

WORLDWIDE AIRPORTS  
LAWYERS ASSOCIATION



XI

Welcome to WALA XI  
Bogotá, Colombia  
October 9-11, 2019

# *BIRD STRIKE*

&

# *AIRPORT OPERATOR LIABILITY*



*Ante Matijaca*  
*Croatia*



# INTRODUCTION

## → Definition

*A bird strike is strictly defined as a collision between a bird and an aircraft which is in flight or on a take-off or landing roll.*

*The term is often expanded to cover other wildlife strikes - with bats or different ground animals. In terminology and communication term bird strike is usually used as a common term.*



# CIVIL AND MILITARY BIRD STRIKE HISTORY

<b>First recorded strike</b>	<b>1905</b>
<b>First recorded fatal strike</b>	<b>1912</b>
<b>Aircrafts Destroyed</b>	<b>614</b>
<b>Fatalities</b>	<b>551</b>
<b>Estimated Cost Civil (2018)</b>	<b>USD \$ 2B / year</b> <b>USD \$ 50.325 / strike<sup>3</sup></b>

# FATALITIES AND DESTROYED AIRCRAFTS - WORLDWIDE

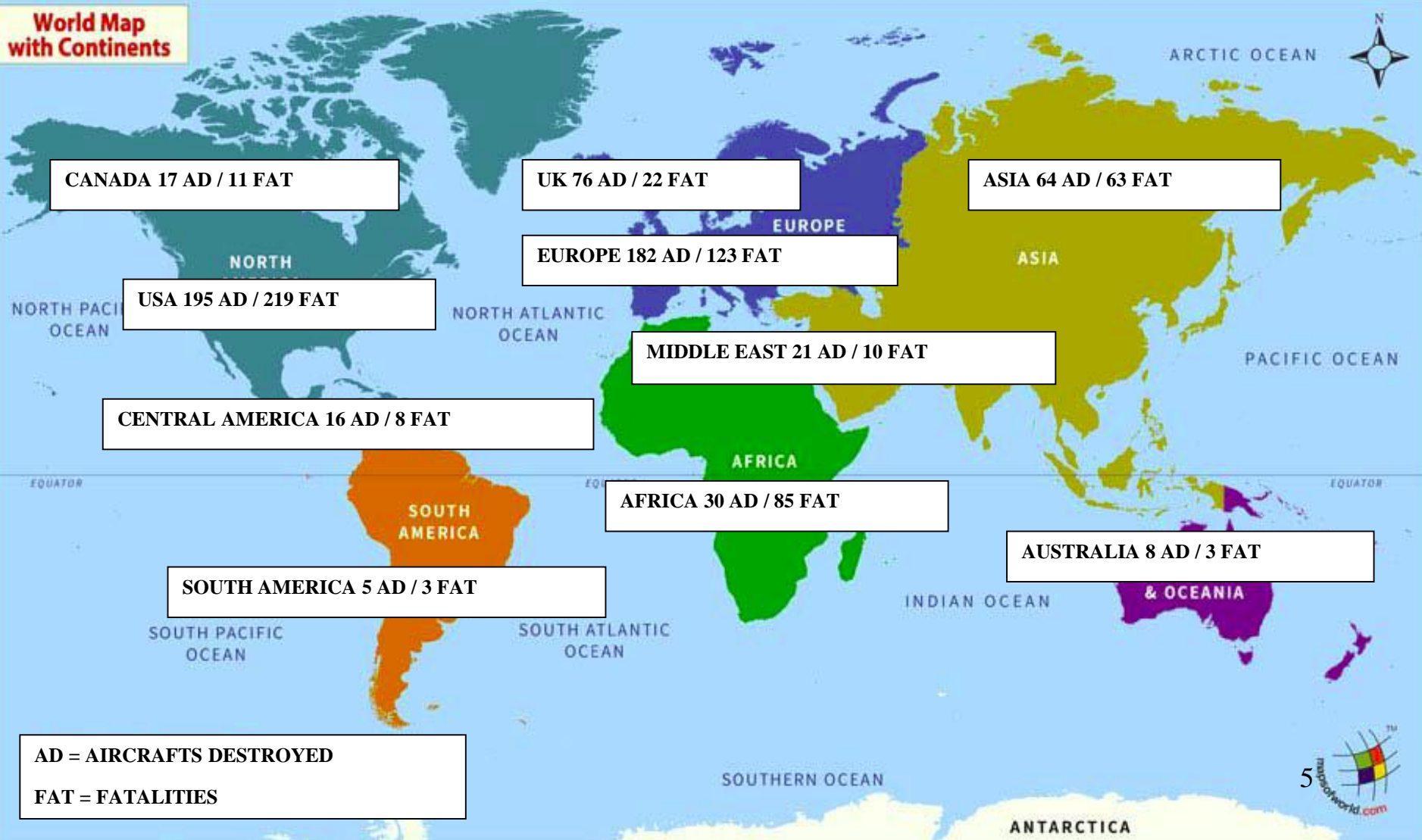
	No. Destroyed Aircrafts	No. Fatalities
<b>Civil</b>	<b>203</b>	<b>319</b>
<b>Military</b>	<b>411</b>	<b>212</b>
<b>Total</b>	<b>614</b>	<b>551</b>

