

AVIATION NOISE CLAIMS UNDER THE FEDERAL TORTS CLAIMS ACT



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AGENDA FOR PRESENTATION



- Tort Claims for Aircraft Noise
 - Trespass
 - Nuisance
- Restrictions on suing Federal Aviation Administration for Aviation Noise
- Federal Tort Claims Act

TORT CLAIMS FOR AIRCRAFT NOISE



- Trespass
- Nuisance. Two Types:
 - Continuing Nuisance
 - Permanent Nuisance
 - Also, distinction between Public and Private Nuisance

TRESPASS



- Trespass constitutes “an interference with that exclusive possession of land and everything below and above it.”
 - It involves an unauthorized physical entry onto another’s land.
 - Such physical invasion need not involve entry by persons or tangible objects and may instead constitute such things as smoke, gasses, and odors.
- Flight by aircraft in the air space above the land of another is a trespass if, but only if,
 - (a) it enters into the *immediate reaches* of the air space next to the land; and
 - (b) it interferes substantially with the other’s use and enjoyment of his land.

NUISANCE



- A nuisance is “that activity which arises from unreasonable, unwarranted or unlawful use by a person of his own property, working obstruction or injury to right of another, or to the public, and producing such a material annoyance, in convenience and discomfort that law will presume resulting damage.” *Black’s Law Dictionary*.
- A nuisance, then, is exactly what it sounds like – something that is a nuisance and for which a court will assess damages.

PUBLIC AND PRIVATE NUISANCE



- A public nuisance interferes with the public as a class, not merely one person or a group of citizens.
- A private nuisance is an interference with a person's enjoyment and use of his land.
- A nuisance can be both public and private, called a “mixed nuisance.”

PERMANENT NUISANCE



- “Permanent nuisances are of a type where by one act a permanent injury is done, and damages are assessed once for all. In such cases, plaintiffs ordinarily are required to bring one action for all past, present and future damage within three years after the permanent nuisance is erected.” *Santa Fe Partnership v. Arco Prods. Co.*, 46 Cal.App.4th 967 (2nd App. Dist. 1996).
- Diminution of property value can only be recovered in a permanent nuisance case.

CONTINUING NUISANCE



- “If a nuisance is a use which may be discontinued at any time, it is considered continuing in character and persons harmed by it may bring successive actions for damages until the nuisance is abated. Recovery is limited, however, to actual injury suffered prior to commencement of each action. Prospective damages are unavailable.” *Santa Fe Partnership v. Arco Prods. Co.*, 46 Cal.App.4th 967 (2nd App. Dist. 1996).
- Loss of use can be recovered in a continuing nuisance case. So can transitory physical damages.

CONTINUING NUISANCE, P.2



- In *Baker v. Burbank-Glendale-Pasadena Airport Authority*, 39 Cal.3d 862 (1985) the California Supreme Court says nuisance and trespass are available against airport owner/operator because they have responsibility to abate noise as much as they can.
- Also states that lawsuits concerning airport operations are “quintessential” continuing nuisance.

SAN FRANCISCO SMALL CLAIMS LITIGATION



- San Francisco International Airport Small Claims Litigation. Group of 170 residents filed small claims lawsuits of \$750 apiece (the limit at the time) for nuisance against the owner/operator of SFIA, the City and County of San Francisco.
- “As a whole, the Plaintiffs are a sincere and reasonable group of people who understand and accept the fact that the Airport is going to remain their neighbor and that they must bear some inconvenience as part of the price of a modern transportation system. But the price they have had to pay here in the subject period is not a reasonable one.” Decision in *Dyson v. City and County of San Francisco*, No. 50885 (Cal. Mun. Ct., San Mateo County 1982).
- Effective because: (1) “reasonable” amount of damages; (2) many plaintiffs; (3) based on continuing nuisance claims; and (4) ability to file claims on a rolling basis.

CHALLENGES PRESENTED BY NEXTGEN



- Many residents live away from the airport, in areas that are below 65 DNL.
- Previous successful lawsuits generally involve suing the airport owner/operator over aviation noise.
- Changes to Flight Routes, Paths, Procedures is the sole responsibility of the F.A.A.
- Many residents were unaware that the changes had been or were being made until after the time to challenge the F.A.A.'s action had passed.
- Suing the F.A.A. is a tough proposition.

