MEMORANDUM

To: MGDR

April 25, 1966

From: James H. Bastian

Subject: Corrective Measures Indicated by the Jones Suit

The case of Jones v AACL points up an important uninsured liability created by the performance of operations and maintenance by two separate corporations. For example, Air America performs the flying operations in SEA while AACL in many cases performs the maintenance. Therefore, an employee of Air America, killed in an accident in SEA could elect to sue AACL as a third party tort feasor for negligent maintenance while at the same time collecting his workmen's compensation benefits from Air America. The comprehensive ground liability insurance would not cover such a claim against AACL because Air America is also a named insured under the policy and employees of named insureds are excluded from coverage. Similarly, if an employee of Air Asia was killed in an Air America flight he could sue Air America for negligent operation while collecting his workmen's compensation benefits from AACL. The aircraft liability insurance would not cover such a claim against Air America because AACL is also a named insured under the policy and employees of named insureds are excluded from coverage.

Contributing to the problem is the fact that all persons in the past have been employed by AACL and then assigned to Air America with no real formal documentation resulting in vagueness as to which company is the actual employer. This vagueness is apparent in other practices such as lack of company identity on the personnel manual and most personnel action forms. In some instances this lack of company identification could be beneficial, however, in the Jones case it was an important factor in alerting the plaintiff of the fact that more than one company was involved and that a law suit against the Company not paying workmen's compensation might result in additional recovery. These facts were that Jones was hired under a AACL letter offer of employment and all pre-employment contacts by him and his wife were with AACL. Notification of death and all subsequent correspondence and workmen's compensation claims were handled in the name of Air America. However, workmen's compensation payments were made and are still being made with a Civil Air Transport check.

I understand that in the future all Americans are to be employed initially by Air America and any transfer of such employee from Air America to Air Asia shall be formally documented. It would also be helpful to abolish all other practices which tend to introduce confusion as to the actual employer of

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each employee. In this regard separate personnel manuals could be developed, separate personnel forms, and separate Boards of Review established. In the case of the Jones death the AACL Board of Review determined the death and other benefits to be paid to the survivors and although the plaintiff does not yet have a copy of the minutes of such meeting they have been demanded by the plaintiff and represent an additional piece of evidence supporting her allegation that Jones was employed by AACL at the time of his death.

An immediate step that could be taken by this office to avoid confusion among dependants, would be to set up an Air America bank account from which workmen's compensation benefit payments would be made.

None of the foregoing changes in personnel practice would eliminate the potential double liability created by the performance of maintenance by one company and operations by another but would merely tend to clarify in the minds of the employees and those survivors, the company of employment. The actual risk can only be eliminated by consolidating the maintenance and operations in one company or by obtaining insurance coverage. The latter would be the most expeditious way to cover the risk pending resolution of some other approach. In this regard I would recommend that the comprehensive ground liability policy and the aircraft liability policy be amended to include coverage for claims by employees of one co-insured against another co-insured.

A similar risk exists with respect to Southern Air Transport employees. The liability for the maintenance and handling of Southern aircraft is not covered under the comprehensive ground liability policy which names Air America, AACL and CATCL as insured. This maintenance and handling activity was excluded to save on premium cost. The risk was thought to be small because under the maintenance and handling contracts Southern held Air America, AACL and CATCL harmless. Southern in turn was protected by its aircraft liability policy which specificially covers its holding Air America, AACL and CATCL harmless. Such contracting is adequate as it applies to third party claimants. However, Southern aircraft liability policy does not cover its own employees and it is doubtful that such coverage would be afforded by the back door route of holding AACL harmless from a suit by a Southern employee for negligent maintenance resulting in an accident. Therefore, I recommend that the maintenance and handling performed for Southern be covered by the comprehensive ground liability policy of Air America, AACL and CATCL.

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