

***LEGAL ASPECTS IN CASE OF
WILDLIFE STRIKE WITH SPECIAL
REFERENCE TO AIRPORT OPERATOR
LIABILITY***



***Ante Matijaca
Split Airport
C r o a t i a***

Buenos Aires – 18th September, 2014

INTRODUCTION

- Air traffic participants make a significant efforts in attempting to eliminate wildlife hazard
- In case of wildlife strike they may face the seriousness of different damages and compensation claims
- Legal proceedings
- Implementation of national and international law

In case of:

- material damage
- injury of persons or
- death of persons



as a result of wildlife strike

lack of proper
procedures

lack of adequate
wildlife control

failure to take
other activities

AIRPORT OPERATORS

LEGAL PROCEEDINGS

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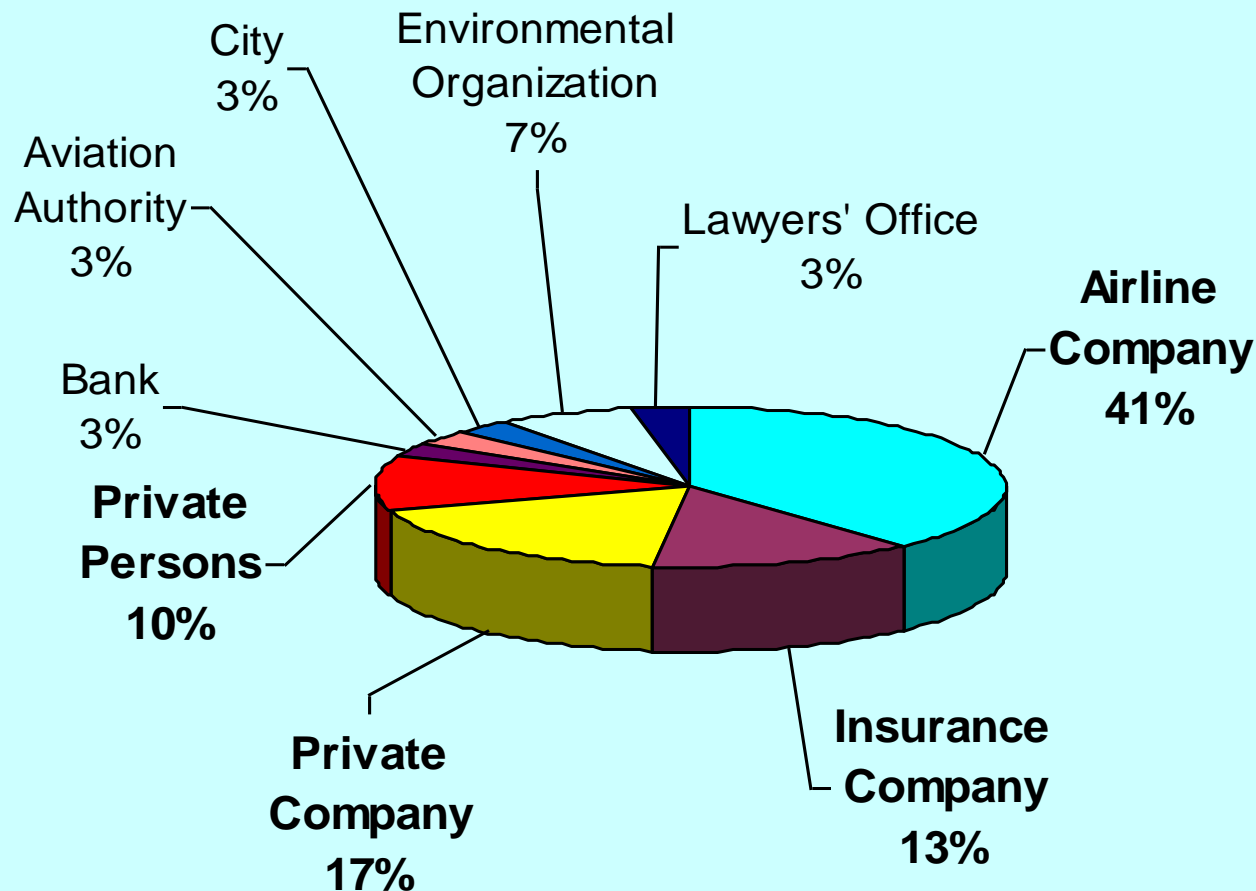
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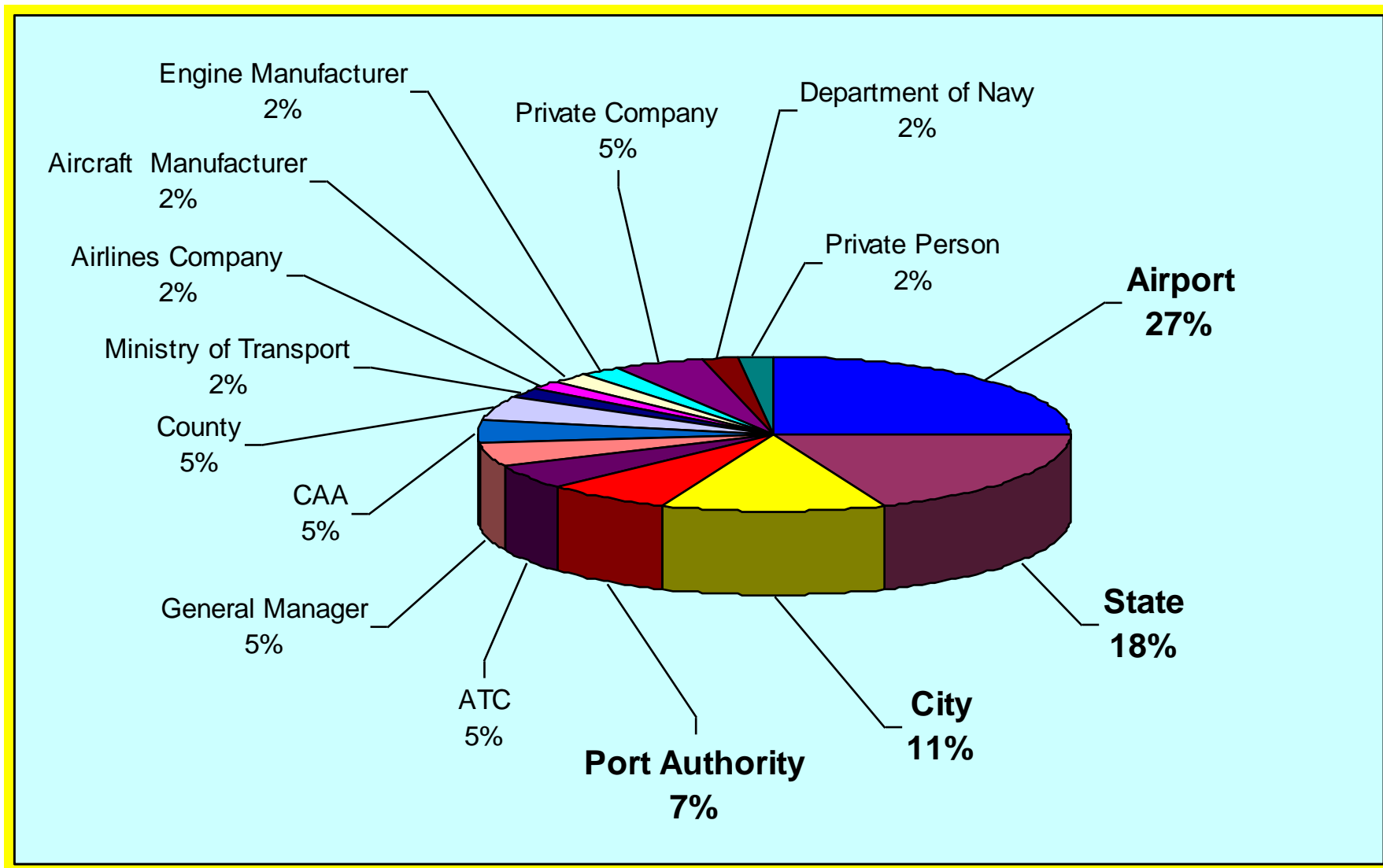
COUNTRIES & COURT JUDGMENTS

