

The 12th Annual McGill Conference on International Aviation
Montreal, 18-19 October 2019

LIABILITY OF AIRPORTS, ANSPs, AND MAINTENANCE
PROVIDERS

LAURA PIERALLINI

Name Partner at Studio Pierallini, Professor at LUISS University, Rome



STAKEHOLDERS



FOCUS ON

- ❖ Airports (Service Level Agreements - SLA)
- ❖ Standard Ground Handling Agreements (SGHA)
- ❖ Air Navigation Service Providers (ANSPs)
- ❖ Maintenance (Aircraft/Airports)
- ❖ Case-law

RELATIONSHIPS BETWEEN STAKEHOLDERS

HANDLERS



AIRPORTS



SERVICE PROVIDERS

AIRLINES



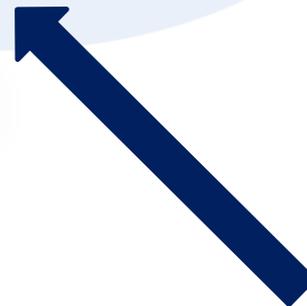
MAINTENANCE



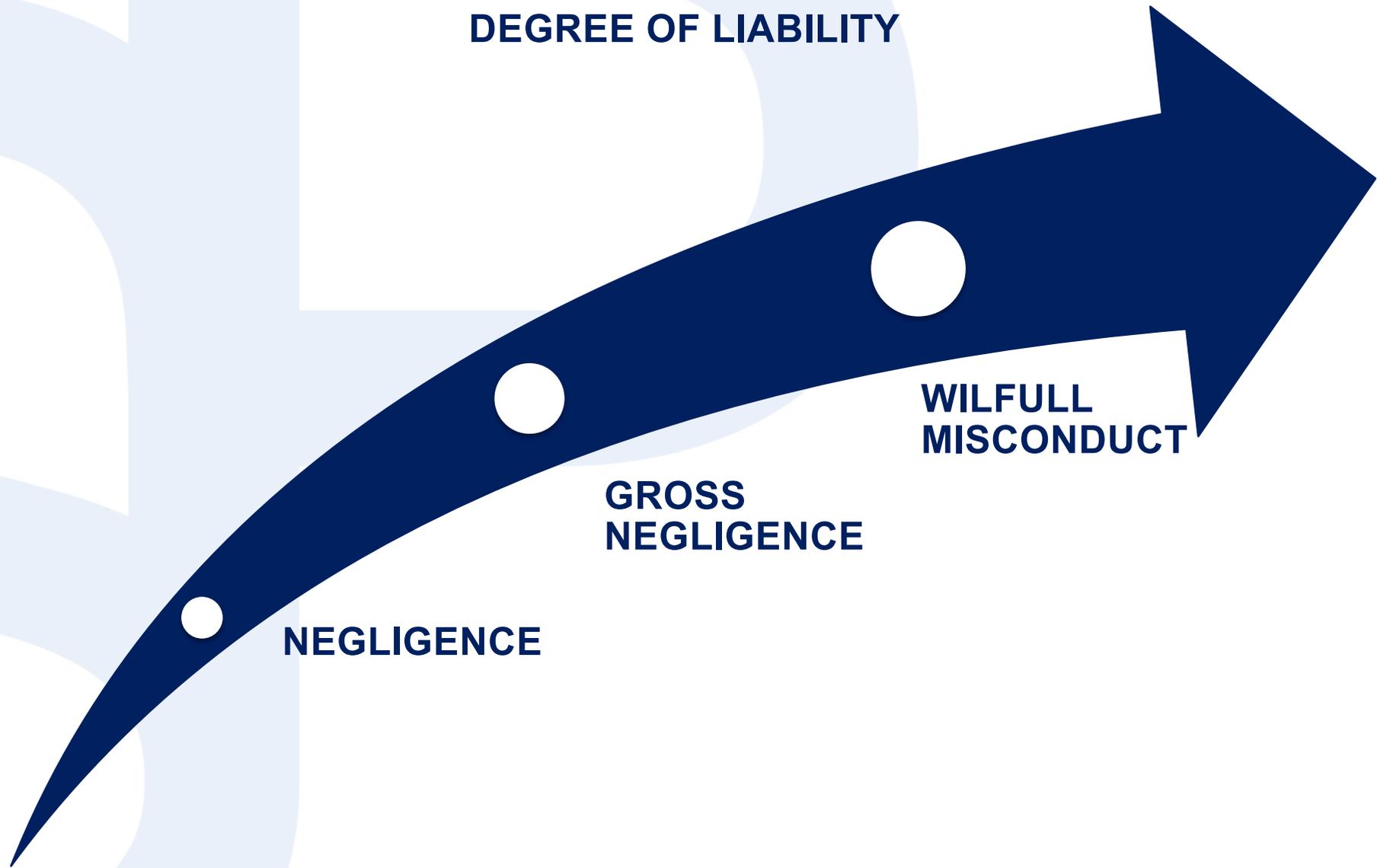
PASSENGERS



ANSPs



DEGREE OF LIABILITY



NEGLIGENCE

**GROSS
NEGLIGENCE**

**WILFULL
MISCONDUCT**

AIRPORTS

CHAIN OF LIABILITY



AIR CARRIERS

AIRPORTS

**SERVICE PROVIDERS
(INCLUDING GROUND HANDLERS)**

Service Level
Agreements

+

SGHA (where
handling services are
provided by airport)

