and rescue operation, to locate an escaped prisoner, to surveil a place or location for the purpose of executing an arrest warrant, or if a law enforcement officer has reasonable suspicion to believe that the use of a drone is necessary to prevent imminent danger to an individual or to prevent imminent destruction of evidence.” Wisconsin Statutes §175.55. Wisconsin has also made it a misdemeanor criminal violation to photograph or observe an individual in a location where they reasonably expect privacy, and it has prohibited the operation of a drone over a correctional institution. *Id.* at §§ 942.10 and 114.045.

What Lies Ahead?

It appears that there is very little that will hold back the tide of technology, and the potential benefits to business and governmental entities that come with the use of drones will only hasten their advancement. So long as appropriate policies and regulations are in place, you should expect that delivery from Amazon at any moment. ●

About the Firm

Jardine, Logan & O'Brien, P.L.L.P., is a mid-sized civil litigation law firm that has handled some of the region's largest and most difficult disputes with outstanding results for clients. Litigation has always been our primary focus. With trial attorneys admitted in Minnesota, Wisconsin, North Dakota, South Dakota, and Iowa, our firm has the ability and expertise to manage cases of any size or complexity. We are trial lawyers dedicated to finding litigation solutions for our clients. View our website at www.jlolaw.com to obtain additional information. Please call us to discuss a specific topic.

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