

COURT JUDGMENTS : PRO & CONTRA

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Abstract

In the moment of a collision between the birds and an aircraft slight or bigger damages on the aircraft occur. In certain cases these damages can be extremely huge from the total destruction of the aircraft to the injuries and death of passengers, crewmembers or third persons on the field. Besides these kinds of direct damages there are also indirect and hidden damages for the aircraft operators and damages for the airport operators. With the occurrence of the damage the liability for the damage for which the claimant can request the reparation or indemnity in cash of the damage is established while the other side has to effectuate the reparation or pay certain reimbursement.

In these relations the participants in the air traffic especially the airport operators and aircraft operators as well as the insurance companies of the former and the last, face various forms of indemnity claims for the reimbursement of the damages on the property, requests for lost profit as well as indemnity for the case of injury or death of a physical person.

These requests are sometimes realized in long lasting court processes. In these processes the plaintiffs more often are physical persons, air carriers and insurance companies, and the defendants: airport operators, air carriers, aircraft manufacturers, engine manufacturers, air traffic control, state institutions and the state itself.

Researches in the field of the realization of the indemnity requests for the damages occurred show that in the world, regarding the number of the registered cases of collisions of birds and aircrafts, the question of the indemnity is mostly settled with the negotiations between the insurer and the damaged out of the court procedure. But in case this amicable way of settling is not possible the parties accept the final decision reached by the court.

The subject of this paper is the survey of two very interesting court verdicts, which are completely different in their substance. One verdict is reached in favour of the plaintiff (insurance company) and the other in favour of a defendant (airport operator).

Keywords: liability, indemnity, accusation, fault, verdict.

1. INTRODUCTION

The problem of damage to the airplane due to the collision with birds from the point of view of liability aspect for such damage, underlines the space in which the accident occurred as well as certain phases of the flight.

When the airplane is in the phase of taking off or landing namely when it is in the territory of the airport and when the bird strike occurs such an event show potential liability of the airport.

Airports have to assure all the conditions for taking off and landing of the airplanes. Among these duties is also the preventing of entering of any animals or birds that could present a risk for the safe taking off or landing of the airplane. In order to achieve this it is necessary to apply various activities and methods that will make the conditions for the birds and other wildlife to stay as longer from the area of the airport as possible. The maintenance of the conditions mentioned at high-level requests the permanent awareness with which high level of the air traffic safety is achieved. Lack of activity brings to the self-confidence, which is the enemy of the safety. Self-confidence is the essential presumption of the negligence, which brings often to the failure to undertake all necessary measures for safe flying. This causes the damages and also the liability for the damage occurred.

It is to underline especially that we are interested in reasons namely the background for which the charges for indemnity of the damages caused by the collision of birds and airplane are mostly brought. Having reviewed the court verdicts it is to be simply established that the defendant in the procedure is intended to be pronounced guilty due to the negligence. Namely, in simple words the plaintiff wants to prove the liability of the defendant for the damage occurred as the consequence of negligence in undertaking of necessary activities and making and maintenance of such conditions that enable free staying of birds in the area of airport.

In these paper two court procedures for indemnity of the damages on the airport, one at the Municipal and County Court in Republic of Croatia and the other at US District Court are analyzed.

For the court procedure in Republic of Croatia it is characteristic that this is the first and the only such case in Croatian legislative system and it is a kind of precedent. For procedure in USA it can be said that it is just one in the series of cases on this theme pursuant to the Federal Tort Claims Act. Final verdicts in these cases are completely different. The verdict of the court in Croatia is in the favor of the plaintiff while that in USA in favor of the defendant. In both cases the plaintiffs are the insurance companies, which proves once more that the airports and air carriers insurance companies face significant financial costs after the damages caused by the bird strikes. Insurance companies asked for the reimbursement of the indemnity paid for the damage paid to the air carriers due to the bird strikes at the landing or taking off. The decision of the court in Croatia that the defendant airport is liable for the damage represents practically the guideline in the effort to sharpen the liability for the air safety but also to improve the concrete safety tasks for diminishment of such event risks. At the same time it places some new elements for evaluation of interest of air carriers and airports that are to be insured and for equal distribution of risk that the participants in the air traffic have insured in various forms at the insurance companies.

