

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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FRIENDS OF THE EAST HAMPTON AIRPORT, INC.,
ANALAR CORPORATION, ASSOCIATED AIRCRAFT
GROUP, INC., ELEVENTH STREET AVIATION LLC,
HELICOPTER ASSOCIATION INTERNATIONAL, INC.,
HELIFLITE SHARES LLC, LIBERTY HELICOPTERS,
INC., SOUND AIRCRAFT SERVICES, INC., and
NATIONAL BUSINESS AVIATION ASSOCIATION, INC.,

No. 15 Civ. 2246 (SJF) (ARL)

Plaintiffs,

-against-

THE TOWN OF EAST HAMPTON,

Defendant.

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DECLARATION OF KURT CARLSON

I, Kurt Carlson, make the following declaration pursuant to 28 U.S.C. § 1746:

1. I am the Chief Executive Officer of HeliFlite Shares LLC (“HeliFlite”), one of the Plaintiffs in this action.

2. I make this declaration, based upon personal knowledge, in support of Plaintiffs’ application for a temporary restraining order enjoining the Town of East Hampton’s recently-enacted restrictions on access to the East Hampton Airport (“the Airport” or “HTO”).

Background of HeliFlite

3. HeliFlite is a limited liability company duly organized and existing under the laws of the State of Delaware, with a principal office located at 15 Brewster Road, Newark, New Jersey 07114.

4. Founded in 1998, HeliFlite provides “on-demand” helicopter charter services to passengers to and from various destination points throughout the Northeast, including New York,

New Jersey, Pennsylvania, Connecticut, and Rhode Island. HeliFlite's fleet is comprised of the following helicopters: four (4) Bell 430 and three (3) Sikorsky S-76.

5. HeliFlite offers its customers the option to purchase a HeliCard, which provides for 25 hours of flight time at a discounted price.

6. HeliFlite also operates a fractional ownership program for its customers. Catered toward frequent users, fractional ownership allows several owners to share in the ownership and maintenance costs of a helicopter. Many of HeliFlite's fractional owners frequently travel to and from HTO.

7. In addition, one of the Bell 430 helicopters in HeliFlite's fleet is a managed helicopter. This means that the helicopter is wholly owned by two customers, but HeliFlite provides maintenance, storage, and the pilots. If the helicopter is unavailable, the owners are entitled to use one of the other helicopters in HeliFlite's fleet. Similarly, if the owners are not using the helicopter, HeliFlite is permitted to use the helicopter to charter other customers. The owners of the managed helicopter travel to and from HTO.

8. HeliFlite holds a Part 135 certification conferred by the Federal Aviation Administration ("FAA"). Part 135 certification authorizes HeliFlite to provide operations for compensation or hire. HeliFlite also has authorization from the Department of Transportation to engage in interstate air transportation. Pursuant to Part 135, HeliFlite complies with various FAA requirements and safety standards, including those related to flight operations, maintenance, and training.

9. HeliFlite has 35 employees.

HeliFlite's Operations to and from HTO

10. HTO is one of HeliFlite's most important destinations. In 2014, HeliFlite flew a total of 1,356 flights (including landing and take-offs) to or from HTO. Many of our customers own homes in East Hampton but work in New York City or elsewhere, and use our charter and fractional ownership helicopter services as the primary means of traveling to and from their East Hampton homes.

11. Flights to and from HTO account for between 20% and 25% of HeliFlite's total annual revenue.

12. Moreover, the majority of HeliFlite's flights to and from HTO—approximately 85%—take place during the summer, from May through September. In 2014, 1,148 of HeliFlite's flights to and from the Airport—out of a total of 1,356—occurred between May and September.

13. While most HeliFlite operations involving HTO transport passengers between Manhattan and East Hampton, HeliFlite also frequently transports passengers between HTO and points outside of New York State. In 2013 and 2014, HeliFlite conducted 87 interstate flights involving HTO.

East Hampton's Recently-Enacted Restrictions

14. Over the past year, HeliFlite has tried, on multiple occasions and in numerous ways, to work with the Town to find a balanced, reasonable way of addressing noise concerns. Much to HeliFlite's disappointment and chagrin, the Town has been unwilling to engage in any meaningful dialogue.

15. I understand that on April 16, 2015, the Town Board adopted three new local laws restricting access to HTO ("the Restrictions"). I am familiar with the Restrictions.

16. I understand that the Restrictions include (1) a mandatory curfew, prohibiting use of HTO between 11:00 p.m. and 7:00 a.m. (the “Mandatory Curfew”); (2) an extended curfew for so-called “Noisy Aircraft” banning use of the Airport from 8:00 p.m. to 9:00 a.m. (“the “Extended Curfew”); and (3) a one-trip limit during the summer, prohibiting “Noisy Aircraft” from flying more than one trip per week to HTO during the summer season (the “One-Trip Limit”). I further understand that the Restrictions define “Noisy Aircraft” as including any aircraft that has a published Effective Perceived Noise in Decibels (EPNdB) approach (AP) level of 91.0 or greater.

17. The Town has issued a list of aircraft that have EPNdB AP levels above 91.0. All of HeliFlite’s helicopters are on this list and thus are deemed to be “Noisy Aircraft” by the Town.

18. If the Restrictions are put into effect, HeliFlite’s entire fleet will be subject to all three of the Restrictions—the Mandatory Curfew, Extended Curfew and One-Trip Limit. Our helicopters will immediately be prohibited from flying into or out of HTO between 8:00 p.m. and 9:00 a.m., year-round. In addition, our helicopters will be barred under the One-Trip Limit from flying more than one trip per calendar week from May through September—HeliFlite’s busiest season.

