

# Drones.



A Presentation by



**Your House Counsel®**

The One To Turn To.



# Drones.



**They're not only coming...**



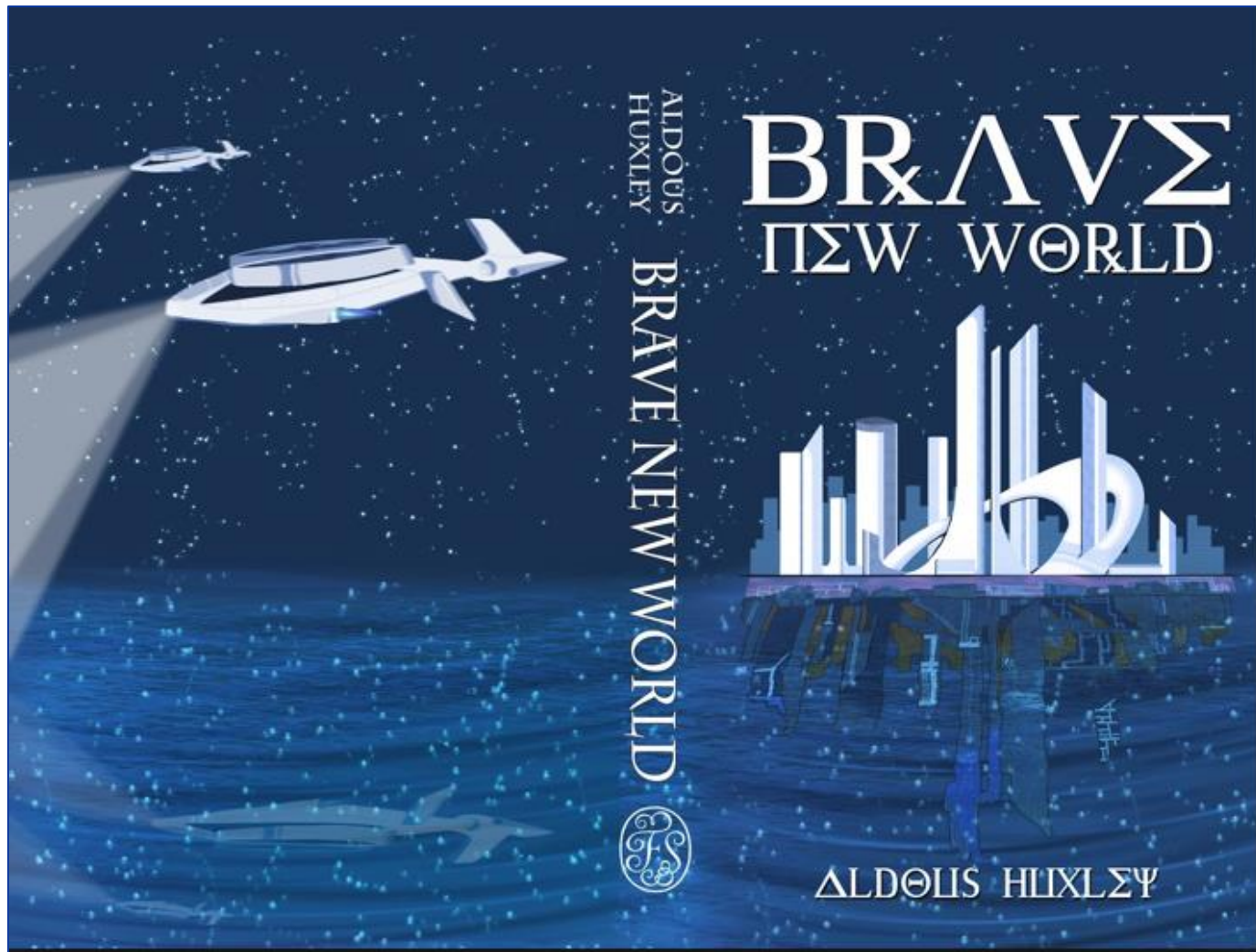
# Drones.

**They're here!**



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# Commercial Use Problems?