Contrary to the decision mentioned the decision of the court in USA shows and intensifies the extreme and consistent thoroughness in acting of the state and the airport that with their attitudes and activities jeopardize the seriousness of threats of bird strikes.

2. PULA CASE – JUDGMENT IN FAVOUR OF PLAINTIFF

2.1. Event

On 13th September 1996, at 3,11 p.m., Croatia Airlines aircraft Boeing 737-200, registration 9A-CTB, when taking off from Pula Airport, just before detaching from runway, sucked in its left engine a seagull. According to Fire Brigade Safety Report, the taking off was monitored visually. It is particularly underlined that bird strike was accompanied by "hollow explosion that caused all staff to jump into vehicles" ready to intervene, waiting for further development of the incident. Fortunately, the aircraft managed to stop without any further damages or casualties.

The damaged engine had been replaced with new one and the aircraft was enabled to leave Pula Airport on 15th September 1996.

Pursuant to the insurance agreement, Croatia Airlines, as the owner of the aircraft, presented to its Insurer the engine damage compensation claim, covering compressor and turbine damage

caused by strike and suction of seagull.

The damage was estimated to USD 140.123,69. The Insurer paid the compensation. After the payment, it presented to Pula Airport the request for refund.



Croatia airlines B 737 – 200



Seagulls



Pula Airport

However, pursuant to the Airports Safety Regulations, Art. 4, Item 1., Pula Airport refused that request stating that, at the time of the incident, all conditions for protection of non-controlled access of people, vehicles and animals had been regularly fulfilled. They asserted that particular day the prescribed runway examination and control had been performed at 4,30 a.m. and at 4,10 p.m., and that no obstacles for safe take off had been entered in the Report. Simultaneously, they emphasized that there had been no special requests for scattering of birds that day. Besides, the authorized service had previously issued a permanent Notam warning to increased concentration of birds in the vicinity of runway and recommending additional caution. Giving reference to Articles 184 and 192 of the Air Traffic Law, and to obligation of Air Traffic Control to establish all safety conditions before granting a take off, Pula Airport pointed out that the aircraft captain had failed to declare the danger of bird strike to ATC on behalf of take off, that ATC itself had not reacted, and that, consecutively, neither the Airport could have responded adequately.

Consequently, deeming that the aircraft damage had not been caused by its negligence, the Airport refused the request for refund.

As dilemmas regarding legal liability and acting regularity of all actors responsible for air traffic safety can be competently solved only by authorized court, the Insurer instituted legal proceedings in Pula Court of Law, requesting from the Airport the refund of damage compensation.

2.2. First instance legal proceedings

In response to the allegations quoted in accusation (P-2459/97), the accused Airport waived any liability for the incident and challenged the accusation in all its aspects, underlining that the Accused itself had not contributed to the incident in any way. It stated that it had undertaken all prescribed and necessary measures regarding protection of uncontrolled access of people, vehicles and animals (birds), and pursuant to the Airports Safety Regulations, Art. 3, Item 1.

The Airport quoted all measures undertaken on that critical day in purpose of assuring safe

take off and landing conditions. It issued a permanent Notam to air carriers warning them to intensified concentration of birds in the vicinity of runway with strong recommendation for additional caution. On that day the runway examination and control was performed twice. Besides that, the Airport also referred to the lack of any intervention or request for scattering of birds either from the side of captain or from the side of authorized ATC. At the same time, it emphasized the position of ATC that had established that all conditions for safe take off and landing of that particular flight were fulfilled.

It was specially underlined that ATC Operative Service alone had the insight into runway conditions closely before take off, that judgment of conditions had exclusively been in its competence, that it had failed to report any danger of bird strike, and that it had given the take off clearance to that aircraft on that critical occasion, having judged the conditions to be safe.

Therefore, the Defendant considered itself acting pursuant to the valid regulations and professional standards of air traffic safety obligations, and it considered the request fully unfounded.

