

AVIATION

The Sheppard Mullin Aviation Team is a national practice of recognized attorneys in the area of aviation law. Our aviation attorneys have extensive experience representing domestic and international airlines, public and private sector aircraft manufacturers, aircraft financiers, aircraft parts distributors, charter operators, airport authorities, fixed base operators and aircraft maintenance and service providers.

Our interdisciplinary team approach to addressing legal issues facing the aviation industry enables us to identify and efficiently address significant matters impacting our clients. Our aviation team is comprised of attorneys who have a deep understanding of the aviation industry and are equally knowledgeable in the areas of litigation, tax, transactions, securities, environmental law, insurance, insolvency, labor, real estate and land use regulatory compliance in the aviation sector. Each of our aviation lawyers is focused on the particular business goals of our clients.

Regulatory

Sheppard Mullin's aviation team handles matters before the Department of Transportation, the Federal Aviation Administration, the Transportation Security Administration and the National Transportation Safety Board, in all types of regulatory proceedings. Our experience before the Department of Transportation and Federal Aviation Administration includes user fees, overflight fees, crash investigations, pilot citations, licensing, code sharing, aircraft registration and noise compliance. Our Aviation Team also handles enforcement or certificate actions involving air carriers, repair stations, fixed base operators, engine management companies and air-taxi/commuter services.

Airport and Government User Fees on Airlines

A mainstay of Sheppard Mullin's aviation law practice is its more than sixteen years of experience representing airlines and their trade associations in administrative proceedings and federal and state court cases challenging user fees and other charges imposed by national and local governments and airport authorities.

In 2007, the Firm served as lead trial counsel for seven U.S. airlines challenging millions of dollars in new airport terminal charges at Los Angeles International Airport. The U.S. Department of Transportation, on June 15, 2007, ruled that the new charges unjustly discriminated against the air carriers and ordered the airport to refund all of the unlawful fees. *Alaska Airlines, Inc. et al. v. Los Angeles World Airports, et al.*, Docket No. OST-2007-27331 ("LAX III"), Final Decision, Order 2007-6-8 (available at <http://dms.dot.gov>). The ruling sets important legal precedent, provides critical protections to air carriers against unjust discrimination by airports, and should result in more than 100 million dollars in refunds and cost savings to the affected airlines at LAX. The case is highlighted in "A Tale of Two Airports: Why DOT Found Unjust Discrimination Against Airlines at LAX But Not at Newark," *Issues in Aviation Law and Policy* ¶ 20,431 (October 2007).

The Firm also represented the same seven U.S. Airlines in the multiple challenges to the DOT LAX III decision filed in the U.S. Court of Appeals for the D.C. Circuit. In August 2009, the D.C. Circuit issued its decision, affirming important aspects of the DOT decision and remanding other issues to the agency. *Alaska Airlines, Inc. v. DOT*, 575 F.3d 750 (D.C. Cir. 2009). Among other things, the Court agreed with the complainant airlines that DOT had improperly failed to explain why LAX could use fair market value to set terminal charges but not airfield fees. The Court also agreed with the airlines that LAX's monopoly power was relevant to the issue of whether LAX's terminal charges were lawful.

Sheppard Mullin represented several airlines in a D.C. Circuit Court challenge to the imposition by the U.S. Transportation and Security Administration of hundreds of millions of dollars in additional "Aviation Security Infrastructure Fees" ("ASIF") for screening passengers and property at U.S. airports. In February 2009, the Court held that the fee increase was unlawful because the TSA improperly included the cost of screening non-passengers in its calculations for the cost increase. *Southwest Airlines Co. v. Transportation Security Admin.*, 554 F.3d 1065 (D.C. Cir. 2009). (The matter is now on remand before the TSA.)