Country	In favour of plaintiff	In favour of defendant	In process	Total
ARGENTINA	-	1*	-	1
FRANCE	1	1	-	2
CROATIA	3	-	-	3
ITALY	4	-	2	6
MALTA	1*	-	-	1
THE NETHERLANDS	-	1	-	1
GERMANY	2 + 1/2	1/2	-	3
RUSSIA	2	-	-	2
U S A	8	6	-	14
SPAIN	1	2	-	3
GREAT BRITAIN	1	1	-	2
TOTAL	23+1/2	12+1/2	2	38

PLAINTIFFS



DEFENDANTS



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PLAINTIFFS' SUCCESS (1)

- Airports do not undertake all measures and activities at their disposal for the protection of birds and other animals;
- Airports do not carry out necessary inspection of runways, taxiways and other movement area from time to time;
- Sometimes airport does not warn pilots of the possible presence of birds or other animals on, or in the vicinity of an airport;
- Failings in proper design, construction, operation and maintenance of an airport;

PLAINTIFFS' SUCCESS (2)

- Failings in maner of land use on, or in the vicinity of an airport;
- Failings in maner of zoning in the vicinity of an airport;
- Failings in issued certificates to operate an airport, sometimes for airworthiness of an aircraft and to constructions of engines;
- Failings in education of personnel particularly on importance and consequences on wildlife hazards;

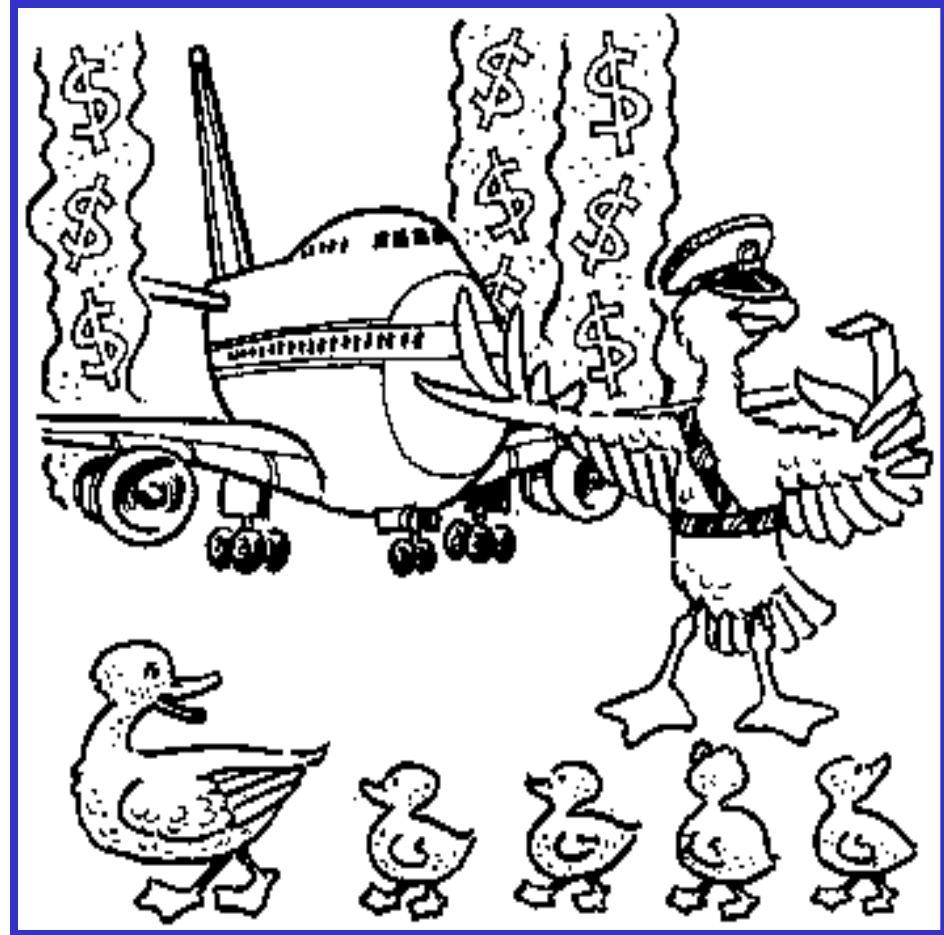
PLAINTIFFS' SUCCESS (3)