## NOTES

Reporting diligence varies significantly, figures are probably grossly underestimated

# BIRD STRIKE CAUSED ACCIDENTS BY REGION (CIVIL & MILITARY)

World Map with Continents



AD = AIRCRAFTS DESTROYED

FAT = FATALITIES

# QUESTIONS

- 1. Who will be liable for caused damages?**
- 2. What kind of damages can appear?**
- 3. Who is entitled to demand compensation for the occurred damages?**
- 4. Who will pay compensation?**



# **DAMAGE AND LIABILITY FOR DAMAGE IN CASE OF BIRD STRIKE**

- 1. Direct damage – material damage of an aircraft**
- 2. Indirect damage**
- 3. Non – material damage**



# **CRITERIA FOR ESTABLISHING OF DAMAGE LIABILITY**

- 1. The exact point of bird strike (inside or outside of airport boundaries)**
- 2. The moment of bird strike – phase of flight (approach, landing, take-off, climb, cruising etc.)**
- 3. The extent and amount of damage (thousands \$/strike)**
- 4. Consequences of bird strike with regard to safety of further flight**
- 5. Actions of all air traffic participants that are taken prior to the concrete bird strike**
- 6. Parties that will be involved in the eventual legal proceedings**



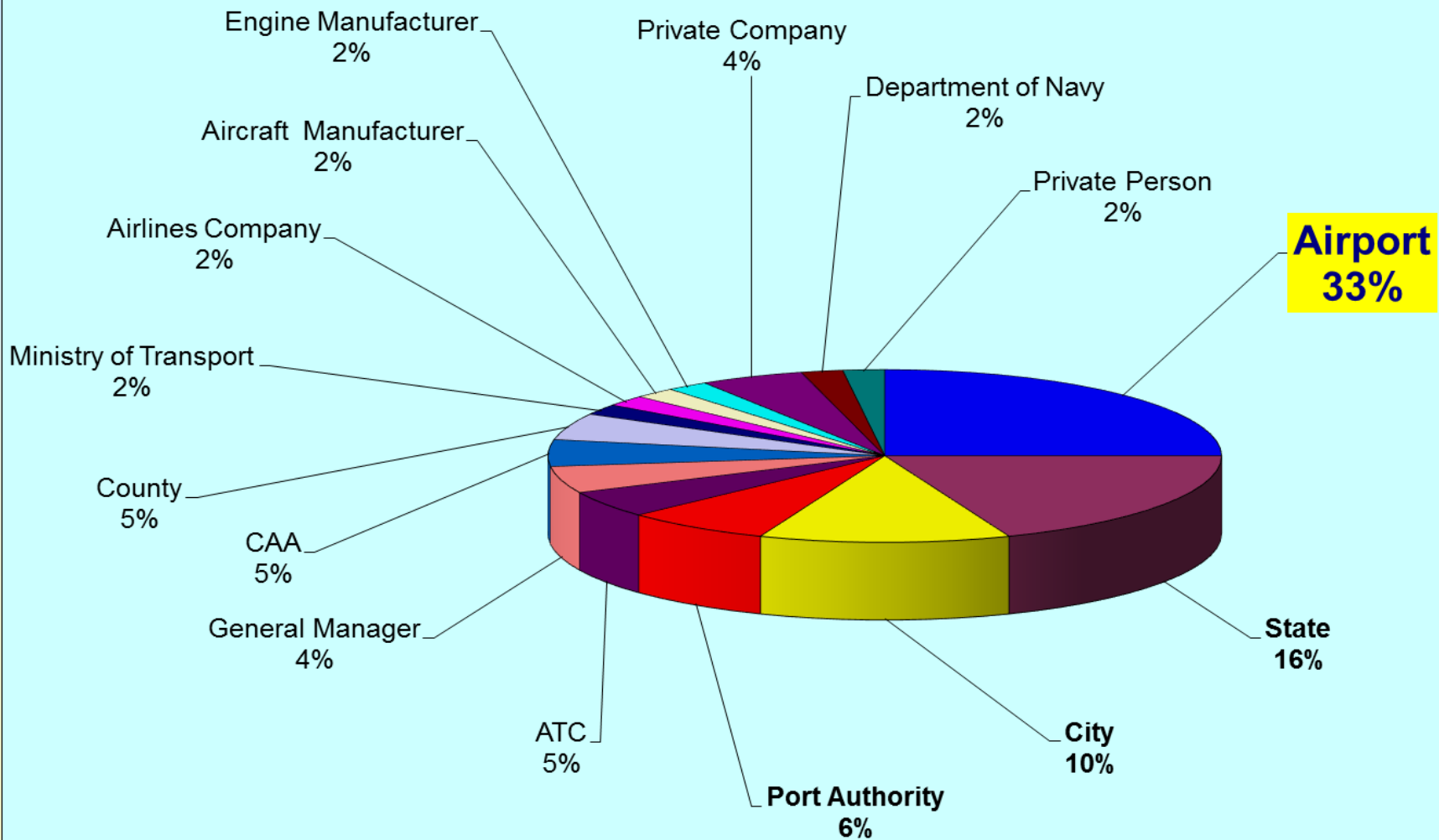


<b>Country</b>	<b>In favour of plaintiffs</b>	<b>In favour of defendants</b>	<b>Total</b>
<b>ARGENTINA</b>	<b>1</b>	<b>-</b>	<b>1</b>
<b>CROATIA</b>	<b>3</b>	<b>-</b>	<b>3</b>
<b>FRANCE</b>	<b>1</b>	<b>1</b>	<b>2</b>
<b>GERMANY</b>	<b>1/2</b>	<b>1/2</b>	<b>1</b>
<b>ITALY</b>	<b>3</b>	<b>-</b>	<b>3</b>
<b>MALTA</b>	<b>1</b>	<b>-</b>	<b>1</b>
<b>THE NEDERLANDS</b>	<b>-</b>	<b>1</b>	<b>1</b>
<b>RUSSIA</b>	<b>1</b>	<b>-</b>	<b>1</b>
<b>SPAIN</b>	<b>1</b>	<b>2</b>	<b>3</b>
<b>UNITED KINGDOM</b>	<b>1</b>	<b>1</b>	<b>2</b>
<b>USA</b>	<b>9</b>	<b>5</b>	<b>14</b>
<b>TOTAL</b>	<b>21 + 1/2</b>	<b>10 + 1/2</b>	<b>32<sup>9</sup></b>