- Operation was not within visual line of sight of the Pilot in Command at all times
- All operations must utilize a visual observer, in addition to the Pilot in Command
- Cannot fly over other persons or moving vehicles
- Pilot in Command must possess at least a private pilot certificate and at least a current class-three medical certificate



“It’s often that technology gets ahead of policy, particularly in this country, and this is an instance where that essentially has happened”;  
“Some of the technology—the capability, anyway—has gotten ahead of what the current air traffic system is able to accommodate directly.”



Director, University of Colorado Research and Engineering Center for Unmanned Vehicles, 2013 (after being forced to submit 60 separate applications for authorization to conduct storm research in the Great Plains of the U.S. – ultimately granted by the F.A.A., but limited to small grids of about 1000 km in northeast Colorado, northwest Kansas and southwest Nebraska)

# What are the insurance industry's concerns surrounding UAS use?

- 1) Privacy
- 2) Liability
  - A) Negligent Operation
  - B) Product Liability
- 3) Regulatory Violations
  - A) Federal
  - B) State
  - C) Local
- 4) Use in Claims Handling



# Privacy Concerns



- 1) Public Use of UAS
  - A) Police
  - B) Military
- 2) Commercial Use
  - A) Media
  - B) Retail
  - C) Agriculture



# Privacy Concerns



- California Senator Diane Feinstein calls privacy concerns with drones “very, very major”, warranting Federal Government regulation of “size and type for private use”, with “some certification of the person that’s going to operate it” and “some specific regulation of the kinds of uses it can be put to”
- State regulation outpaces Federal legislation at this point – Florida Freedom from Unwarranted Surveillance Act, Fla. Stat. §934.50; Illinois Freedom from Drone Surveillance Act, 725 Ill. Comp. Stat. §167/1-167/35; Idaho Code §21-213(2)(a); Texas Govt. Code §423.003, .004; Oregon Rev. Stat. §837.380
- Local governments are getting in on the fun as well – for example, Charlottesville, VA, has adopted a Resolution banning the use of UAS, except in recognized law enforcement situations

# Regulatory Issues

- A) Federal
  - 1) Constitution
  - 2) Legislation
  - 3) Regulatory
- B) State
  - 1) Texas
  - 2) Florida
- C) Local
  - 1) Charlottesville



# General Liability Policy

- The typical CG 00 01 policy form, Coverage A, provides:

- Insuring Agreement: We will pay those sums that the insured becomes legally obligated to pay as damages because of “bodily injury” or “property damage” to which this insurance applies.



- Exclusions: This insurance does not apply to:...

- G. Aircraft, Auto or Watercraft:

- “Bodily injury” or “property damage” arising out of the ownership, maintenance, use or entrustment to others of any aircraft, “auto” or watercraft owned or operated by or rented or loaned to any insured.





## Are UAS “aircraft”?



- 49 U.S.C. §40102(a)(6) defines “aircraft” to be “any contrivance invented, used, or designed to navigate or fly in the air”.
- 14 C.F.R. Part 1, Section 1.1, defines “aircraft” as a “device that is used or intended to be used for flight in the air”.
- ***Huerta v. Pirker***, Docket CP-217, National Transportation Safety Board, decided March 6, 2014: FAA’s definitions of “aircraft” arguably would include “a paper aircraft” or a “toy balsa wood glider” – clearly so overly broad and unreasonable in scope that the Administrative Judge referred to it as *reductio ad absurdum*. The FAA’s \$10,000 fine assessed to Mr. Pirker for operating his UAS over the University of Virginia’s campus for commercial photography was vacated and set aside; the ruling was appealed by the FAA to the full NTSB, and the decision was reversed on 11/18/2014, the Board finding that “aircraft” included “**any** device used for flight in the air.”



# CG 00 01 — Coverage B

- “Personal and advertising injury” is defined to mean “injury, including consequential “bodily injury”, arising out of one or more of the following offenses:...
- C. The wrongful eviction from, wrongful entry into, or invasion of the right of private occupancy of a room, dwelling or premises that a person occupies, committed by or on behalf of its owner, landlord or lessor.”

Exclusions: This insurance does not apply to:...



A. Knowing Violation of Rights of Another: “Personal and advertising injury” caused by or at the direction of the insured with the knowledge that the act would violate the rights of another and would inflict “personal and advertising injury”...