- Mostly awarded by public tender
- Relation between airport managers and service providers is governed by local law

SGHA (if handling is liberalised)

A Service Level Agreement (SLA) is a negotiated agreement between two parties where the level of service is formally defined. Each specific area of the service scope should be subjected to the same degree of scrutiny.

As airports are only built to serve as aviation infrastructure enabling airlines to operate, **airlines are the primary users** of airports and a major source of revenue for airport authorities and operators, ancillary industries and services.

- Airport contract liability is governed by the SLA (e.g. birdstrike; strike airport staff)
- Terms and conditions governing the access to the airport area accepted by airlines (even on a *de facto* basis)



The IATA Standard Ground Handling Agreement

The IATA SGHA provides general terms and conditions for optional use of air carriers and handlers.

The Aviation Ground Services Agreements Working Group (AGSA WG) publishes new versions of the SGHA every 5 years following detailed reviews.

The 2018 version of the SGHA in force, as published in the IATA Airport Handling Manual (AHM), is the latest review.



GROUND HANDLING SERVICES PROVIDED BY THE AIRPORT OR THIRD PARTIES



EUROPE

Directive 96/67/CE – liberalisation of ground handling services at EU airports with more than 2 million passengers or 50 000 tonnes of freight per year.



REST OF THE WORLD

In North America generally the airports are not involved in the provision of ground handling services and in most of the airports more than two providers are active.

In several other countries (mainly in Middle East and Far East) market is over-regulated and often characterized by a single handling provider per airport.

LIABILITY

ARTICLES 8.1 AND 8.5 OF THE SGHA

Article 8.1

Carrier shall not make any claim against the Handling Company and shall indemnify it (subject as hereinafter provided) against any legal liability for claims or suits, including costs and expenses incidental thereto, in respect of, *inter alia*:

[...] (d) damage to or loss of property owned or operated by, or on behalf of, the Carrier and **any consequential loss or damage**; arising from an act or omission of the Handling Company in the performance of this Agreement unless done with intent to cause damage, death, delay, injury or loss or recklessly and with the knowledge that damage, death, delay, injury or loss would probably result.

Article 8.5

Notwithstanding Sub-Article 8.1(d), the Handling Company shall indemnify the Carrier against any **physical loss of or damage** to the Carrier's Aircraft caused by the Handling Company's negligent act or omission **PROVIDED ALWAYS THAT the Handling Company's liability shall be limited to any such loss of or damage to the Carrier's Aircraft in an amount not exceeding the level of deductible under the Carrier's Hull All Risk Policy which shall not, in any event, exceed USD 1,500,000 except that loss or damage in respect of any incident below USD 3,000 shall not be indemnified.**

For the avoidance of doubt, save as expressly stated, this Sub-Article 8.5 does not affect or prejudice the generality of the provisions of Sub-Article 8.1 including the principle that the **Carrier shall not make any claim against the Handling Company and shall indemnify it against any liability in respect of any and all consequential loss or damage howsoever arising.**