<b>Country</b>	<b># Cases</b>	<b>Plaintiffs</b>	<b>Defendants</b>
<b>ARGENTINA</b>	1	Airline Company	<b>Airport</b>
<b>CROATIA</b>	3	Insurance Company, Airline Company	<b>Airport (2),</b> Insurance Company
<b>FRANCE</b>	2	Private Company, Insurance Company (7) Airline Company	<b>Airport (2),</b> State, Chamber of Commerce, General Manager
<b>GERMANY</b>	1	Private Company	Private Person
<b>ITALY</b>	3	Airline Company (2), Insurance Company	<b>Airport (2),</b> Ministry of Transport Port Authority ATC, CAA General Manager
<b>MALTA</b>	1	Airline Company	<b>Airport</b>
<b>THE NETHERLANDS</b>	1	Airline Company	<b>Airport</b>
<b>RUSSIA</b>	1	Airline Company	<b>Airport</b>
<b>SPAIN</b>	3	Airline Company (3)	<b>Airport (3)</b>
<b>UNITED KINGDOM</b>	2	Airline Company (2)	<b>Airport (2),</b> CAA, County
<b>USA</b>	14	Insurance Company (3), Airline Company (5), Private Person (3), Private Company (2), Bank, City, CAA, Environmental Org. (2), Lawyer Office	Port Authority (2), Airline Company, County, <b>Airport (2),</b> State (8), City (5), CAA, Aircraft Manufacturer, Engine Manufacturer, General Manager, ATC, Ministry of Defence



# DEFENDANTS



# QUESTIONS

- What are the main reason why airport operator is the first who will be sued?

**OMISSIONS**



**CONSEQUENCES**



**&**

- What are the possibilities of exoneration of airport from liability in case of bird strike?



# Q U E S T I O N ?

*Whom an airline my claim damage compensation from in case of bird strike outside an airport boundaries?*