- **Very often airport operators, some responsible state entities and other air traffic participants have awareness at very low levels regarding wildlife hazards;**
- **Some airports have not enough financial resources to undertake necessary measures and activities for avoiding collisions between the wildlife and aircrafts;**
- **Failings and mistake in timely and correct communication in case of wildlife strike between all participants in air traffic i.e. communication between airport personnel, air traffic controllers and air carrier personnel;**

PLAINTIFFS' SUCCESS (4)

- **Inadequacy of specialists and other various education personnel at airports;**
 - **Shortage of:**
 - **statistical data and other records,**
 - **preliminary studies about potential danger of wildlife strike,**
 - **adequate airport's plan and program for protection aircrafts from wildlife hazards,**
 - **adequate law provisions**
- have a direct influence on increased danger from birds and other animals on, or in the vicinity of an airport.**

Omissions & Consequences



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DEFENDANTS' SUCCESS (1)

- Airports use proper care and diligence to maintain and operate the airfield in reasonable safe manner;
- For alleviate the wildlife hazard at the airport they are exercising the following measures:
 - removing the food supplies which lure the birds to the property,
 - operating mobile bird-scanning patrols with scare devices throughout airport,
 - issuing appropriate NOTAM to alert pilots to the danger;

DEFENDANTS' SUCCESS (2)

- **Airport is able to prove a proper system of wildlife control and proper adherence to the system by the responsible personnel.**

This is manifesting by producing general records such as:

- **airport books of inspection and patrols,**
- **records of earlier wildlife strikes,**
- **annual airport reports and statistics on wildlife strikes,**
- **airport manuals,**
- **measures which are in use,**
- **work and shift rotas,**

DEFENDANTS' SUCCESS (3)

- vehicle maintenance records,
 - cartridge purchase invoices,
 - staff training reports,
 - staff assessment reports,
 - other documents and facts those are necessary to prove innocent;
- If an airport is able to demonstrate that the bird/wildlife control system in operation at a time when bird/wildlife strike occurs is safe and adequate it has a great chance to be freed from liability;

DEFENDANTS' SUCCESS (4)

- **Effective and timely communication between all participants in air traffic in case of bird/wildlife strike, particularly advance warning of pilots on possibility of bird/wildlife hazards especially in phase of take off or landing from air traffic controllers.**



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LEGAL REGULATIONS

→ NATIONAL REGULATIONS

(Laws, Directives, Orders, Procedures, Circulars, Manuals, Decisions, Standards and Guidelines)