The Firm represented the Air Transport Association and several major airlines in administrative litigation before the DOT and in federal court litigation challenging landing fee surcharges imposed by a local governmental entity (Tinicum Township) at Philadelphia International Airport. In March 2008, the DOT granted the ATA's petition for an order declaring that the landing fees violate the Anti-Head Tax Act because the township does not own or operate the airport. The Firm represented ATA as an intervenor in the township's appeal of the DOT decision, and in September 2009, the U.S. Court of Appeals for the Third Circuit denied the township's appeal. *Township of Tinicum v. DOT*, 582 F.3d 482 (3rd Cir. 2009).

Our Firm has defended major U.S. airlines in class actions alleging that the carriers improperly collected Mexican tourist taxes from exempt passengers. In January 2010 the U.S. Court of Appeals for the Ninth Circuit affirmed the ruling of a federal court in San Francisco which had dismissed the class action complaint challenging improper collection of the tax. *McMullen v. Delta Air Lines, Inc.*, 2010 WL 55526 (January 5, 2010).

In 2009, we successfully represented a major Latin American airline sued in a class action for allegedly failing to comply with requirements for notifying passengers of their rights after being involuntarily denied boarding.

On multiple occasions we successfully pursued cases on behalf of a coalition of international airlines that challenged air traffic control user fees imposed by the U.S. Federal Aviation Administration on flights that do not take off or land in the U.S. ("overflights"). E.g., *Air Transport Association of Canada v. FAA*, 323 F.3d 1093(D.C. Cir. April 8, 2003). These cases resulted in refunds of several millions of dollars plus cost savings in the hundreds of millions of dollars for the international aviation community. We also played an important role in successfully challenging the same type of user fees in 1998. *Asiana Airlines v. FAA*, 134 F.3d 393(D.C. Cir. 1998). Our experience in these cases is detailed in the Spring 2006 edition of the *Journal of Air Law and Commerce* in an article entitled "Will it Happen Again? — FAA's Disastrous Prior Experience with User Fees."

In 2009, the Firm represented the National Airline Council of Canada in negotiations with the FAA over FAA's plans to increase the overflight fees.

In 2006 and 2009, the Firm represented the Air Transport Association of Canada in challenging the U.S. Department of Agriculture's attempt to increase the fees charged for inspection of aircraft entering the United States for compliance with the U.S. laws regarding agricultural products.

We also represented an airline challenging passenger facility charges imposed by the airports in Minneapolis-St. Paul and Memphis. *Northwest Airlines, Inc. v. FAA*, 14 F.3d 64 (D.C. Cir. 1994).

We routinely represent DHL Express in negotiating leases and user agreements for on-airport facilities at most major airports throughout the United States.

Government Contracts

Sheppard Mullin has decades of experience representing entities in the transportation sector and other industries in administrative and judicial challenges to federal and state agency decisions, rulemakings and investigations.

Our premier government contracts attorneys are experienced in government contract issues and disputes. We have successfully advocated our client's position on a variety of challenges, including cost and cost accounting challenges and audits, termination claims and bid protests, prime and subcontract disputes, as well as civil and criminal False Claims Act litigation.

Sheppard Mullin has deep and broad capability conducting assessments of corporate compliance programs intended to satisfy required statutory and regulatory mandates. We have a sizeable background in performing internal investigations related to possible violations of federal statutes and regulations.

U.S. Customs and Immigration

Sheppard Mullin has experience handling U.S. customs and immigration problems relating to passengers and cargo.

Our attorneys have worked with ICE (Immigration and Customs Enforcement) and other various governmental agencies including Los Angeles World Airports and the Director of Security at San Francisco International Airport.

Aircraft Finance, Leasing, and Insolvency

Sheppard Mullin's Aviation Team has extensive experience in aircraft financing transactions, including the representation of leasing companies, banks and air carriers in such financings and in airline insolvencies in the United States and Brazil. Our attorneys are also experienced in representing borrowers, leasing companies, banks and other lenders in equipment leasing, project finance, acquisition financing, letters of credit, financing restructures and asserting and pursuing creditors' rights in airline insolvencies. We recently completed a leveraged lease transaction involving the sale and leaseback of \$72 million in airport related equipment. These transactions draw upon the expertise of our finance, real estate, tax, bankruptcy, federal regulatory, securities and litigation attorneys.

