

IN THE UNITED STATES COURT OF FEDERAL CLAIMS

)	
SECURITYPOINT HOLDINGS, INC,)	
Plaintiff,)	Civil Action No. 1:11-cv-00268-EGB
)	
v.)	Honorable Judge Eric G. Bruggink
)	
THE UNITED STATES OF AMERICA,)	**FILED UNDER SEAL**
Defendant.)	
)	
)	
)	

JOINT STATUS REPORT ON ADDITIONAL COMPENSATION DUE TO SECURITYPOINT IN ACCORDANCE WITH THE COURT’S OPINION

Pursuant to the Court’s August 31, 2021 Opinion (ECF 597 (“Opinion”)), the parties submit this joint status report concerning “damages through the date of judgment as directed in this opinion, including the quantum of interest.” (Opinion at 73.)

SECURITYPOINT’S POSITION

The Court directed the parties to calculate two numbers: (1) delay damages; and (2) damages for infringement from May 1, 2020 through the present (at trial, the latest available throughput data went through April 30, 2020).

SecurityPoint’s calculations for the Court are as follows:

Delay Damages

Pursuant to the methodology set forth in section II.F. of the Court’s Opinion (ECF 597 pp. 72-73), delay damages are:

\$25,875,241.51

This amount is determined by applying the prevailing average 10-year treasury rates to each annual accounting of infringing passenger throughput, compounding annually such that

compounding is fixed based on the prevailing treasury rate when the infringement would have been paid (*i.e.*, 2008 passenger throughput compounds annually at the 2008 interest rate, 2009 passenger throughput compounds annually at the 2009 interest rate, etc.). (*See* ECF 597 at 72-73).¹

Additional delay damages will have to be recalculated when a final judgment is issued. As set forth below, the Court has not yet determined the amount of damages for Defendant's infringement at Cat II, III and IV airports, so a final judgment should not yet be entered. The government has calculated a "daily delay compensation rate." However, because the final calculation will depend on the 10-yr treasury rates, which continue to fluctuate, SecurityPoint contends it is improper to use the government's daily rate.

Damages for Infringement From May 1, 2020 – September 8, 2021

SecurityPoint calculates damages for infringement between May 1, 2020 – September 8, 2021 as follows:

Description	Deduction	Adjusted Total
Category X and I Passenger Throughput (5/1/2020 – 9/8/2021)		479,496,870
Throughput Under An Implied License (31.2%)	149,603,023	329,893,847
ASL Throughput	63,351,379	266,542,468
Royalty Base (in passengers)		266,542,468
Royalty Compensation at \$0.02/passenger		\$ 5,330,849.35

¹ SecurityPoint calculates higher delay damages than Defendant. This difference is mostly due to the parties' opposing positions on whether to make deductions for the MPC method. The parties otherwise agree on the underlying methodology of calculating delay damages in this case.

Total Additional Damages Owed To SecurityPoint

Delay Damages:	\$ 25,875,241.51
Additional Infringement Damages:	\$ 5,330,849.35
TOTAL:	\$ 31,206,090.86

SecurityPoint's Position On Defendant's Proposed Adjustments

SecurityPoint disputes the government's attempt to adjust the Court's calculation of Total Damages (Royalty Rate multiplied by the Royalty Base) for infringement of the '460 Patent at category X and I airports from January 1, 2008 – April 30, 2020. The Court made factual findings based on the evidence presented to it at trial, and Defendant's attempt to change those findings is improper.

Turning to the government's proposed adjustments, SecurityPoint agrees that PHL became a SecurityPoint licensed airport on March 17, 2021, and it has taken this into consideration in its calculation of additional damages from May 1, 2020 – September 8, 2021.

SecurityPoint further agrees to Defendant's deduction of \$49,131 for attorneys from earlier proceedings in a related matter.

SecurityPoint disputes, however, the government's proposed deduction to infringement based on its purported use of the MPC method. In its Opinion, the Court did not make any factual findings regarding the extent of TSA's use of the MPC method. Specifically, the Court did not determine when Defendant began using the MPC system, at which lanes Defendant used the MPC system, or for how long Defendant used the MPC system. Indeed, Defendant did not present any such evidence at trial, so there would have been no basis for the Court to make such findings. In the absence of any factual findings on this issue, it is improper for Defendant to deduct for its alleged use of the MPC method based on evidence that it did not present at trial.

