

# Drones May Expose Property Owners to Increased Liability

by Allen R. Wolff and Jorge Aviles

**A**s the use of unmanned aerial vehicles—commonly known as drones—becomes more widespread for professionals, solo operators and amateur enthusiasts alike, so does the risk of liability stemming from drone-related accidents. Since drones are human-operated machines, the cause of a drone accident is likely either human error or machine error. That is, the operator of the drone can lose control when operating it or can precipitate a breakdown through inadequate maintenance. Malfunctions and crashes can also be caused by manufacturing defects.

For a person injured by a drone-related accident, the universe of potentially liable parties might seem confined to the operator or the manufacturer of the drone. But as with a slip-and-fall scenario where an injured customer sues the property owner for allowing a dangerous condition inside a store, the owner of the premises where the drone accident occurred may also be liable. Close calls involving drones have already occurred. In September 2015, for example, a drone hovering over the stadium during a U.S. Open tennis match crashed into the stands. Similarly, a drone interrupted a European Championship soccer match in 2014.

It is a generally accepted legal principle that customers who enter premises at the invitation of the property owner are owed protection against not only dangers of which the owner is aware, but also against dangers that the owner should, in the exercise of reasonable care, have anticipated. That standard of care often encompasses the duty to conduct a reasonable inspection to discover latent dangerous conditions. Property owners therefore need to be increasingly vigilant to protect their invitees from drone accidents.

Specialty insurance policies can be obtained by drone operators to cover some of their potential liabilities. Commercial insurance policies might cover the manufacturer's product liability. Property owners, meanwhile, will likely need to look to their general liability insurance for coverage against drone accident claims. General liability insurance covers a broad scope of liabilities associated with the policyholder's business and can cover multiple locations.



Under a standard form commercial general liability (CGL) policy, liability for “bodily injury” or “property damage” is covered if the “bodily injury” or “property damage” takes place during the policy period and was triggered by an “occurrence.” Most policies define an “occurrence” to include “an accident.”

The fact that the property owner was not directly involved in the operation of the drone should not prevent the owner from obtaining insurance coverage in the event of a drone accident. Courts have noted that such policies cannot be read to require wrongdoing solely on the part of the policyholder because denying insurance coverage in cases where liability is incurred without fault of the policyholder “would reduce indemnity to a shadow.” The standard language for premises-operations insurance generally covers, among other things, an injury or a loss suffered either as a result of an act of negligence or an omission. Accordingly, it is generally accepted that CGL policies cover liabilities arising out of tortious conduct, such as the premises owner's alleged failure to adequately safeguard invitees, even if there are other potentially liable parties involved.

CGL policies often exclude coverage for the policyholder's

## Fine Print

use of aircraft. The customary policy language of an aircraft exclusion usually states that “‘bodily injury’ or ‘property damage’ arising out of the ownership, maintenance, use or entrustment to others of an aircraft, auto or watercraft owned or operated or rented to any insured,” is excluded. Insurance companies might argue that drones constitute aircraft, but such exclusion would never preclude coverage for a premises owner facing liability for an injury caused by a drone that was operated by a third party. Further, endorsements are now available that would specifically add drone coverage to a CGL policy should such an endorsement be necessary.

Property owners, especially those who own property that could attract drone activity, should review their insurance pro-

gram and consult with their broker to make sure they have the right coverage. When a drone-related claim arises, they should not delay in seeking competent insurance counsel to ensure that they receive the full measure of the insurance coverage to which they are entitled. ■

---

**Allen R. Wolff** is a shareholder in Anderson Kill's New York office. His practice concentrates in construction litigation, insurance recovery, and the nexus between the two, as well as in complex commercial litigation.

**Jorge Aviles** is an attorney in the Anderson Kill's New York office. His practice concentrates in corporate and commercial litigation and insurance recovery, exclusively on behalf of policyholders.