Sheppard Mullin has been involved in some of the largest and most complex aircraft sale and purchase transactions in the industry, representing both sellers and purchasers, in both domestic and cross-border situations. We have significant experience in the broad range of lease transactions, financings and tax and regulatory matters associated with these complex transactions.

Bankruptcy and Creditors' Rights

Bankruptcy and business restructuring is a critical component of Sheppard Mullin's practice. We have the resources to respond to the time sensitivity of financial crises and the depth to provide whatever size team is required. We regularly draw on all of the resources necessary to solve the multi-disciplinary problems presented by complex insolvencies and business restructuring endeavors, including real estate, intellectual property, tax, labor, securities and mergers and acquisitions.

We represent clients in all types of regional, national and international insolvency matters, from out-of-court workouts and financial restructurings to bankruptcy proceedings, creditors' rights and distressed acquisitions, including such proceedings in the airline industry. Our clients have included secured lenders, debtors, bank groups, creditors' committees, indenture trustees, equity holders, real property and equipment lessors, bankruptcy trustees and buyers, among others.

Our attorneys have been involved in most of the major U.S. airline chapter 11 cases where we have represented major institutional financiers and lessors in such cases as Delta, Northwest, Continental, TWA, Tower, and Pan Am (I and II). In these cases, our attorneys have represented the interests of various institutions including ING Lease, TIAA-CREF, foreign airlines, and U.S. Bank as substantial creditors. We have also represented DHL and airlines as creditors in bankruptcy matters and provided bankruptcy counseling to American Airlines and Blue Panorama Airlines as a creditor in Delta Airlines' bankruptcy, as well as representing creditors in the Varig insolvency cases and the Fairchild Donier cases.

Litigation

Sheppard Mullin takes a multidisciplinary approach to litigation. By teaming our Aviation attorneys with attorneys from other practice areas including antitrust, environmental and land use, intellectual property, international arbitration, labor and employment, securities, and tax, we can address any dispute that may arise within the aviation industry.

Our specific litigation expertise includes:

Antitrust

For decades, Sheppard Mullin has been a leader in the antitrust bar. Gordon Hampton, one of the Firm's name partners, was a founder of the Antitrust Section of the American Bar Association. That tradition continues today with a dynamic Antitrust and Trade Regulation practice spanning every aspect of antitrust law. Our practice currently encompasses matters involving mergers and structural issues, criminal grand jury proceedings, international antitrust enforcement, pricing practices, product distribution, joint ventures, class actions based on federal statutes and state unfair competition laws, among many other areas. Our litigation experience includes:

- Horizontal restraint cases
- Monopolization/merger cases
- Boycott/tying/vertical restraint/unfair competition claims
- Price discrimination issues
- Government cases and investigations

Most recently, we represented a large carrier in an unfair competition and false claims action.

International Arbitration

As the aviation industry by its nature crosses many international borders, disputes will arise that involve the laws of many countries. The International Arbitration Practice at Sheppard Mullin is comprised of more than two dozen attorneys practicing across the Firm. More than a dozen different languages are spoken within the group, and our attorneys practice globally as well as being licensed in various domestic jurisdictions including many U.S. states and U.K. countries.

The Firm regularly represents clients before the leading international arbitration institutions, including the International Chamber of Commerce (ICC), International Centre for Dispute Resolution (ICDR), American Arbitration Association (AAA), and the London Court of International Arbitration (LCIA). We have experience in a variety of specialty practice areas, and have represented clients before the World Intellectual Property Organization (WIPO), London Maritime Arbitration Association, Society of Maritime Arbitrators of NY, Iran-United States Claims Tribunal, and the Independent Film & Television Alliance (formerly the American Film Marketing Association), as well as in numerous ad hoc arbitrations.