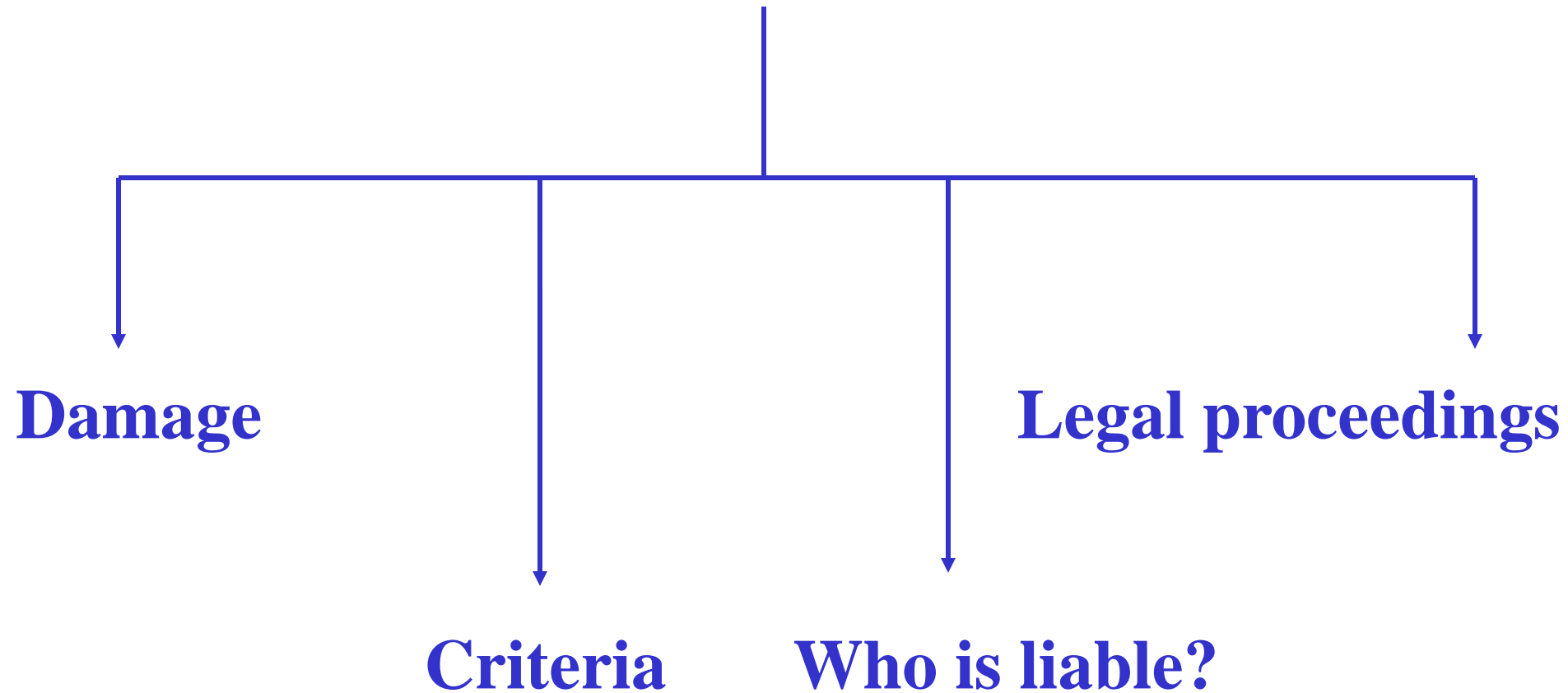
→ INTERNATIONAL REGULATIONS

(International Conventions, EU regulations, IATA Intercarrier Agreement etc.)



POTENTIAL LIABILITY

Elements



Q U E S T I O N ?

If bird strike happens outside bounded and strictly determined airport area, who is than responsible for occured damage ?

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RNW 05

Airport boundary



**m a r s h l a n d
PANTAN**

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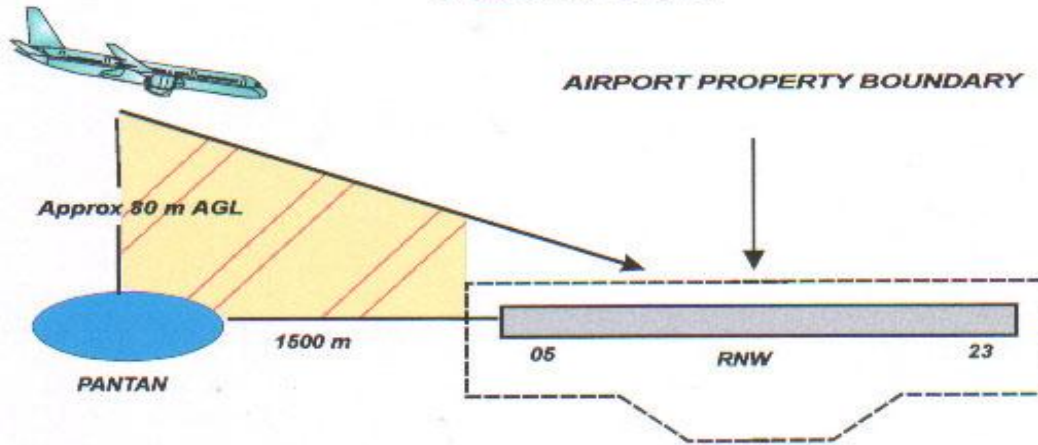
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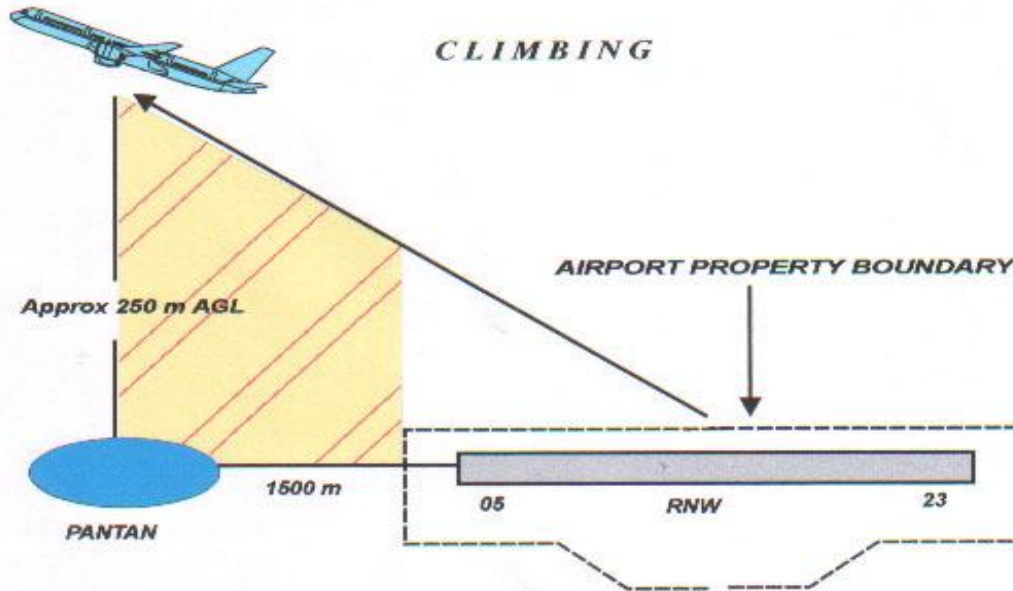
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DESCENDING