D. Criminal Acts: “Personal and advertising injury” arising out of a criminal act committed by or at the direction of the insured....

# FAA Modernization and Reform Act of 2012 (FMRA)



- Congressional mandate to the FAA to integrate Unmanned Aerial Systems (UAS) into the National Airspace System (NAS) by September 2015.
- Requires the FAA to create a comprehensive plan and undertake rulemaking to address the integration of UAS into the NAS, and to create test sites for UAS development.
- FAA published the First Edition of its “Integration of Civil Unmanned Aircraft Systems (UAS) in the National Airspace System (NAS) Roadmap” on November 7, 2013
- FAA designated six test sites around the US to conduct research into the certification and operational requirements for integrating drones safely into the national airspace in December 2013
- FAA’s Notice of Proposed Rulemaking suggests regulations applicable to UAS, specifically addressing commercial applications, issued February 15, 2015



# Potential Applications of UAS

## ■ Inspections:

- Oil and Gas Pipelines
- Solar Panels
- Agriculture (crop monitoring and management)
- Wildlife Census
- Critical Infrastructure
- Thermal Isolation Analysis
- Power Line/Cable
- Cooling Tower
- Algae Proliferation Detection
- Aerial Terrain Mapping (urban and non-urban environment)
- Gas burn-off stack tip
- Wind Turbine Blade
- Bridges
- Forestry Management and Research
- Historical Monument
- Aerial Terrain Mapping (industrial site)
- Railway track bed
- Salt Water Infiltration
- Radiation Measurement & Monitoring



Search and Rescue  
Real Estate Photography  
Surveillance  
Disaster Site Monitoring  
Volcanic Ash Cloud analysis  
Climate monitoring  
Invasive species identification  
Volcano monitoring



# Underwriting and Insuring Risk Appropriately



- The liability risks posed by Unmanned Aerial Systems were the stuff of science fiction only a few years ago – now they are very real and must be addressed proactively
- Coverage forms presently in use do not adequately address the variety of risks posed by UAS
- 60 Minutes piece “Drones Over America” on March 16, 2014, said the “genie’s out of the bottle” – it’s our job now to adequately assess and insure the risks posed as a result



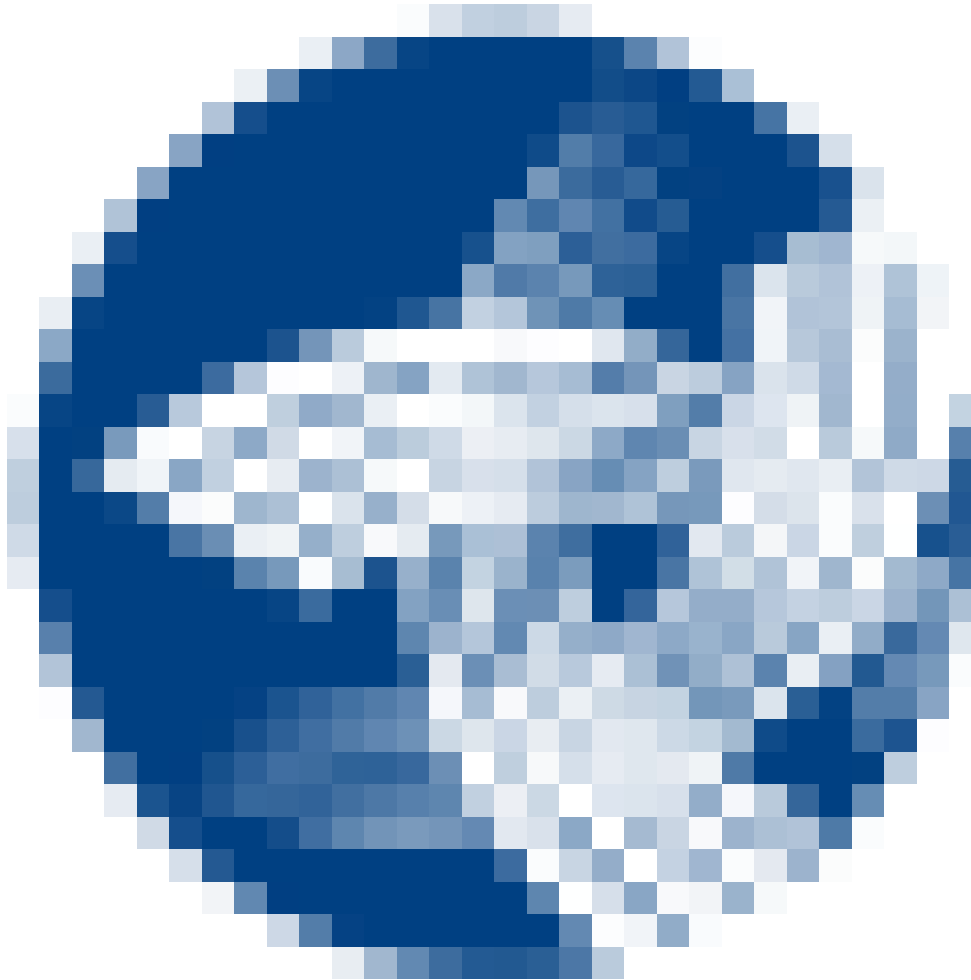
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*Anderson Crawley & Burke, PLLC*  
*Attorneys and Counselors*

