

AIR ASIA COMPANY LIMITED  
108 Chung Shan Road North  
Section 2  
Taipei, Taiwan

26 December 1968

DLC-68-193

Peter Martin, Esq.  
Messrs. Beaumont and Son  
15, devonshire Square  
London, E.C. 2  
ENGLAND

REC'D WAS DEC 31 1968

Re: Air Asia Company Limited Accident  
to N1386N on November 25, 1968  
Near Savannakhet, Laos

Dear Peter:

Reference my letter of 17 December 1968 (DLC-68-178) paragraph 5. regarding the status of passenger No. 18 Mr. Peu, Nai enclosed is a copy of a memorandum from USAID, just received, which confirms his unauthorized status.

With kind regards,

Very truly yours,

APPROVED FOR  
RELEASE DATE:  
13-Mar-2009

Jerry Fink  
Deputy Legal Counsel

Encl:

4-12/31/68

cc: Avocat Robert Ducret, Vientiane, Laos (w/o encl)  
Mr. Robin S. Peard, Bangkok, Thailand ( " )  
Mr. William Turnbull, Jr., Hongkong ( " )  
Mr. George Tompkins, New York, N.Y., USA ( " )

bcc: ✓ MGDR (via Pres) w/encl  
DI (via T/C) w/o encl  
File

JF/cw

→ DIC/RE

Office Memorandum • UNITED STATES GOVERNMENT

TO : Mr. J. A. Cunningham, BM, Air America, Inc. *WJG* DATE: December 13, 1968

FROM : William R. Leonard, Chief, ASB

SUBJECT:

December 13, 1968  
 26 DEC 1968

A full investigation by USAID personnel responsible for manifesting, authenticating, and checking passengers aboard Milkrun flights has revealed that Mr. Nai Peu was an unauthorized passenger on board aircraft 8&N on November 25, 1968.

*William R. Leonard*

ASB:WRLeonard:ws:12/13/68

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MEMORANDUM

TO : MGRD (via President)

DATE: Dec. 27, 1968

FROM : DLC (via SLC)

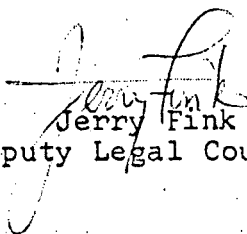
REF. No. DLC 68-198  
REC'D WAS JAN 2 1969

SUBJECT: Accident to N1386N on 25 November 1968

Attached is a copy of a letter from Beaumont and Son dated 20 December 1968 and also a copy of a letter from Beaumont to Messrs. Ducret, Peard, Turnbull and Tompkins dated 20 December 1968. As you can see from the letter addressed to counsel for the underwriters, there may be hedging on the part of Beaumont. I suspect, although not stated, that they are looking into the question of whether U.S. Government contract flights come within the purview of Lao domestic law relative to commercial carriage or, in the alternative, whether failure to issue terms and conditions of carriage would result in unlimited liability. In the event of the latter situation, it remains to be seen whether the underwriters would respond to claims in excess of Hague limits. In the event of the former situation, presumably they would respond to the policy limits.

The foregoing is my opinion and, therefore, I see no cause for alarm until such time as they take such position as indicated in the last paragraph of their letter to counsel retained by them. Possibly copies of the unenclosed letters will come into our hands; if so, I will forward copies of same.

I will respond to their statement that Air America, Inc. employees are not covered. The terms of the policy, as I understand them, would provide coverage to employees other than those performing crewmember duties.

  
Jerry Fink  
Deputy Legal Counsel

Encl.: as stated

cc: File

JF/lc

4 - 1/2/69

BEAUMONT AND SON  
(WITH WHICH IS AMALGAMATED CLARKE HAWLINS & CO)

ALAN GOODFELLOW  
G. HUME MITCHELL  
JOHN L. BROOKS  
PETER MARTIN  
T. S. B. UNMACK

15, DEVONSHIRE SQUARE,

LONDON, E. C. 2.

