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Husch Blackwell Springfield attorneys Amanda Tummons, David Agee and Michael Cosby are part of the firm's new 30-member unmanned aircraft systems practice group.

FAA seeks to nail down drone regulations as Husch Blackwell launches a new practice group to sort through gray skies

by Emily Letterman · elletterman@sbj.net

When Seattle Space Needle officials tweeted, "Still standing after a drone strike," they were only half kidding.

The Seattle Police Department apprehended an Amazon.com (Nasdaq: AMZN) employee July 24 after the man flew a four-propeller, camera-equipped drone near the landmark, close enough to cause tourist alarm.

National news reports indicate the man was only seeking to test the drone's camera, not cause harm to the Needle. However, the incident is indicative of a larger problem brewing within the Federal Aviation Administration: how to regulate drone use.

Officially called unmanned aircraft systems by the FAA, the aviation authority is still working out the kinks regarding use in a rapidly changing marketplace.

Currently, all commercial UAS use is prohibited.

"We started using drones about two years ago for surveillance, but everything in the news and this being such a hot topic, we have backed off that," said Tim Brenner, owner of Springfield-based private investigation firm Southern Missouri Judicial Services. "It's handy, but not essential to my business. I don't want to become case law."

The issue won't settle until the FAA completes a new rulemaking process as mandated by Congress in 2012. According to its website, along with four years of funding for the agency, lawmakers ordered it "to establish a roadmap for getting UAS integrated into the national airspace." The regulations and expanded access for commercial UAS is supposed to be granted no later than Sept. 30, 2015. However, local attorney David Agee said that's unlikely to happen.

"The FAA is already behind in the process," said Agee, a partner in Husch Blackwell LLP's Springfield office. "This is a new frontier and the current law leaves a lot of room for confusion."

"People think just because they can buy something off the shelf, they have the right to fly it and that's simply not the case."

Gray skies

The FAA rulemaking is expected to clear up

numerous regulatory gray areas, such as the difference between a hobby plane and a UAS and where FAA authority begins. In the meantime, enter Agee and Husch Blackwell's newly created UAS practice group.

The 30-person team, composed of lawyers in 12 of the Missouri-based firm's 16 nationwide offices, will focus on drone technology, assisting clients with legal, privacy and regulatory issues of UAS and unmanned aerial vehicles.

Along with Agee, a corporate attorney who also leads the firm's aviation practice group, the UAS group will be led by Chicago-based former Air Force fighter pilot and Husch Blackwell intellectual property and commercial litigator Tom Gemmell.

"It's not really a gray area. As far as the FAA is concerned, it's a black and white issue," he said. "People may be confused – and that's where we come in – but until the FAA grants authority, UAS can't be flown for commercial use."

With UAS group litigators in areas such as real estate, insurance and construction law – including two additional Springfield lawyers – Gemmell said clients are confused about their options and seeking legal counsel.

"There has been an explosion in activity recently," Agee added, noting the group already has 10 clients. "A year ago, we would probably get one call a week about it; now it's constant."

"The community wants to use these. They are already using them. The FAA is saying no for commercial use. There is a disconnect."

Agee said the regulatory comment period is so laborious, he doesn't expect final and comprehensive new rules in place until 2017 or 2018, leaving up to four more years of the unknown for some clients.

"The technology of this is exploding," Agee said. "What is good now might be completely different in four years. Compare it to something like cellphones."

"The FAA is focused on filling the gap in the law, but also on safety. Safety is always the main concern."

Drone use

Regulating all air space "from a blade of grass to infinity," as Agee put it, drones are banned from commercial use, except in specific instances. Public universities,

government agencies and law enforcement officials can apply for a certificate of waiver or authorization for use in areas such as search and rescue. However, Springfield Police Department spokeswoman Lisa Cox said the local department currently isn't, nor has it ever, used drones.

According to the FAA, to date, only two UAS models have been certified for commercial use, and they are only authorized to fly in the Arctic. A waiver was granted to London-based energy corporation BP (NYSE: BP) for aerial surveys in Alaska – the first UAS operation over land.

Kicking off June 8, UASs are used to survey BP pipelines, roads and equipment in Prudhoe Bay, Alaska, the largest oilfield in the United States.

However, Agee and Gemmell say UAS have myriad other uses.

"Think about other inspections like train tracks, smoke stacks, off-shore oil rigs, mining and buildings," Agee said. "The film industry is ready and uses in agricultural are almost limitless. It's estimated up to 75 percent of UAS use will be in the agriculture industry."

In June, the Motion Picture Association of America facilitated an authorization request on behalf of seven aerial photo and video production companies asking for regulatory exemptions, but it's still waiting on a ruling from the FAA.

Andrew Moore, executive director of the Virginia-based National Agricultural Aviation Association, said just because commercial use is illegal, doesn't mean farmers and ranchers aren't doing it. The NAAA, which represents approximately 1,800 members in 46 states, primarily includes agricultural pilots who do crop dusting, not UAS pilots. However, Moore said his pilots have had run-ins with the unmanned devices.

"We had a near miss in Idaho last week. Someone was using one recreationally," he said. "It's a concern. I'm certainly not opposed to the integration, but we want a safe integration."

"We need to make sure the people flying these are qualified to do so. Guidelines need to be similar to pilots."

Moore said the largest agricultural use of unmanned aircraft would be for crop sensing, testing water and soil quality or using infrared sensors to detect problems. He noted similar tests can be conducted by manned aircraft as well.

"Once they get the green light, some farmers will use these, but they won't totally replace manned aircraft as they sit," he said. "I've seen unmanned crafts that can carry 10 gallons on average, but they are slow. Manned crafts can carry 300 to 800 gallons and are much faster."

What's next?

Safety is key for the FAA moving forward.

"People have to realize they can't just fly whenever, wherever they want," Agee said. "Use the switch from horse and buggy to cars for example. When someone put in the first stoplight, people probably complained and questioned it. Now, everyone understands it's needed to maintain order."

"This new set of coming FAA regulations will be the first stoplight."

Former pilot Gemmell said unmanned crafts currently have too many unknowns.

"What if the craft malfunctions, what happens to it?" he said. "Does it fall from the sky into somebody's yard or on someone's head? Does it return to its home base? There has to be a system of regulations to answer these questions."

Agee said as the industry continues to evolve, the new UAS practice group will seek to represent clients, "from the cradle to the grave," so to speak.

"We will run the whole gamut from the user side to the manufacturing and development side," he said. "The technology is outpacing the FAA right now and the innovation will never stop."