RESTRICTIONS ON SUING THE F.A.A.



- The F.A.A. is a federal agency.
 - Very few opportunities to sue the F.A.A. for the actions it takes.
 - No citizen's suit provision that are found in other environmental laws.
 - Small window of opportunity to file suit – 60 days to challenge an F.A.A. action.
- Tort claims, such as trespass and nuisance, are based on state law and therefore cannot be brought in federal court.
 - No federal cause of action for tort claims.
 - F.A.A. is protected by sovereign immunity from tort claims.

FEDERAL TORT CLAIMS ACT



- “Waiver of sovereign immunity.” As such, the law must be strictly followed.
- 28 USC § 1346 (b) states the basis for claims as the “negligent or wrongful act or omission” of any government employee while acting within the scope of his employment.
- Consequently, virtually every kind of negligence action that could be brought against private individuals can be maintained against the government whether based on misfeasance or nonfeasance

FEDERAL TORT CLAIMS ACT, P.2



- The Basic process for filing a claim under the FTCA is this:
 - File an administrative claim with the proper governmental agency
 - The governmental agency has 6 months to grant or deny the claim
 - If the governmental agency denies the claim, the claimant has 6 months to file a Complaint with the U.S. District Court, if he/she so chooses.
 - If the governmental agency neither grants nor denies the claim within 6 months, then after the 6-month period has passed, the claimant has 6 months to file a Complaint with the U.S. District Court, if he/she so chooses.

ADMINISTRATIVE CLAIM REQUIREMENT

- The FTCA requires that a *written* claim must first be presented to the appropriate federal agency.
- **Standard Form 95** may be used for the filing of a claim against the FAA.
<https://www.gsa.gov/portal/forms/download/116418>
- The claim *must* be for money damages in a sum certain.
- The claim must be signed by the claimant or his/her representative.
- One claimant per claim form.
- Notice must be presented to the “appropriate federal agency.”

CLAIM FOR DAMAGE, INJURY, OR DEATH		INSTRUCTIONS: Please read carefully the instructions on the reverse side and supply information requested on both sides of this form. Use additional sheet(s) if necessary. See reverse side for additional instructions.		FORM APPROVED GSA FPMR 101-11.6
1. Submit to Appropriate Federal Agency		2. Name, address of claimant, and claimant's personal representative if any. (See instructions on reverse.) Number, Street, City, State, and Zip Code.		
3. TYPE OF EMPLOYMENT <input type="checkbox"/> MILITARY <input type="checkbox"/> CIVILIAN	4. DATE OF BIRTH	5. MARITAL STATUS	6. DATE AND DAY OF ACCIDENT	7. TIME (A.M. OR P.M.)
8. BASIS OF CLAIM (State in detail the known facts and circumstances attending the damage, injury, or death, identifying persons and property involved, the place of occurrence and the cause thereof. Use additional pages if necessary.)				
PROPERTY DAMAGE				
9. NAME AND ADDRESS OF OWNER, IF OTHER THAN CLAIMANT (Number, Street, City, State, and Zip Code)				
BRIEFLY DESCRIBE THE PROPERTY, NATURE AND EXTENT OF THE DAMAGE, AND THE LOCATION OF WHERE THE PROPERTY MAY BE EXPECTED (See instructions on reverse side)				
PERSONAL INJURY/WRONGFUL DEATH				
10. STATE THE NATURE AND EXTENT OF EACH INJURY OR CAUSE OF DEATH WHICH FORMS THE BASIS OF THE CLAIM. IF OTHER THAN CLAIMANT, STATE THE NAME OF THE INJURED PERSON OR DECEDENT.				
WITNESSES				
11. NAME		ADDRESS (Number, Street, City, State, and Zip Code)		
12. (See instructions on reverse.) AMOUNT OF CLAIM (in dollars)				
12a. PROPERTY DAMAGE	12b. PERSONAL INJURY	12c. WRONGFUL DEATH	12d. TOTAL (If figure to specify more than one cause, indicate by your initials)	
I CERTIFY THAT THE AMOUNT OF CLAIM COVERS ONLY DAMAGES AND INJURIES CAUSED BY THE INCIDENT ABOVE AND AGREE TO ACCEPT SAID AMOUNT IN FULL SATISFACTION AND FINAL SETTLEMENT OF THIS CLAIM.				
13a. SIGNATURE OF CLAIMANT (See instructions on reverse side)		13b. PHONE NUMBER OF PERSON SIGNING FORM	14. DATE OF SIGNATURE	
CIVIL PENALTY FOR PRESENTING FRAUDULENT CLAIM The claimant is liable to the United States Government for a civil penalty of not less than \$5,000 and not more than \$15,000 plus 2 times the amount of damages sustained by the Government. (See 31 U.S.C. 3729.)		CRIMINAL PENALTY FOR PRESENTING FRAUDULENT CLAIM OR MAKING FALSE STATEMENTS Five imprisonment or both. (See 18 U.S.C. 287, 1001.)		
Authorized for Local Reproduction Previous Editions not Usable 95-109		N31N 7349-00-34-4345		STANDARD FORM 95 (REV. 2/2007) PRESCRIBED BY DEPT. OF JUSTICE 24 CFR 14.2