In purpose of explaining an airport protection services organization, the Airport suggested the hearing of authorized ATC representative. Also, the parties to the law suit mutually agreed to ask the Court to investigate through the Ministry of Maritime Affairs, Transport and Communications the data referring obligatory airport bird strike protection safety measures in general.

The hearing of the head of competent Air Traffic Control Center established that the Defendant applied as bird strike protection measures the so called "follow me" vehicle that scatters birds along runway with its noise, and the hunting weapons that disperse birds by shots. The statement, however, does not state that that weapon was at all in function at the critical occasion.



Follow me vehicle



Dianawerk rastatt-Ruggieri & "Capa"
Anti bird-strike cartridge

Ministry of Maritime Affairs, Transport and Communications informed the Court that, pursuant to than actual Air Traffic Law (Official Gazette no. 53/91), there had been no explicit obligation for airports regarding bird strike protection, but that, however, pursuant to Art. 135 of that same Act, there had been an obligation for airports to establish Councils that, besides other things, should have reconsidered the questions of air traffic safety and brought respective obligatory conclusions.

After the hearings, the First Instance Court brought a conclusion to take into account the arguments of the Airport, and reached a verdict in which it rejected the Plaintiff's damage compensation refund claim as unfounded.

In the exposition of the verdict, it is stated that the regulations that determined legal frame of air traffic safety, namely, the Air Traffic Law from 1986 and the Airport Safety Regulations, both taken over as the Republic of Croatia official acts, contain no an explicit regulation relating to obligation of airports to take protective measures against birds. The verdict establishes that the Airport applies protective measures in form of "follow me" vehicle and guns, but that these, as well as other known measures, are not completely safe. It is stated that the damage occurred when none of these measures could have been taken, because, even if the gun had been used, the sound could not have been heard due to a noise of engine.

The opinion of the Court is that the damage occurred due to suction of bird into the aircraft engine, occurred **accidentally**. Furthermore, contrary to Act of God situation, if the incident could have been foreseen, it could have been avoided. In this concrete case, if it had been known that the birds could appear, the measures for dispersing of those birds would have been undertaken prior to beginning of that take off.

It is concluded that accidental damages come upon the party to which they happen, and that there is no liability for damage caused to other party by accident.

At the same time, the obligation of implementation of established protection measures is taken as relatively valid, and it is stated that the Air Traffic Law, Art. 135, does not explicitly say that decisions of the Airport Safety Council, founded also in the area of the Defendant, are obligatory, because the Council itself is an advisory body whose decisions have no obligatory character.

2.3. Appeal against the first instance verdict

The Plaintiff (insurance company) lodged a well-timed appeal on all available grounds.

The appeal states that the Plaintiff considers that the proceedings did not prove that the defendant had implemented foreseen bird strike protection measures on critical occasion. The runway control was not performed before the Plaintiff policyholder's aircraft take off. It is also doubtful whether the armed hunters protection was organized at that time, and whether the Defendant possessed any birds scattering weapon at all. It considers the characterization of incident itself as accidental legally unfounded, because bird strike danger is a regular take off and landing risk, and it is indisputable that it can and must always be foreseen as such.

County Court in Pula (as the high court) declares void the contested verdict and returns the case to First Instance Court for repeated proceedings with following arguments:

- The High Court considers incorrect the stand of the First Instance Court that the accused Airport was not obliged to organize any special bird strike protection measures due to lack of regulations. Also, it deems wrong the conclusion that the Airport was not obliged to organize any special bird strike protection measures because they had not been determined by any competent legal provision, and because the Airport Safety Council decisions did not have obligatory, but only advisory character.
- At the same time, the High Court judges that the facts are incompletely established. It is, also, of the opinion that the Defendant could avoid damage liability only if proved that it had done everything that was to be done, and that the damage had occurred without its fault. It is a question of so-called presumed liability quoted in the Obligatory Relations Act, Article 158. and, in the eventual exculpation proceedings, the Defendant has to prove what was actually done in this particular case.