19. The EPNdB AP level for HeliFlite’s helicopters does not measure, and is not a fair or accurate indicator of, the noise impact HeliFlite’s helicopters on people at ground-level, outside HTO’s boundaries. That is so for many reasons, including that HeliFlite’s pilots adhere to HTO’s noise abatement procedures, which include (1) maintaining high altitude approaches to HTO; (2) climbing quickly to high altitude when departing HTO; and (3) avoiding operating the rotors for more than five minutes while on the ramp. HeliFlite demands that its pilots follow the

noise abatement procedures, except where the pilot is directed otherwise by the air traffic controller, or where the pilot cannot comply due to safety conditions caused by the weather. HeliFlite has policies and procedures in place to monitor compliance with the noise abatement procedures, and I personally perform that monitoring.

The Restrictions' Impact on HeliFlite

20. The Restrictions will have an immediate and serious adverse effect on HeliFlite's business.

21. The One-Trip Limit will result in an 80–90% reduction in HeliFlite's operations to and from HTO. The Extended Curfew will result in a 20% decrease in its operations to HTO.

22. The Restrictions will decrease HeliFlite's projected revenue for 2015 by an estimated 20–25%.

23. A loss of approximately one-quarter of revenue is a severe hardship to HeliFlite that will significantly impact our operations. HeliFlite will likely be forced to reduce its fleet by at least 25% (two helicopters) and to lay off between 8 and 10 full-time employees. Many of HeliFlite's employees have worked for HeliFlite for more than 8 years. Moreover, even if the Restrictions were later lifted, HeliFlite will have been irreparably harmed because it will have already lost its highly skilled employees, who will be hard to replace. In addition, were HeliFlite forced to reduce its fleet, it would be very difficult to replace the helicopters if the Restrictions were later lifted because HeliFlite only purchases used single-owner, high quality helicopters, which are hard to find.

24. If the Restrictions take effect, HeliFlite also anticipates losing significant market share, as customers traveling to and from HTO may elect to travel by aircraft and other means of transportation not subject to the Restrictions.

25. Because of the recent political developments in East Hampton, a number of HeliFlite's clients included a contingency in their HeliCard purchase agreement, requiring a refund should access to HTO become difficult. Moreover, several HeliCard customers have refrained from renewing their purchase of a HeliCard until the accessibility of HTO is determined. As a result, HeliFlite has already lost revenue due to the pendency of the Restrictions.

26. If the Restrictions are enforced, HeliFlite anticipates that most fractional owners will attempt to put their shares back to the company and/or eventually leave the program.

27. In addition, if the One-Trip Limit is enforced, the owners of the managed helicopter likely would insist that the helicopter's one trip be used to transport them to and from HTO. HeliFlite would fly the customers to HTO on Thursday or Friday, park the helicopter at HTO for the weekend, and return on Monday. Therefore, HeliFlite would lose the ability to use this helicopter for additional charter services during weekends from May through September.

28. If the Restrictions take effect, the other airports in Long Island, including Montauk Airport ("Montauk"), Francis S. Gabreski Airport ("Gabreski"), which is in Westhampton, and the Southampton Heliport ("Southampton") are inadequate alternatives to HTO and will not mitigate the serious economic and operational harm that HeliFlite will suffer. Montauk is more than 20 miles east of HTO and does not provide fueling services. Southampton consists of one helipad, does not provide fueling services, does not allow helicopters to remain on the helipad for more than five minutes, and is only open from sunrise to sunset. Gabreski is more than 25 miles west of HTO. HeliFlite's clients who land at Gabreski would then have to drive via Route 27—which is heavily congested during the summer—to get to East Hampton.

Many clients have informed me that they will likely forego the expense of flying into Gabreski if they will still face heavy traffic en route to East Hampton.

29. Furthermore, if the Restrictions go into effect, it is entirely unclear whether Southampton, Montauk and Gabreski would even have the capacity or ability to accommodate helicopter traffic that can no longer land at HTO—which for years has been the main airport hub on the East End for helicopter services. In my opinion, Southampton will become the primary destination for many and will be overwhelmed. Multiple helicopters will be holding over the bay waiting their turn to land on the helipad, which only accommodates one ship at a time which will increase the noise level in the surrounding area and will increase the risk of collisions.

30. Finally, in addition to harming HeliFlite and other HTO users, the Restrictions will harm HTO itself. The Restrictions will have the effect of significantly reducing HTO's revenues, which will in turn deprive HTO of funds desperately needed to maintain the Airport in good repair. Even prior to its enactment of the Restrictions, the Town had failed, and continues to fail, to maintain HTO in proper condition as required by federal law. For this reason, on January 29, 2015, HeliFlite and others filed an administrative complaint with the FAA, alleging that the Town has violated its federal grant assurances (specifically, Grant Assurance 19.a) by, among other things, failing to remove obstructions to runways, allowing runways to deteriorate, and failing to maintain an effective perimeter fence. *See Friends of the East Hampton Airport, Inc. et al. v. East Hampton Airport*, FAA Docket No. 16-15-02 (2015). That administrative complaint is pending. If the Restrictions are enforced, then HTO's revenues—which are currently the only source of funding for Airport maintenance—will plummet, causing HTO to fall further into disrepair.

31. If the Restrictions take effect, HeliFlite will be irreparably harmed. The Restrictions will materially decrease HeliFlite's revenues, thereby forcing HeliFlite to downsize its fleet, lay off employees and restructure its business operations. Even if the Restrictions were later lifted, HeliFlite will have been permanently harmed, as its customers might not return.

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge and belief.

Executed: April 28, 2015
Newark, NJ


Kurt Carlson