ADMINISTRATIVE CLAIM REQUIREMENT: DAMAGES

- 28 USC § 2675(b) limits the amount of damages awarded to the amount claimed before the administrative agency.
- This must be kept in mind when filing the initial claim so as not to limit yourself as to the damages you may seek if the administrative claim process is unsuccessful and a lawsuit becomes necessary.
- The only exception is when an increased amount is based upon newly discovered evidence not reasonably discoverable at the time of presenting the claim.

9	PROPERTY DAMAGE
NAME AND ADDRESS OF OWNER, IF OTHER THAN CLAIMANT (Number, Street, City, State, and Zip Code)	
BRIEFLY DESCRIBE THE PROPERTY, NATURE AND EXTENT OF THE DAMAGE, AND THE LOCATION OF WHERE THE PROPERTY MAY BE RESPECTED <small>(Copy on this form on reverse side)</small>	
10	PERSONAL INJURY/WRONGFUL DEATH
STATE THE NATURE AND EXTENT OF EACH INJURY OR CAUSE OF DEATH WHICH FORMS THE BASIS OF THE CLAIM. IF OTHER THAN CLAIMANT, STATE THE NAME OF THE INJURED PERSON OR DECEDENT	
11	WITH RAFFS

DAMAGES, P.2



- A cause of action need not be stated in the claim, but if a suit is later brought in the U.S. District Court, it may be brought only on those facts and theories presented in the claim.
- Regulations require “additional information” be provided to support the claim. 28 C.F.R. § 14.4. The extent of the “additional information” is subjective.

DAMAGES, P.3



- What information do you need to present?
- Successful nuisance claims have presented:
 - The specific facts of their situation. A list of dates and times of overflights that caused the damage, along with the damage they caused.
 - Other evidence about aviation noise in general, such as tape recordings, noise measurements, maps, and expert reports on the measurements and on the health effects of noise.
- How you arrived at the valuation of the damages.

STATUTE OF LIMITATION



- The limitations period is a matter of federal not state law. In effect, there are two “statutes of limitations:”
 - The claim must be filed **within two years** after accrual of the cause of action, that is after the event complained of;
 - Suit must be filed **within six months** after the date of mailing by the government of its notice of final denial of the claim by the agency to which it was presented.
- In a claim for continuing nuisance, the cause of action “accrues” whenever an aircraft flies overhead and causes damage.
- The failure of an agency to make final disposition of a claim within six months after it is filed shall, at the option of the claimant any time thereafter, be deemed a final denial of the claim for purposes of this action. See 28 USC § 2675

FILING SUIT IN FEDERAL COURT



- Must be filed in the U.S. District Court for the district in which the claimant lives or the injury took place.
- The controlling law is the law of the state where the act of omission occurred .
- Relief is limited to money damages.
- The amount of recovery cannot exceed the amount claimed in the administrative claim.
- No punitive damages and no prejudgment interest damages.