Anderson Crawley & Burke, PLLC is a Mississippi law firm headquartered in Jackson, Mississippi. ACB's attorneys represent businesses, the insurance community, and governmental entities throughout Mississippi in a broad spectrum of practice areas. The commitment of its members to excellence, fairness, and honesty is the basis for the success of the firm's attorneys and for the recognition they have achieved in their careers.

ACB views its mission as that of a strategic partner with its clients in managing the risk associated with litigation, and that vision has solidified the relationships between ACB's attorneys and the firm's clients.

The firm was founded in 2003, but the roots of the firm's history run to the 1970's when Jim Anderson, ACB's Managing Member, entered the world of workers' compensation first as a Claims Professional and then as a Claims Supervisor/Administrative Assistant with the Mississippi Workers' Compensation Commission. His career has remained focused primarily on workers' compensation issues involving the defense of employers and carriers in litigation, mediation of disputes.

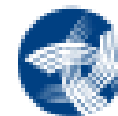
Practice Areas:

Workers' Compensation; General Liability; Medical Device Liability; Premises Liability; Products Liability; Professional Liability; Director and Officer Liability; Health Care, Nursing & Pharmacy Liability; Government Torts & Public Liability; Defense Litigation Management; Longshore and Harbor Workers' Act; Personal Injury; Administrative Law; Appellate Advocacy; Transportation Law; Business Planning and Operations; Construction Law; Governmental Relations; Insurance Regulation Labor and Employment Law.

Timothy D. Crawley  
Anderson Crawley & Burke, PLLC  
Jackson, Mississippi

Timothy D. Crawley is admitted to the Bar of Mississippi, United States District Courts for Northern and Southern District of Mississippi, United States Court of Appeals for the Fifth Circuit in 1986 and admitted to practice before the United States Supreme Court in 1998. He completed his preparatory education at Duke University (A.B. Political Science; History, 1982) and his legal education at the University of Mississippi (J.D., 1985). While in law school, Mr. Crawley was a member of Phi Delta Phi (Exchequer, Summer 1985) and Moot Court Board (Chairman, Appellate Division, Summer, 1985). He received the American Jurisprudence Award in Antitrust.

Mr. Crawley is presently a member of the American Bar Association; Mississippi Bar Association; Harrison County Bar Association; Hinds County Bar Association; Bar Association of Fifth Federal Circuit; Mississippi Defense Lawyers Association; Mississippi Claims Association; American Business & Insurance Attorneys; Defense Research Institute (Young Lawyers Committee, 1991-95, Drug & Medical Device Steering Committee, 1994-95, Technology Committee, Mississippi State Liaison, 2000-Present, and Trucking and Insurance Committees, 2005 to present); Mississippi Economic Council, 1992-Present; Leadership Mississippi, 1995-96. He has been a faculty member for a variety of seminars dealing with issues in his areas of specialty.



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# Questions?