Labor & Employment

For many years, Sheppard Mullin has been a leader in defending employers against large, complex and potentially devastating labor and employment lawsuits. Our Labor and Employment attorneys have represented employers in literally scores of single plaintiff and class action lawsuits. Our experience includes wage/hour class actions, including claims involving unpaid overtime, off-the-clock work, vacation pay, payroll deductions, commission disputes, waiting time penalties and alleged meal and rest period violations.

We recently represented a major carrier in a large wage and hour class action suit and an overtime class action case.

We also represent clients in sexual harassment cases, wrongful discharge, whistleblower, qui tam, trade secrets, and unfair competition cases. These lawsuits represent substantial financial exposure to employers, both in terms of verdict potential and the cost of defense.

In addition, our attorneys have successfully handled these matters before the Equal Employment Opportunity Commission, Fair Employment and Housing Commission, Office of Federal Contract Compliance Programs and other regulatory agencies. We have substantial experience in representing employers in lawsuits filed by these agencies, and we have successfully defended clients in individual and class action cases.

Labor Management

Sheppard Mullin has decades of experience assisting clients in complying with prevailing wage requirements on public works construction projects. We have litigated numerous matters before the Secretary of Labor, Labor

Standards Administration, the California Labor Commissioner and state and federal courts involving the California State Prevailing Wage Law, the Davis-Bacon Act, the Contract Work Hours and Safety Standards Act, the Fitzgerald Act and related laws and regulations. We also represent companies and organizations in administrative and judicial matters involving the determination of prevailing rates and the appropriate application of benefit payment.

Preventative and proactive policies and procedures are often times the more constructive way management can avoid a union insurgence. Sheppard Mullin assists clients with the day-to-day decisions that affect the stability and atmosphere of a workplace, and our attorneys have been extremely successful in keeping many organizations union free through positive and ongoing management training programs.

Sheppard Mullin regularly assists employers in resisting unwelcome labor union organizing drives. Our attorneys have developed a solid reputation for an aggressive, practical and tactically sound approach to organizing drives and labor disputes in a broad variety of industries.

The Firm represents clients before the National Labor Relations Board (“NRLB”), defending and prosecuting unfair labor practice charges. We counsel clients through labor disputes such as strikes and picketing, including how to set up separate gate systems, obtaining temporary restraining orders and injunctions and basic strike preparations. We have represented clients in lawsuits against labor unions, taking a number of significant cases through successful jury trials.

Patent and Trademark

The Firm represents U.S. and foreign air carriers in trademark infringement, patent infringement, internet domain name and antitrust litigation, and in challenges to passenger facility charges imposed by airports.

The Firm successfully represented a major international airline in defending against claims for patent infringement in two separate cases filed in Texas. In the first case, the airline was dismissed based on the defense that the scope of the subject patent was confined to the territory of the United States. In the second case, the Firm was successful in requiring a third party vendor to indemnify the airline for all costs relating to the claim for patent infringement.

We have represented Airport Group International, LLC (prior to their acquisition of ASIG) and AOM French Airlines on various patent and trademark issues.

Securities

Sheppard Mullin has successfully defended clients against securities claims. We have tried several of these cases, and defended many of them by way of motions to dismiss, motions for judgment on the pleadings and motions for summary judgment. In cases that have settled, our clients have paid significantly less than the average settlement.

An example of our experience includes the representation of Northrop Grumman Corporation in a shareholder class action alleging misrepresentations made in connection with the aborted Lockheed/Northrop merger. This case was dismissed on a judgment on the pleadings and was won on appeal. We also defended four directors and officers of Polaris Aircraft Leasing Corporation, which sponsored income fund limited partnerships sold through Prudential Bache, in a series of class action and shareholder derivative actions.