SUMMARY AND QUESTIONS



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CLAIM FOR DAMAGE, INJURY, OR DEATH		INSTRUCTIONS: Please read carefully the instructions on the reverse side and supply information requested on both sides of this form. Use additional sheet(s) if necessary. See reverse side for additional instructions.		FORM APPROVED OMB NO. 1105-0008	
1. Submit to Appropriate Federal Agency:			2. Name, address of claimant, and claimant's personal representative if any. (See instructions on reverse). Number, Street, City, State and Zip code.		
3. TYPE OF EMPLOYMENT <input type="checkbox"/> MILITARY <input type="checkbox"/> CIVILIAN		4. DATE OF BIRTH	5. MARITAL STATUS	6. DATE AND DAY OF ACCIDENT	7. TIME (A.M. OR P.M.)
8. BASIS OF CLAIM (State in detail the known facts and circumstances attending the damage, injury, or death, identifying persons and property involved, the place of occurrence and the cause thereof. Use additional pages if necessary).					
9. PROPERTY DAMAGE					
NAME AND ADDRESS OF OWNER, IF OTHER THAN CLAIMANT (Number, Street, City, State, and Zip Code).					
BRIEFLY DESCRIBE THE PROPERTY, NATURE AND EXTENT OF THE DAMAGE AND THE LOCATION OF WHERE THE PROPERTY MAY BE INSPECTED. (See instructions on reverse side).					
10. PERSONAL INJURY/WRONGFUL DEATH					
STATE THE NATURE AND EXTENT OF EACH INJURY OR CAUSE OF DEATH, WHICH FORMS THE BASIS OF THE CLAIM. IF OTHER THAN CLAIMANT, STATE THE NAME OF THE INJURED PERSON OR DECEDENT.					
11. WITNESSES					
NAME			ADDRESS (Number, Street, City, State, and Zip Code)		
12. (See instructions on reverse). AMOUNT OF CLAIM (in dollars)					
12a. PROPERTY DAMAGE	12b. PERSONAL INJURY	12c. WRONGFUL DEATH	12d. TOTAL (Failure to specify may cause forfeiture of your rights).		
I CERTIFY THAT THE AMOUNT OF CLAIM COVERS ONLY DAMAGES AND INJURIES CAUSED BY THE INCIDENT ABOVE AND AGREE TO ACCEPT SAID AMOUNT IN FULL SATISFACTION AND FINAL SETTLEMENT OF THIS CLAIM.					
13a. SIGNATURE OF CLAIMANT (See instructions on reverse side).			13b. PHONE NUMBER OF PERSON SIGNING FORM	14. DATE OF SIGNATURE	
CIVIL PENALTY FOR PRESENTING FRAUDULENT CLAIM			CRIMINAL PENALTY FOR PRESENTING FRAUDULENT CLAIM OR MAKING FALSE STATEMENTS		
The claimant is liable to the United States Government for a civil penalty of not less than \$5,000 and not more than \$10,000, plus 3 times the amount of damages sustained by the Government. (See 31 U.S.C. 3729).			Fine, imprisonment, or both. (See 18 U.S.C. 287, 1001.)		

INSURANCE COVERAGE

In order that subrogation claims may be adjudicated, it is essential that the claimant provide the following information regarding the insurance coverage of the vehicle or property.

15. Do you carry accident insurance? Yes If yes, give name and address of insurance company (Number, Street, City, State, and Zip Code) and policy number. No

16. Have you filed a claim with your insurance carrier in this instance, and if so, is it full coverage or deductible? Yes No 17. If deductible, state amount.

18. If a claim has been filed with your carrier, what action has your insurer taken or proposed to take with reference to your claim? (It is necessary that you ascertain these facts).

19. Do you carry public liability and property damage insurance? Yes If yes, give name and address of insurance carrier (Number, Street, City, State, and Zip Code). No

INSTRUCTIONS

Claims presented under the Federal Tort Claims Act should be submitted directly to the "appropriate Federal agency" whose employee(s) was involved in the incident. If the incident involves more than one claimant, each claimant should submit a separate claim form.