CLIMBING



LIABILITY YES or NO ?



*Whom aircraft
operator may
claim damage
compensation
from?*

POTENTIAL DEFENDANTS

In case of eventual legal proceedings

1. Company that manages rubbish-heap ?
2. Ecological association that takes care about Pantan area protection ?
3. Local community on the territory of which Pantan and rubbish-heap are situated ?
4. Ministry (Republic of Croatia) / Agency in charge of air traffic safety (CAA or CCAA) ?
5. Somebody else who is not mentioned here – maybe airport operator ?

NATURE PROTECTION ACT

(Official Gazette No. 80/2013)



Article 170

The Republic of Croatia is not liable for damage caused by wildlife, except in cases specified by this Act.

i.e.

The Republic of Croatia is not liable for damage caused by wild animals except when it comes to strictly protected wild animal species.

Article 172

The injured party is entitled to recover damage compensation in the amount of actual damage caused by the animals defined as strictly protected wild species if the actions and measures have been taken pursuant to the provision of Article 171 of this Act.

AIRPORT'S TASK

1. **Initiate activities to correct way of land use in the vicinity of airport**
2. **Establish close cooperation with experts of regional planning**
3. **Initiate activities to remove more attractions for birds near airport**

EXCLUSION FROM LIABILITY

AIRPORT LIABILITY —————> CIVIL LAW

ELEMENTS :

1. Prevention at or in the vicinity of an airport;
2. Successful defence;
3. Sufficient number of qualitative proofs;
4. Knowledge and experience of the judge in this matter.



QUALITATIVE PROOFS

1. To have all facts completely and correctly established
2. To prove that everything that had to be done was done, and eventual damage occurred without the fault of a defendant

Airport operator shall not be liable for damage occasioned by bird strike if it proves that it had taken all available measures and activities that could reasonably be required to avoid that strike, or if it proves that it had been impossible to take such measures or activities, especially due to safety reasons.

BIRD STRIKE = EVENT → caused by

**EXTRAORDINARY
CIRCUMSTANCES**

The extraordinary circumstances justifying airport operator behaviour at the moment of bird strike must be extraordinary in the sense of necessity to maintain total safety of flight.

Meteorological conditions



↓
unusual
↓



with birds' behaviour and
with operation of the concerned flight

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**EXTRAORDINARY
CIRCUMSTANCES**