2.4. Proceedings instituted after the County Court declared the verdict null and avoid

In purpose of establishing the facts outlined in the High Court's decree, the First Instance Court summoned as a witness, and upon proposal of the Airport, its employee who had been completely acquainted with safety measures in time of the critical event. He stated that the Airport primarily took the measure of grass cutting around the runway in order to lessen the stay of birds to minimum. It also used a smaller "follow me" vehicle for frightening of birds with sound signals and noise, and a heavy fire-fighting vehicle for the bigger flocks, respectively. The airport also had a gun, but with no person authorized for its use, so that it could not be used. Besides those, there were also two rocket pistols with ammunition.

However, the witness also declared that he had not had direct insight into the concrete event. He knew that that day none of the disposable measures had been used, except the usual control and watching of runway.

In the following proceedings, the Court ordered the Defendant to submit all relevant Airport Safety Council and local Council decisions referring to bird strike protection measures and their implementation.

After the insight into submitted documentation, from which it was possible to establish everything that was organized and implemented from the side of respective services of the accused Airport in purpose of bird safety risk prevention over a longer period of time, the First Instance Court concluded the main hearing and reached the verdict.

The verdict confirmed the accusation of the Plaintiff. In its explanation, it states that the accusation was well grounded, because the Defendant runs the business that, by its nature, includes the increased danger.

The performing of such an activity, says the verdict, may put in danger lives and health of people and cause destruction of property of great value. Therefore, performing of the activity like that demands increased attention from the side of respective personnel. In this concrete case, it is stated that significant material damage occurred due to the aircraft's engine destruction, and that there was

also a strong possibility of greater damage that could include injuries of passengers. That is why the First Instance Court considers the Defendant responsible for damage as the dangerous activity contractor, and pursuant to Obligatory Relations Act, Art.174, Item1.

It is also stated that in this case there are no grounds for exemption from liability, as there exist no reasons quoted in Obligatory Relations Act, Art. 177, that indicates cases when a person performing dangerous activity can be exempt from liability. These are cases of out of the matter causes whose effect cannot be foreseen, avoided or eliminated.

According to the opinion of the Court, the existence of birds on the Defendant's runway could have been foreseen, as the Defendant itself issued the Notam about bird strike danger. The existence of that danger could have been eliminated by existing measures, in a way of driving the "follow me" vehicle along the runway before every take off or landing, and in a way of organizing better the service of runway watching in the whole of its length. Therefore, the request is entirely granted.

The Airport appealed to such a verdict. In its appeal, it repeats the arguments quoted in the previous proceedings, particularly underlining the following:

The Appeler sees the circumstance for exculpation of the one that performs dangerous activity stated in Obligatory Relations Act, Article 177. in the event itself, because the existence of birds on the Defendant's runway at the moment of take off, according to its opinion, could not have been foreseen, and even less avoided or eliminated, by application of safety measures. The process of take off of aircraft is the activity of certain duration, performed under certain conditions that can not be influenced by Airport, because, from the moment it starts, the guidance and directions regarding take off, same as regarding landing, are in domain of Air Traffic Control. Right in the fact that the Air Traffic Control did neither prevent the take off, nor give any information about presence of birds on runway, and that the aircraft captain did not react in any way, too, the Appeler sees the reasons for not acting in accordance with special measures of birds scattering, and, also, the very existence of exculpation grounds.

Furthermore, describing the characteristics of seagull itself, it states that the similarity of its and runway colour, where the runway is, due to the oldness of asphalt layer ad long lasting usage, of just the same gray-white colour as the seagull is, makes it impossible to detect presence of seagulls on a 3 km long runway, notwithstanding average attention and effort.

Deeming that it acted in accordance to the valid regulations and professional standards of air traffic safety, that no omission that could provoke aircraft damage was made, and that not only average attention and effort, but also additional caution measures were undertaken, the accused Airport demands the annulment of the first-degree verdict.