Taxes and User Fees

Tax litigation requires not only expertise in tax law, but also highly developed advocacy skills. Sheppard Mullin can assist aviation clients in resolving tax disputes ranging from administrative appeals to litigation. Working with our clients’ auditors and accountants, we have successfully resolved disputes through alternative dispute resolution forums, and state and federal courts, including the U.S. Tax Court. Our attorneys also regularly represent clients in audits before the Internal Revenue Service and State Revenue Departments.

As discussed above, a major component of our Aviation practice is representing airlines in administrative and judicial litigation challenging user fees and other charges imposed by national and local governments and airport authorities.

Environmental

Sheppard Mullin lawyers counsel clients on environmental issues in connection with site assessments prior to purchasing, selling, leasing or lending secured by real property. We also negotiate and document remediation activities, both with private parties and with governmental authorities.

Attorneys in our Environmental practice have represented clients in connection with CERCLA enforcement actions, clean-up and abatement orders, underground storage tank regulation, removal and remediation of hazardous substances, hazardous waste storage and transportation, and the permitting of facilities that handle or store hazardous waste and private contamination litigation. We have also represented clients in proceedings before the Air Quality Management District Boards and have counseled clients with respect to asbestos removal procedures and asbestos related injury and abatement cases.

Recently, we represented a major refiner/marketer of aviation jet fuel in litigation arising from alleged contamination of soil and ground water at several California airport fueling facilities, some of which have been in operation for more than 40 years.

Land Use & Development

Our lawyers are widely recognized for their expertise in the areas of commercial and industrial development. As part of Sheppard Mullin's real estate development expertise, our attorneys regularly draft and negotiate documents related to the acquisition, construction, financing, management, leasing and operation of airport and on-airport real estate projects.

As part of our ongoing real estate representation of DHL Express, we handle both the lease of existing on-airport and near airport facilities, as well as the lease of build-to-suit facilities. The latter include the lease and development of an approximately 290,000 sq. ft. air and ground hub at the former March Air Force Base in California and an approximately 307,000 sq. ft. ground hub in Allentown, Pennsylvania. In addition, we served as primary counsel for the ground lease and development of a primary air hub at the Cincinnati/Northern Kentucky International Airport and a major expansion of the air hub in Wilmington, Ohio acquired as part of the Airborne acquisition. Both the Cincinnati and Wilmington projects were financed primarily through the issuance of special facility tax-exempt revenue bonds issued by the local airport or port authority, transactions in which Sheppard Mullin represented DHL as the lessee/real party in interest to the financing. Our work at the March Air Force Base has included, not only the initial leasing and construction of the DHL facility, but also working on an ongoing basis with the airport authority to address citizen noise complaints and to put in place a new master plan and expanded CEQA and other environmental regulatory approvals for the anticipated expansion of civilian operations at the airport.

We also represented the City and County of San Francisco in obtaining permits required from the Bay Conservation and Development Commission ("BCDC"), the State Lands Commission, the Army Corps of Engineers and other regional, state and federal authorities to develop one or more additional runways extending into the Bay for the benefit of the San Francisco International Airport.

Corporate

The corporate attorneys on the Sheppard Mullin aviation team provide general business legal advice, assist in structuring and implementing major transactions, prepare agreements to address unique business arrangements and consult with clients to resolve major business and ownership issues. We handle such matters as initial and later stage venture financings; leveraged buyouts and recapitalizations; public offerings; mergers and acquisitions; SEC compliance; the registration, sale and termination of franchises; partnership formation and related transactions; and corporate partnering, joint venture and other strategic alliance arrangements, preparing and reviewing contracts with

travel agents and wholesalers, charter contracts, maintenance and spare parts contracts and passenger and cargo handler contracts.

Because of our diverse client base, we have experience representing substantial entities in complicated multinational and multi-state transactions, as well as advising smaller and emerging clients on the full spectrum of business matters.