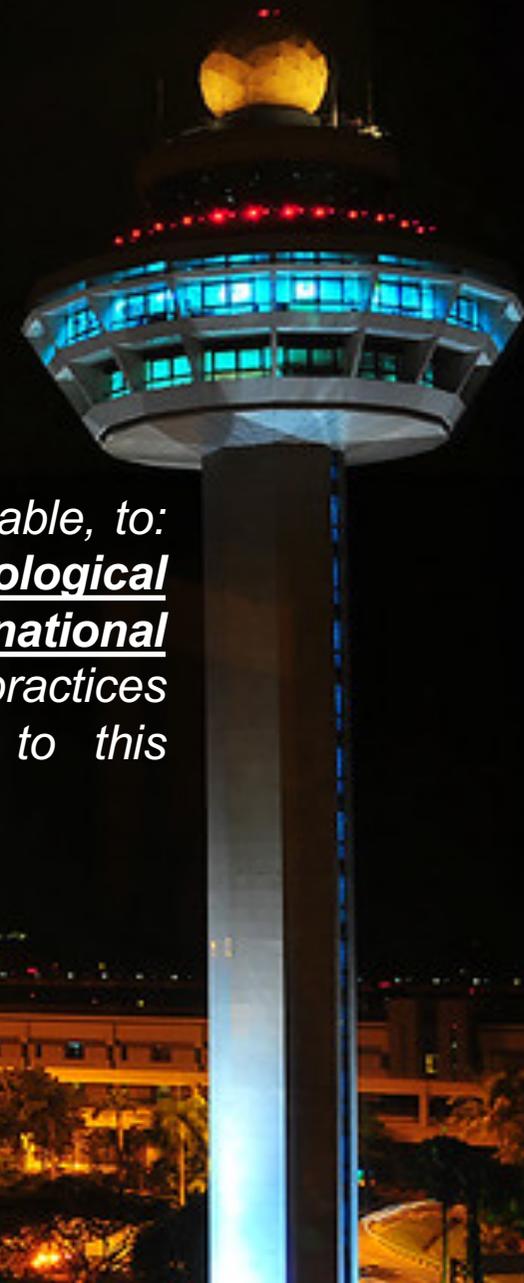
CHICAGO CONVENTION

Article 1:

«Each State has complete and exclusive sovereignty over the airspace above its territory»

Article 28:

«Each contracting State undertakes, so far as it may find practicable, to: Provide, in its territory, airports, radio services, meteorological services and other air navigation facilities to facilitate international air navigation, in accordance with the standards and practices recommended or established from time to time, pursuant to this Convention»



The situation varies from country to country even among EU Member States

State Primary Responsibility

The State is primarily responsible for any ANS failures but may have a right of recourse against the ANSP

State Ultimate Responsibility

The ANSP is primarily responsible but States provides compensation for damages that ANSP is unable to pay

Service Provide Exclusive liability

The ANSP is liable. The State does not have any legal duty to provide assistance to ANSP



AIRCRAFT MAINTENANCE



- Line maintenance at airports
- Maintenance Repair Overhaul (MRO)
- Supply Chain Contracts
- «umbrella» technical services contracts

- Providers to be certified
- Applicable law chosen by parties

AIRPORT'S INFRASTRUCTURES



- All the activities for the airport maintenance (cleaning agents, building & airfield maintenance repairs, greenland maintenance)
- Awarded by public tender (in Europe: Directive 2014/23/EU; Directive 2014/24/EU; Directive 2014/25/EU)

- Providers to be certified
- Contracts governed by local laws

HANDLERS LIABILITY CASES

Italian Courts served several judgments concerning airport handlers liability for damages to the aircraft caused by handling operations.

Civil Court of Verona (judgment no. 2656/2011)

The judgement regarded an action for damages caused by the airport handler to an aircraft operated by an Italian air carrier. Specifically, whilst towing the right wing of the aircraft bumped into the sliding hatch of a hangar, thus rendering the aircraft unsuitable for flight for a period of more than 20 days.

The Civil Court of Verona held the airport handler responsible not only for the damages to the aircraft but also for the damages consequential to the aircraft's grounding and the reprogramming of flight schedules, along with the non proprietary damage to the commercial image and professional reputation of the air carrier amounting to about 3 million Euros.

Civil Court of Bari (judgment no. 1492/2011)

The judgement regarded a request for damages caused by airport handler to an aircraft used by an Italian air carrier. Specifically, whilst loading and unloading luggage, the baggage carousel kept bumping into the aircraft causing the fuselage's lower antenna to break and thus the aircraft's inability to fly.

The Civil court of Bari rejected the claim, holding that:

- a) the coexistence of contractual and non contractual actions was inadmissible;*
- b) the article 8.1 SGHA exemption was applicable, following the handler's fault in handling operations.*

Both judgments have been challenged before the Italian Supreme Court and the relevant cases are pending.



CONFLICTING CASE-LAW

- Until a few years ago the prevailing trend of the Italian Supreme Court case-law was based on quite outdated precedents of the early nineties. According to such case-law trend, the delivery of luggage, cargo and mail by an airline to a handling company would constitute a contract for a third party beneficiary.
- More recent case-law decisions of the Italian Supreme Court, which now take into consideration the liberalization of the market of ground-handling services and is so in line with the approach adopted in most of the other countries, where the Montreal Convention is interpreted in the sense that the ground-handling companies fall within the concept of airlines' auxiliaries as per article 30 of Montreal Convention.

Given the peculiar subject matter, the uncertainty on this case-law was discussed by the so called “Sezioni Unite” (i.e. joint sections) of the Italian Supreme Court.



ITALIAN SUPREME COURT JUDGEMENT NO. 2850/2017

- (i) **the handler is an auxiliary of the airline**, because without its support the airline cannot take in charge nor redeliver the freight
- (ii) both the airline and the handler are jointly liable toward the passengers for damages and/or losses (namely: **the airline would bear a liability in contract; the handler a liability in tort**)
- (iii) in the event that the Montreal Convention must apply, the handlers avail themselves of the limitations of liability provided for the airlines



THANK YOU FOR YOUR KIND ATTENTION



www.studiopierallini.it
Viale Liegi, 28
I-00198 Roma, Italy
Tel: +39 06 88 41 713
segreteria@pierallini.it



@laurapierallini



@studiopierallini