2.5. Final decision

On 18th April 2000, The Pula County Court, under number GŽ-2141/00, reaches the verdict in which it dismisses the appeal of the Defendant and confirms the First 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 High Court concludes that the First Instance Court stated the facts regularly and precisely, and that it applied the material legislation. However, according to the judgment of this Court, the accused Airport is not liable on the grounds of objective liability, Obligatory Relations Act, Art. 174. and related to Art. 173. but on the grounds of presumed liability, Art. 154. Item 1., of the same Act. One of the Defendant's activities – the maintenance of runway safety – does not represent a dangerous activity, nor the runway represents a dangerous object.

However, the Airport is liable according to the criteria of liability for damage occurred by omission to undertake measures or activities indispensable for air traffic safety.

According to the High Court judgment, in this concrete case the incident happened exactly because of such omission, i.e. the omission of the Defendant to drive the "follow me" vehicle along the runway prior to any take off and landing, and to organize better surveillance service. The 1992 Notam acquainted the Airport with continuous danger of birds, and with its duty to increase control. So, in accordance with that Notam and with the activity it performs, it is obliged to undertake all measures in order to prevent the presence of birds at the Airport on behalf of take off.

Only in case the Airport proved that it had undertaken all available measures of bird strike protection, it could have been, in this concrete case, exempted from liability for incident. But, as the First Instance Court in course of proceedings correctly established that in that particular situation the Defendant had not driven its "follow me" vehicle along the runway prior to incident, the further conclusion that the Airport was liable for damage suffered by the Plaintiff due to omission to undertake all available necessary measures, i.e. that that very omission led to the incident itself, also resulted to be correct.

According to the High Court's opinion, notwithstanding the fact that the Defendant did not notice the presence of birds at the Airport that particular day, the very fact of existence of permanent bird strike danger and of Notam that predicts runway check prior to any take off or landing obliges the Airport to use at least "follow me" vehicle in order to prevent continuous risks by direct observation. Furthermore, according to the High Court judgment, the very fact that in this concrete situation the Defendant did not notice the presence of birds at the Airport does not "exempt" him from responsibility to eliminate that permanent potential danger with any available measures. Therefore, it considers the First Instance Court verdict, in which the Airport's liability for damage caused by sucking in of the bird on behalf of take off of aircraft was established, completely regular.

3. PATRICK CASE – JUDGMENT IN FAVOUR OF DEFENDANT

3.1. Background

Hawaiian Airlines, Inc. and Underwriters at Lloyd's and Certain Insurance Companies, London, seek to recover of the United States the sum of \$ 104.288,51 damages to a Lockheed Electra L-188 aircraft alleged to have been sustained on July 3, 1977, when the aircraft was landing at Patrick Air Force Base.

Hawaiian Airlines is the lessee of the aircraft from Zantop International, Inc. pursuant to written lease. United States is the owner and operator of Patrick Air Force Base. Underwriters and Certain Insurance Companies issued an insurance policy or policies providing insurance coverage to the aforesaid aircraft. Hawaiian Airlines contracted with United States to transport cargo on behalf of the United States Air Force to several of its Air Force Bases, including Patrick. As part of the contract Hawaiian was granted permission to land and take off from air bases of the United States, and United States was to perform certain services for them.



Lockheed Electra L-188

In accordance with the terms of its contract, Hawaiian was granted clearance to land the aircraft at Patrick on July 3, about 9,15 p.m. local time. Immediately before the plane touch down, a flock of birds suddenly flew up from the runway area directly in front of the aircraft. The aircraft struck a number of the birds and some of them were ingested into two of the engines, doing substantial damage to the engines and the aircraft.



The policy in question covered damage to the aircraft from striking objects such as birds and from ingestion into the aircraft's motors, with a deductible of some \$30.000,00. Hawaiian's claim is for some \$30.000,00 and the insurance companies' claims for some \$74.288,51, for a total of \$104.288,51 with interest.

3.2. Complaint

Asserting jurisdiction and the right to recovery under the Federal Tort Claims Act, plaintiffs assert the United States was guilty of negligence in permitting conditions to exist at Patrick which

encouraged the nesting of birds, in permitting birds to nest at or near the facility and particularly the runways of the Air Base, in failing to adequately warn the crew of the aircraft of the presence of the birds, and in failing to divert or delay the landing of the aircraft until the birds had left the area, as a result of which birds suddenly flew up from the runway directly in front of the aircraft and were ingested into the engines, causing damage as aforesaid.