&

**BIRDS'
BEHAVIOUR**

**MITIGATING
CIRCUMSTANCES**

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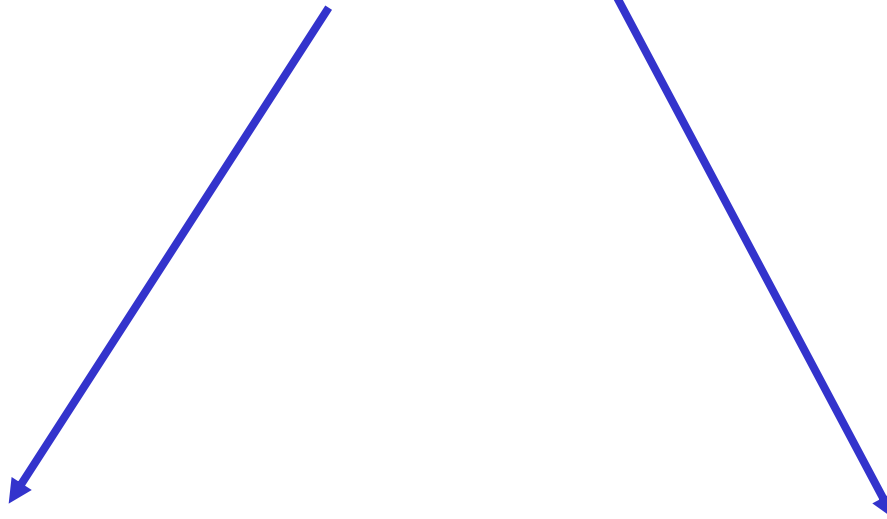
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DAMAGE COMPESATION CLAIMS



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DAMAGES

1. Aircraft

- Material damage
- Indirect damage
- Unexpected damage



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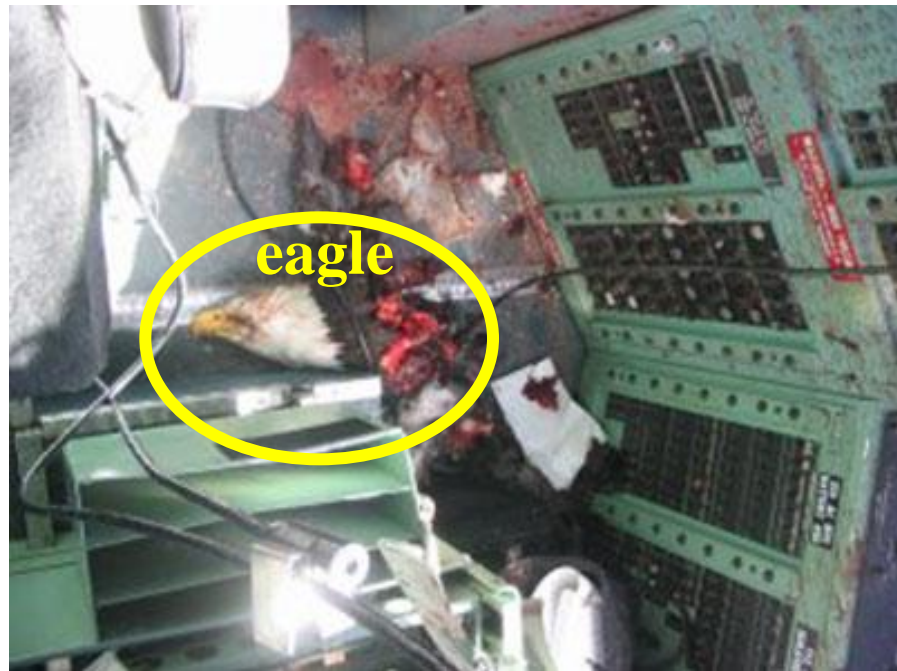


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2. Passengers

- Compensation in case of death
- Bodily injury compensation
- Mental injury compensation if acknowledged by legal system of the respective country

- Other solutions will lessen a danger from
- Develop the between wildlife and aircraft expensive
- Airports are so much to avoid this p
- Threat with ion on international
- T. Scorer:



will lessen a

between wildlife

expensive

so much to

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TER THAN



TO SUCCESS
IS
PREVENTION
PREVENTION
PREVENTION

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World
Birdstrike
Association



20 – 24 OCTOBER 2014;

ICAO / WBA / CARSAMPAF CONFERENCE

MEXICO CITY – SANTA FE

“WORKING TOWARDS STANDARDS”

www.worldbirdstrike.com

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*Thank you very much
for your attention*

Ante Matijaca

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VII WORLDWIDE AIRPORT LAW CONFERENCE

BUENOS AIRES, ARGENTINA

September 17th – 19th 2014

