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# CINCINNATI/NO. KENTUCKY INTERNATIONAL **FIRST TO OBTAIN FEDERAL SAFETY ACT COVERAGE**



## Security Management Plan Receives Certification, Designation

By Raymond B. Biagini, Dana B. Pashkoff and Scott Gibbons

**A**irports that invest in a comprehensive airport facility security program beyond the minimum regulatory requirements are now eligible for another benefit in addition to safety and compliance. These airports now can be awarded Support Anti-Terrorism by

Fostering Effective Technology (SAFETY) Act protection, which minimizes or eliminates future enterprise-threatening tort liability should a terrorist attack occur at their airports.

In July 2011, Cincinnati/Northern Kentucky International became the first U.S. airport to apply for and receive SAFETY Act certification and designation for its self-titled "Airport Security Management Plan (ASMP)," which protects the airport, its passengers, employees and others from terrorist and criminal activities. Through this SAFETY Act award, DHS has opened the door for other airports to seek SAFETY Act coverage to protect themselves against tort liability in the event their security programs are implicated during a terrorist attack. This is significant because airports are not necessarily entitled to complete governmental immunity under state law, and no amount of insurance can protect an airport from the potential liability that could be incurred if an attack occurred on its premises.

Cincinnati/Northern Kentucky International, which is run by the Kenton County Airport Board, designed its ASMP to meet and exceed the civil aviation security standards mandated for airports set forth by TSA under 49 CFR Part 1542. The airport's multi-faceted security plan encompasses the use of physical and electronic security measures; the operations and training of airport police, security and rescue and fire fighting personnel; the operations of the airport emergency operations center; the selection and integration of technical security systems and procedures; and the development and implementation of airport security plans and planning documentation. Essentially all aspects of airport security developed and implemented at the airport have been covered under the SAFETY Act award.

"We are pleased that DHS has evaluated our airport security management plan and determined it is appropriate for SAFETY Act coverage," said Scott Gibbons, A.A.E., vice president of administration. "This benefit will allow us to continually evaluate and apply robust security measures to protect the airport from the threat of terrorism."

### EXPANSIVE REACH

The SAFETY Act, which was passed after the Sept. 11 terrorist attacks, eliminates or minimizes tort liability for sellers, providers and users of "Qualified Anti-Terrorism Technologies" (ATT). Since passage of the act in 2002, DHS has awarded hundreds of companies SAFETY Act protection for everything from security screening equipment

to vulnerability assessments and security system integration services. The SAFETY Act has been an effective tool in allowing companies to develop homeland security products and services without the fear of tort liability should these products and services be implicated during a terrorist attack.

More recently, DHS has allowed the SAFETY Act to broaden its reach. DHS has awarded coverage to entities other than those companies that traditionally “sell” homeland security technologies. For example, DHS awarded coverage to a chemical company that implements comprehensive security plans internally to protect its own facilities. Next, recognizing that quasi-governmental agencies sometimes can be liable in the event of an act of terrorism, DHS awarded SAFETY Act coverage to the Port Authority of New York & New Jersey for its security-related activities. Now, with its first-of-its-kind award to Cincinnati/Northern Kentucky International, DHS has affirmed that airport authorities/owners also are clearly within the SAFETY Act purview.

### LIABILITY PROTECTION

Given that a terrorist event at an airport could lead to catastrophic liability for the owner/operator of the airport, the protections offered by the SAFETY Act are significant. The two levels of SAFETY Act coverage are known as “designation” and “certification.” Airports that obtain SAFETY Act “designation” coverage receive the following protections:

- Elimination of punitive damages claims;
- A requirement that such lawsuits be filed exclusively in federal court; and
- A cap on liability damages in an amount specified in the SAFETY Act coverage decision, which is to be covered by terrorism insurance.

If DHS also awards the airport the higher level “certification” coverage, the above protections apply, and the airport obtains a legal presumption of immediate dismissal from all third-party lawsuits arising out of an act of terrorism involving the technology. This presumption only can be overcome by a show of “clear and convincing” evidence that the seller acted “fraudulently or with willful misconduct” in submitting information to DHS during the SAFETY Act application process.

### OBTAINING SAFETY ACT COVERAGE


Airports seeking SAFETY Act coverage must complete and submit an application to DHS, which takes the department approximately 120 days to evaluate. The application requests technical, insurance and financial information from the applicant. All information submitted with the application is kept strictly confidential and exempt from public disclosure.

The technical portion of the SAFETY Act appli-

cation primarily seeks a description about the ATT and how it is performed. For an airport, this would consist of describing its security program in detail, focusing on the mechanisms designed to protect the airport perimeter, air operations area, and other secured areas. It also would consist of a discussion regarding the hiring, training and oversight of the individuals who are charged with implementing the program. Airports should identify for DHS those elements of their security programs that exceed TSA’s minimum security requirements. Applicants also must provide evidence of the ATT’s efficacy, the policies and procedures governing the deployment of the ATT, and any safety hazards or risks associated with the use of the ATT.

In the insurance section, applicants must provide information relating to their insurance policies that would respond to third-party claims arising out of an act of terrorism. Applicants also must provide details regarding the actual and projected revenues for the ATT. This information allows DHS to establish an appropriate liability cap on the seller’s damages should the seller be involved in a lawsuit arising from an act of terrorism.

### SIGNIFICANT BENEFITS

In short, this groundbreaking SAFETY Act award has two significant benefits. First, Cincinnati/Northern Kentucky International has managed its own risk in the most protective manner, obtaining significant liability protection for its security planning. Second, this SAFETY award incentivizes all participating airports to exceed minimum federal regulatory requirements, thus bolstering their facilities against a terrorist event and enhancing homeland security for all U.S. and foreign travelers. 

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***Editor’s Note:** G&T Conveyor Co. in August 2008 was awarded the contract from the Kenton County Airport Board for the inline baggage handling system design improvements at Cincinnati/Northern Kentucky International’s Concourse B.*

*The scope of the project included installing 2,600 linear feet of conveyor belt and 250 drives, and remodeling the TSA break room to become the baggage handling system/TSA control room. Additionally, G&T integrated the baggage handling system with four L3 6600 explosives detection screening machines. The project was completed in 2010.*

*In April 2008, G&T received Safety Act certification from DHS. G&T is designated and certified as a Qualified Anti-Terrorism Technology under the Safety Act and is one of a limited number of baggage handling systems companies to hold Safety Act designation and certification.*



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