This action being prosecuted under the Federal Tort Claims Act required the Court to apply the law of the State Florida, the place where the claims arose. The right of recovery under the Federal Tort Claims Act must be grounded in negligence or wrongful act or omission on the part of the United States. The Act does not authorize an action against the United States on *strict or absolute liability*. The mere fact there was a bird strike does not, in and of itself, authorize a recovery under the law of Florida. There must be a showing of negligence on the part of the United States.

The parties agree that under Florida law it was duty of defendant *"to use proper care, precaution and diligence in providing and maintaining the airfield in a reasonable safe condition for the purpose to which it is adopted, and is apparently designed to be used"*. A failure to perform any of these duties may be negligence. Therefore it was duty of defendant to see that the airfield was reasonably safe for aircraft and to give proper warning of any danger of which it knew or in the exercise of reasonable care ought to have known. Stated another way *"public airdrome proprietors are obliged to see that the airport is safe for aircraft, or at least to use care to see that it is"*.

3.3. Evidence

We turn to the evidence to see whether the facts establish that the United States was guilty of negligence, which was a proximate cause of the damages. The evidence establishes that the plaintiff's aircraft approached Patrick Shortly before 9,20 p.m. o'clock local time. Its captain had been in constant contact with the FAA Air Traffic Control Center for some time before that hour. At a point about thirty miles out from the Patrick Air Base the captain was switched to the Approach Controller. It is customary for the Approach Controller to furnish the captain with Airport Traffic Information Services (ATIS), which is generally a briefing on the airport, taxiways, runways, boundaries, and whether any hazard exists on the runways, and to guide the aircraft into the airport.

About five miles out, the captain is then switched over to the Control Tower at the Air Base, which will clear the aircraft for landing and designate the runway to land on, as well as furnish any later information concerning conditions at the airport. The captain was not furnished with any information that birds were nesting on the runway or in the vicinity.

The weather was described as clear, normal, with no cloud obstruction. There was no other traffic in the area, which affected operation of the plaintiff's aircraft. At 10.000 feet the aircraft turned on its landing lights. The aircraft entered its glide path proceedings at about 123 knots with good visibility. The captain said that when they were about 50 feet off the ground, and as the aircraft was "coming up on the threshold of the runway we suddenly were completely surrounded with birds. They seem to come right up off the ground, right up into the airplane". The captain said there was a large flock of birds, maybe a hundred, and the minute he saw them, they impacted, requiring that number two engine be shut down. Examination of the aircraft disclosed parts of birds and blood on the landing gears, the wings, fuselage, stabilizers and engines. After making an inspection of the aircraft, the captain went inside the Operations Office, where he talked with two non-commissioned officers. Someone was sent out to the runway to pick up any birds, or parts of birds that could be found, and to place them in a plastic bag. The birds found were identified as egrets.

The parties agree that there is problem at most every airport with birds. Efforts must be made to prevent them from nesting in the area and from roosting or sitting on runways and runway approaches. Program must be planned and put into effect to prevent birds from assembling in and on airports.

Patrick, like most airports, has an Airfield Operations Branch, which is charged with the duty to see that a bird control program is in operation, and to see that regulations are

promulgated to enforce the program. Personnel are on duty at Airport Operations at all times when the airport is open. On the night of July 3rd, two Airfield Specialists were on duty. The program in force at Patrick at the time of the incident in question provided that the:

- a) Control Tower,
- b) Pilots,
- c) Civil engineer,
- d) Weather observation site,
- e) Ground control units, and
- f) Supervisor of Flying

were to report the observation of any birds on or in the airfield. Airport Operations was charged with seeing that persons in Operations were familiar with the program and able to operate the equipment used for bird control. A special vehicle was provided known as Opt. 2. equipped with a radio and loudspeaker system, radio to the control tower, tapes and other equipment. Among the tapes to be played was a sound of a dying seagull, and the sound of a firing pistol. A shut gun was also provided in case birds needed to be killed. A permit to kill birds had been acquired. If birds were sighted or reported in the area, the Opt. 2 would be driven to and around the area, the tapes played, and the guns sounded, as a result of which the birds would generally disperse. Inspection of the field and runways were made more than once each day.