Some examples of our corporate representation include:

- The formation of Mountain Pacific Airlines, Inc.
- Representation of Airborne, Inc. in a proposed stock sale transaction and provided a legal opinion to the minority shareholders of Airborne, Inc.
- Representation of Northrop Grumman Corporation in the sale of \$1,000,000,000 of intermediate and long term debt in a 144A offering. The underwriters were Credit Suisse First Boston, J.P. Morgan Securities, Inc., Merrill Lynch & Co., and Salomon Brothers Inc.
- Representation of Sierracin Corporation in connection with the sale of the assets of its Sierracin/Harrison division to Stanley Harrison Corporation, a wholly-owned subsidiary of Stanley Aviation Corporation
- Representation of InTank, Inc., InTank Services, Inc. and InTank Technology, Inc. in connection with the sale of substantially all of their assets to AST Services, LLC, a subsidiary of Praxair, Inc.
- Representation of Polaris Air Cargo in the formation of a venture involving Polaris Aircraft Leasing, Southern Air Transport and a management company for the purposes of conducting a sophisticated air cargo business in the U.S., Russia, the Far East and Australia
- Representation of DHL Express in connection with the repurchase of a substantial block of its shares from the Estate of Larry Lee Hillblom, as well as a related spin off of its airline
- Representation an aircraft leasing company in connection with the formation of a joint venture (Swedish based) with a large publicly held Swedish construction company. The transaction involved the sale of a number of wide bodied aircraft to the joint venture

Tax/Employee Benefits

Tax considerations affect every aspect of a business -- and the practice of tax law requires tremendous innovation and creativity. Sheppard Mullin's tax attorneys advise clients on all areas of corporate tax law, as well as provide clients with sophisticated expertise in employee benefits law, executive compensation, estate/wealth planning and tax-exempt or tax-advantaged finance. Based on our understanding of evolving and complex tax law, we are often able to design sophisticated transactions that are advantageous for our clients. Because tax issues are integrated into virtually all areas of the Firm's practice, our tax attorneys are known for their ability to collaborate and advise our clients in structuring transactions that comply with federal, state and international tax laws.

Sheppard Mullin's tax attorneys assist clients in structuring transactions and planning business affairs in order to reduce income, sales, transfer, property and other taxes. A sampling of the matters we handle includes:

- Taxable and tax-free mergers, acquisitions and sales
- Venture capital financing and business formation
- Choice of entity and combinations of entities, including C corporations, S corporations, limited liability companies, general and limited partnerships, REITs and cooperatives
- Joint ventures and strategic alliances
- Foreign investment in the United States
- Expansion of U.S. businesses abroad

Employee Benefits

Sheppard Mullin can assist aviation clients with all aspects of qualified and nonqualified retirement plans and employee benefit matters under the Employee Retirement Income Security Act of 1974 ("ERISA") and the Internal Revenue Code of 1986. Our well rounded expertise in this highly complex area of the law has benefited our clients for the last several decades. Our advice spans the design, implementation and administration of all such plans. It also

includes all work associated with the defense of employee benefit disputes, the evaluation of benefit claims and securing determinations from the Internal Revenue Service and, where necessary, the Department of Labor.

Executive Compensation

Companies are often faced with creating compensation programs for talented employees and executives in order to attract and retain crucial talent. Our attorneys assist organizations in establishing tailored incentive and compensation plans to win and keep the executives its competition wants most. We advise on establishing compensation plans designed to advance company interests and tax consequences, while at the same time rewarding employees for productive contributions. We have expertise drafting independent contractor agreements, executive employment agreements, consulting services agreements, incentive and non-qualifying stock option agreements, confidentiality/non-disclosure agreements, employee privacy statements, mandatory arbitration agreements, non-solicitation agreements and all other types of employment related agreements. We also assist employers in developing tailored bonus and commission plans that reward employees for contributing to the growth and increased revenue of an organization.

Our approach to employment and executive contracts takes into consideration the current market standards of the aviation industry, as well as the relevant and often highly technical tax, securities and intellectual property issues prevalent in today's work environment.