TELEPHONE 01-247 9451  
(3 LINES)

TELEGRAMS: CUSPATED, LONLON, KCB

PLEASE QUOTE PM/EJ/7284  
YOUR REFERENCE DLC-68-178  
ENCLOSURE 1

20th December 1968

Jerry Fink Esq.,  
Deputy Legal Counsel,  
Air Asia Company Limited,  
108 Chung Shan Road North,  
Section 2,  
Taipei, Taiwan.

REC'D WAS JAN 2 1969

Dear Jerry,

Air America, Inc. - Accident to  
N1386N on 25th November 1968  
near Savannakhet, Laos

This letter is to acknowledge receipt of your letters of 11th and 17th December. I acknowledge receipt, also, of the two sets each of two blue looseleaf volumes containing the answers to my firm's check list of inquiries, and also the enclosures to your letter of 17th December.

I note that you are writing to me on Air Asia Company Limited paper and that the headings to your two letters refer to Air Asia Company Limited. It seems clear to me that this was, in fact, an Air America, Inc. accident and I thought I ought to make this point not only for the sake of good order but because genuine confusion might arise if it was not clarified.

Having read all the documents with which you have provided me, I have advised your insurers that the passenger legal liability claims arising out of death or injury to authorised passengers should be settled upon the best possible terms up to US\$16,600 notwithstanding that "terms and conditions of carriage" of Air America, Inc. were not issued in accordance with the provisions of the relevant policy. This advice has been accepted by underwriters without prejudice to their rights under their policy and I have, accordingly, today written with full instructions to Ducret, Peard, Turnbull and Tompkins. I shall ask each of them to abide by the listing set out in attachment 3 to your letter of 17th December.

So far as the relevant law is concerned, I am satisfied that Laos has applied the provisions of the Warsaw Convention as amended at The Hague to its domestic carriage, but I am still not certain whether a failure to issue tickets creates an unlimited liability situation although I feel reasonably certain that it must do so. However, we must wait for Maitre Ducret to advise us on this point; in the meanwhile, I hope that the majority of claims can be settled within the limit of US\$16,600.

/I am

From

BEAUMONT AND SON.

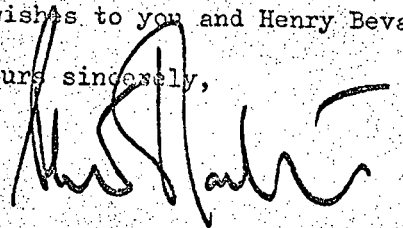
CONTINUATION SHEET NO. 1

I am sending a copy of this letter to Ducret, Peard, Turnbull and Tompkins and I shall be grateful if you will continue to communicate with me direct but with copies for them also in the future, as this is extremely helpful.

I should like to congratulate you and your colleagues upon the splendid way in which you have provided material in this case. In writing to the insurers I drew their attention to this.

With kind regards and best wishes to you and Henry Bevans,

Yours sincerely,

A handwritten signature in dark ink, appearing to be 'H. H. H. H.', written in a cursive style.

BEAUMONT AND SON

SOLE AGENTS FOR THE UNITED KINGDOM AND IRELAND

ALAN GOODYELLOW  
O HUME MITCHELL  
JOHN L BROOKS  
PETER MARTIN  
T. S. B. UNMACK

15 WINDHAM SQUARE

LONDON. E C 2

TELEPHONE 01-547 0451  
(3 LINES)

TELEGRAMS: CUSPATED. LONDON: ECU

PLEASE QUOTE PM/EJ/9284

YOUR REFERENCE

20th December 1968

ENCLOSURE various

Maitre Robert Ducret,  
P.O. Box 231,  
Vientiane, Laos.

REC'D WAS JAN 2 1969

Mr Robin S. Peard,  
Messrs Charles Kirkwood and Associates,  
BOAC Building, Gayborn,  
Bangkok, Thailand.