Attorney's Fees

In addition, SecurityPoint plans to file a petition for attorneys' fees pursuant to 28 U.S.C. § 1498.

Damages For Defendant's Infringement At Cat II, III, and IV Airports

As the Court noted in its Opinion, SecurityPoint "maintains a claim with respect to the other smaller airports. The parties agreed to limit this trial to the two largest categories." (ECF 597, p. 7, n. 4). Thus, because damages have not yet been determined at Cat II – IV airports, the Court should not enter final judgment until damages at these airports have been determined.

THE GOVERNMENT'S POSITION

The United States submits that four adjustments are required to the calculation provided at pages 71 and 72 of the Court's *Opinion*, ECF 597. First, the total throughput calculation must be updated to include throughput from May 1, 2020 through September 8, 2021.

Second, an adjustment is required to passenger throughput to deduct for non-infringing use of the dolly cart system. The court found the dolly carts system did not infringe. ECF 597 at 46. Mr. Thaxton testified that he implemented the nine commercial airports in Arizona. Tr. 588:7-589:5. Of those nine, only Phoenix Sky Harbor (PHX) is a Category X airport and only Tucson International (TUS) is a Category I airport. On June 27, 2018, the United States served a verified Second Supplemental Responses of Defendant, the United States, to Plaintiff SecurityPoint Holdings, Inc.'s First Set of Interrogatories. to Defendant. Relating to Damages.² In that response it identified the conversion to the dolly cart system as being completed at

² The document was marked for identification as DX1698. Denver International Airport (DEN) was also discussed on the record. Denver is a licensed airport, and Denver throughput is accounted in the licensed airport calculation.

Phoenix Sky Harbor Airport (PHX) on June 1, 2018 and completed at Tucson International Airport (TUS) on June 12, 2018.³

Third, Philadelphia International Airport (PHL) became a licensed airport on March 17, 2021. The Percentage of use calculation was adjusted to account for this changes (a 0.2% increase in licensed use).

Fourth, the United States is owed \$49,131 that the Court imposed as a sanction. *See* ECF 372. This Government has included this amount as an offset that has been deducted from the total royalties due.

The Court's calculation is adjusted as follows:

Description	Deduction	Adjusted Total
Category X and I Passenger Throughput		8,140,432,529
Throughput Less Dolly Cart Use	51,450,593	8,088,981,936
Adjusted Throughput Less Implied License Deduction at 31.2%	2,524,642,640	5,564,339,296
Less ASL Passengers	154,568,671	5,409,770,625
Royalty Base (in passengers)		5,409,770,625
Royalty Compensation at \$0.02/passenger		\$108,195,412
Total Compensation through September 8, 2021, with delay compensation to October 1, 2021	25,606,982	\$133,802,394
Less Fee Award in ECF 372	49,131	\$133,753,264

³ The United States provided a verified Third Supplemental Responses of Defendant, the United States, to Plaintiff SecurityPoint Holdings, Inc.'s First Set of Interrogatories. to Defendant. Relating to Damages, identifying 19 additional airports outside Arizona that used the dolly cart system (marked as DX1704). However, in light of SecurityPoint's objection to testimony regarding those airports at trial, they are not included in the calculation here.

Daily Delay Compensation Rate after
October 1, 2021⁴

\$4,875.54

The United States takes no position on SecurityPoint's request that judgment be delayed until after the award of compensation for the Category II, III and IV airports. The Government notes, however, that a "final judgment" encompassing all relief would further require a determination of attorneys' fees and costs, as such an award is part of the underlying award of reasonable and entire compensation under 28 U.S.C. § 1498.

* * *

Respectfully submitted:

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October 1, 2021

⁴ The deduction of the sanctions award does not affect the daily interest calculation.

Sealed Other Documents

[1:11-cv-00268-EGB SECURITYPOINT HOLDINGS, INC. v. USA](#)

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US Court of Federal Claims

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Filer: SECURITYPOINT HOLDINGS, INC.

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Docket Text:

****SEALED** JOINT STATUS REPORT re DAMAGES, filed by SECURITYPOINT HOLDINGS, INC.. (Graveline, Bradley)**

1:11-cv-00268-EGB Notice has been electronically mailed to:

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