Air warning notices were routinely issued to pilots such as:

“Caution, birds can be expected in or near the airfield”.

Among the regulations was a requirement that any bird problems be reported to Base Operations. The runways were inspected daily and if any dead bird or parts of a dead bird were found, it was to be reported to Operations with information of the location at which found.

The published notices of bird activity cautioned pilots to be on a lookout for birds (the evidence disclosed there were 15 to 20 species of birds in the area, including migratory birds), particularly around water (Patrick Air Force Base is bound on the west by the Banana River and on the east by the Atlantic Ocean), and that they were usually active a half an hour before and after sunrise and sunset.

The evidence established that there were approximately one hundred thousand operations a year from Patrick and that the known bird strikes were very minimal.

3.4. Final decision

Defendant was required to exercise reasonable care to maintain and operate the airfield in a reasonable safe manner, to warn aircraft of any known danger such as the existence of birds on or near the runway, and to use proper precaution and care to keep the runways and runway areas free of any such birds. Defendant established and carried out programs for this purpose and performed its duty in a reasonable manner.

The Court finds that the defendant used proper care and diligence to maintain and operate the airfield in a reasonably safe manner for the purposes for which it was intend to be used and for which it was being used.

No evidence, or any reasonable inference to be drawn from it, establishes negligence on the part of defendant. Plaintiff has failed to carry the burden of establishing negligence on the part of defendant, and the complaint is therefore *DISMISSED*.

4. CONCLUSION

Liability for the damages from the collision of birds and aircrafts in the area of liability of the airport represents the risk, which obviously puts the whole system of measures for prevention of such events in question. Notwithstanding whether regulative body prescribed these measures or the airport itself included them in its acts they should be implemented regularly and with no execution.

Whether it is a system of observing with obligatory information of birds or is it regular visit of the runaway with the vehicle with equipment for frightening or some other method is completely irrelevant from the legal point of view. It is important from the point of view of presumed liability and this is a legal basis that actual legal praxis proclaims as the relevant for the form of liability of the airport, that the potentially liable airport to which the liability is presumed, proves that it has undertaken all measures foreseen for prevention of such an event.

Chronology of the above quoted court procedures shows the possibility of giving the legal qualification of the liability of lack of liability of the airport for the damages – object of the evaluation. From the attitude in “Pula case” that the damage from the collision is just occasional one to the opinion that the airport is liable as the entrepreneur of the dangerous activity to the liability on the principle of presumed liability, legal praxis finally decides for the last one as the justifiable. In this way it settles the dilemma with the establishment of the strict form of liability with the possibility of proving the conditions for exemption from liability with the duty of the airport to show the relevant evidence. Exemption of the airport from the liability for the damage namely the refusal of the accusation like in “Patrick case” represents the significant contribution to the legal praxis and gives the opportunity to the courts to reach the releasing verdict for the airports on the basis of the complete procedure effectuated.

Each single case of collision of birds and airplane gives the opportunity for quantitative and qualitative evaluation of the protective measures undertaken and gives the airport to test and verification whether it has undertaken everything foreseen with safety measures, regulations and other acts for avoiding of the collision between airplane and birds. It is obvious that from case to case some elements can be evaluated differently.

The procedures analyzed show that every act and activity of the airport in sense of safety measures implementation should be recorded with the adequate official records in order to be identified and proved in the case of court procedure. If this is not the case there is a real danger for the airport liability to be established even though safety measures were respected.

So it is more and more obvious that court verdicts become very efficient means for application of prevention methods in this segment of protection of people and property. It is therefore necessary to enlarge the knowledge on eventual legal consequences that could occur in case within certain procedure it is undoubtedly established that safety measures for protection of the airplanes from the bird strikes were failed to be implemented namely that the control over implementation of these methods was not done.

On the basis of this it could be established that:

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