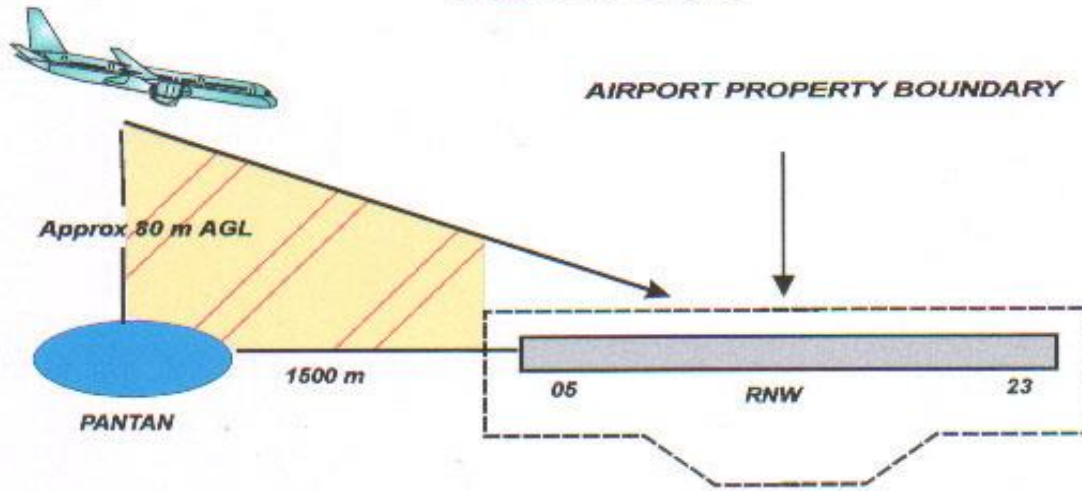
**RNW 05**

**Airport boundary**

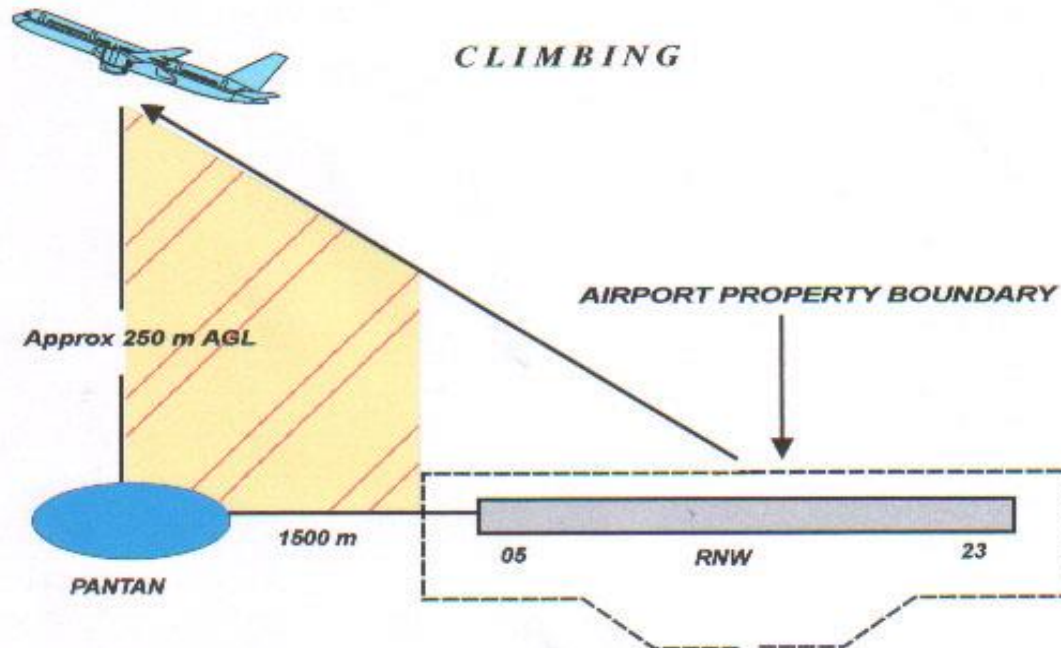


**m a r s h l a n d  
PANTAN**

# DESCENDING



# CLIMBING



# SUBJECTIVE LIABILITY

- **The carrier must prove presence of general conditions for liability:**
  - **damage event,**
  - **loss and cause-and-connect connection between damage event and loss.**
- **Airport operator:**
  - **in order to exempted from liability must prove that he is not guilty for damage, i.e.**
  - **he took all available measures to prevent or reduce presence of birds in airport area.**





# ELEMENTS

- **Prevention at, or in the vicinity of an airport**
- **Successful defence**
- **Knowledge and experience of the judge in this matter**
- **Sufficient number of qualitative proofs**



# QUALITATIVE PROOFS

1. To establish all facts completely and correctly
2. To prove that everything that had to be done was done, and that 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



**EXTRAORDINARY  
CIRCUMSTANCES**

**&**

**BIRDS'  
BEHAVIOUR**

**MITIGATING  
CIRCUMSTANCES**



# THE EVENT

13 September 1996 at 3,11 p.m.

B-737-200 reg. 9A-CTB

Pula Airport

Seagull



# PARTIES & COURTS

→ **PLAINTIF: CROATIA INSURANCE Co.**

→ **DEFENDANT: PULA AIRPORT Ltd.**

→ **AMOUNT OF COMPENSATION:  
USA \$ 140.123,69**

→ **1st INSTANCE COURT:  
MUNICIPAL COURT IN PULA**

→ **2nd INSTANCE COURT:  
COUNTY COURT IN PULA**



# FINAL COURT DECISION

On 18<sup>th</sup> April 2000 the Pula County Court reaches the verdict in which it dismisses the appeal of the defendant and confirms the 1<sup>st</sup> 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 1<sup>st</sup> Instance Court stated the facts regularly and precisely, and that it applied the valid material legislation;
- The accused airport is not liable on the grounds of objective liability, but it is liable on the ground of *presumed – subjective*

*liability*









**WHAT HAPPENS IF A BIRD  
FLIES INTO A PLANE ENGINE?**

# CONCLUSION

- *From the aspect of presumed liability it is important that potentially liable airport, whose liability is actually presumed, proves that it undertakes all measures predicted for prevention of such events.*
- *Every singular case of bird strike actually represents the possibility for evaluation of protective and preventive measures to avoid bird strike.*
- *Airports must do so much to avoid this problem*
- *T. Scorer: “Prevention is better than legal liability”*



*Thank you very much for  
your attention*

*Ante Matijaca* 28