Mr William Turnbull, Jr.,  
Messrs Deacons,  
P.O. Box 277, Union House 6th Floor,  
Hong Kong.

Mr George N. Tompkins, Jr.,  
Messrs Condon & Forsyth,  
One Rockefeller Plaza,  
New York, N.Y. 10020, U.S.A.

Dear

Air America, Inc. - Accident  
to N1386N on 25th November 1968  
near Savannakhet, Laos

I am most grateful to you for agreeing to act on behalf of the insurers of Air America, Inc. in this matter and for all your help so far. I have now had an opportunity of considering all the documents sent to me by Mr Fink of Air America, Inc. and you will have seen copies of his letters to me of 11th and 17th December.

... I enclose a copy of a letter addressed by me to the placing brokers on 18th December together with copies of the enclosures to that letter.  
... I enclose, also, a copy of the placing brokers' reply setting out the insurers' instructions.

It seems quite clear to me that, whatever the precise provisions of Laos law, no passenger tickets and baggage checks in the conventional sense were issued to the passengers. It seems that they were issued (as to most of them) with a "USAID - Laos passenger ticket" which is a simple authority to board the aircraft indicating the date of the flight, the place of departure and destination, the sponsorship and priority applicable, but nothing else, and it seems clear that none of them were issued with copies of the "terms and conditions of carriage" of Air America, Inc., which are nothing more than a print of the current IATA conditions of carriage in the

English/

English language but without reference to any of the items mentioned in article 3(1) of the Warsaw Convention as amended at The Hague or, for that matter, any of the items referred to in article 3(1) of the unamended Warsaw Convention. I am not sure, at this stage, whether this creates an unlimited liability situation at Laos law (although I imagine that it must) and no doubt Maitre Ducret will advise me on this point in due course.

In any event, the purpose of this letter is to authorise each of you to deal with passenger legal liability claims against Air America, Inc./ USAID in the name of Air America, Inc. and USAID and to attempt to settle claims upon the best possible terms up to US\$16,600, bearing in mind that there is no cover under the policy for any claim under workmen's compensation law or in respect of employers liability or any claim by any servant of the insureds: in the context of the policy, it seems to me that USAID and other passengers such as those employed by the Operation Brotherhood organisation are covered but not Air America, Inc. employees themselves.

If I have correctly understood Jerry Fink's letter to me of 17th December, it seems that Maitre Ducret will be responsible for dealing with the majority of the claims, and if Jerry's letter correctly records the advice which Maitre Ducret has given him, Maitre Ducret will now be bound to contact next of kin or legal representatives and solicit claims.

I shall be grateful if you will adopt the numerical system set out in attachment 3 to Jerry Fink's letter of 17th December as a reference system in writing to me on individual claims, preceding each number with the number 9284/ which is my firm's reference number. I assume that, where claims are negotiated to settlement, you only negotiate them upon the basis that final approval of individual settlements must be obtained through me. I will then give the necessary authority and arrange for monies to be credited to the appropriate account on the understanding that a full form of receipt and discharge will be taken in every case.

I shall be away from England until Sunday 5th January. I doubt whether much will occur in my absence over Christmas but, if you should require urgent advice, please be good enough to cable my office for the attention of my assistant, Miss McCurrie.

I am sending a copy of this letter to Jerry Fink but I am not sending him copies of the enclosures. I feel I ought to make it quite clear to you that you are, of course, instructed on behalf of the London aviation insurance market and that in the event of any conflict arising between the interests of insurers and Air America, Inc. or USAID, you are at once to let me know, since it is vital that the interests of insurers are never compromised. Those of you who have worked as my firm's legal correspondents in the past will, of course, understand the point I am making and I apologise for repeating it: those of you who are dealing with us for the first time will readily understand my reason for making it.

Yours sincerely,

P.S. I enclose a copy of the relevant policy wording which you will find of interest.