Complete all items - Insert the word NONE where applicable.

A CLAIM SHALL BE DEEMED TO HAVE BEEN PRESENTED WHEN A FEDERAL AGENCY RECEIVES FROM A CLAIMANT, HIS DULY AUTHORIZED AGENT, OR LEGAL REPRESENTATIVE, AN EXECUTED STANDARD FORM 95 OR OTHER WRITTEN NOTIFICATION OF AN INCIDENT, ACCOMPANIED BY A CLAIM FOR MONEY

Failure to completely execute this form or to supply the requested material within two years from the date the claim accrued may render your claim invalid. A claim is deemed presented when it is received by the appropriate agency, not when it is mailed.

If instruction is needed in completing this form, the agency listed in item #1 on the reverse side may be contacted. Complete regulations pertaining to claims asserted under the Federal Tort Claims Act can be found in Title 28, Code of Federal Regulations, Part 14. Many agencies have published supplementing regulations. If more than one agency is involved, please state each agency.

The claim may be filled by a duly authorized agent or other legal representative, provided evidence satisfactory to the Government is submitted with the claim establishing express authority to act for the claimant. A claim presented by an agent or legal representative must be presented in the name of the claimant. If the claim is signed by the agent or legal representative, it must show the title or legal capacity of the person signing and be accompanied by evidence of his/her authority to present a claim on behalf of the claimant as agent, executor, administrator, parent, guardian or other representative.

If claimant intends to file for both personal injury and property damage, the amount for each must be shown in item number 12 of this form.

DAMAGES IN A SUM CERTAIN FOR INJURY TO OR LOSS OF PROPERTY, PERSONAL INJURY, OR DEATH ALLEGED TO HAVE OCCURRED BY REASON OF THE INCIDENT. THE CLAIM MUST BE PRESENTED TO THE APPROPRIATE FEDERAL AGENCY WITHIN TWO YEARS AFTER THE CLAIM ACCRUES.

The amount claimed should be substantiated by competent evidence as follows:

- (a) In support of the claim for personal injury or death, the claimant should submit a written report by the attending physician, showing the nature and extent of the injury, the nature and extent of treatment, the degree of permanent disability, if any, the prognosis, and the period of hospitalization, or incapacitation, attaching itemized bills for medical, hospital, or burial expenses actually incurred.
(b) In support of claims for damage to property, which has been or can be economically repaired, the claimant should submit at least two itemized signed statements or estimates by reliable, disinterested concerns, or, if payment has been made, the itemized signed receipts evidencing payment.
(c) In support of claims for damage to property which is not economically repairable, or if the property is lost or destroyed, the claimant should submit statements as to the original cost of the property, the date of purchase, and the value of the property, both before and after the accident. Such statements should be by disinterested competent persons, preferably reputable dealers or officials familiar with the type of property damaged, or by two or more competitive bidders, and should be certified as being just and correct.
(d) Failure to specify a sum certain will render your claim invalid and may result in forfeiture of your rights.

PRIVACY ACT NOTICE

This Notice is provided in accordance with the Privacy Act, 5 U.S.C. 552a(e)(3), and concerns the information requested in the letter to which this Notice is attached. A. Authority: The requested information is solicited pursuant to one or more of the following: 5 U.S.C. 301, 28 U.S.C. 501 et seq., 28 U.S.C. 2671 et seq., 28 C.F.R. Part 14.

- B. Principal Purpose: The information requested is to be used in evaluating claims.
C. Routine Use: See the Notices of Systems of Records for the agency to whom you are submitting this form for this information.
D. Effect of Failure to Respond: Disclosure is voluntary. However, failure to supply the requested information or to execute the form may render your claim "invalid."

PAPERWORK REDUCTION ACT NOTICE

This notice is solely for the purpose of the Paperwork Reduction Act, 44 U.S.C. 3501. Public reporting burden for this collection of information is estimated to average 6 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Director, Torts Branch, Attention: Paperwork Reduction Staff, Civil Division, U.S. Department of Justice, Washington, DC 20530 or to the Office of Management and Budget. Do not mail completed form(s) to these addresses.