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AECMA

PRODUCTS LIABILITY WORKING GROUP

FINAL REPORT

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AECMA PRODUCTS LIABILITY WORKING GROUP - FINAL REPORT

This Report has been prepared by the AECMA Working Group on Products Liability, for presentation by the national European aerospace industry Associations (in membership of AECMA) to their national Government Departments concorned; coupled with the urgent request that an inter-Governmental joint Government/Industry Working Party might be established as soon as possible, designed to achieve a solution to the problem expounded by the Report, on the basis of these proposals.

The earlier AECMA Report on this subject (November 1974) was discussed at the Government/Industry Paris Conference on 25th March 1975 (Minutes of which were subsequently circulated to all attendees), when Government officials then present promised further examination of the problem on receipt of the Final AECMA Report, after further work had been undertaken on some questions exposed by the March 1975 Government/Industry Meeting. This document is the Final Report then requested, which is submitted to AECMA Governments with the unanimous agreement of all AECMA industries.

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1. It may be helpful to recapitulate from the earlier Report that the acute nature of the problem now and for the future stems from a combination of these adverse factors:-

1.1. Increased amounts at risk:-

1.1.1. Constantly increasing world traffic, involving (statistically) prospects of more accidents, notwithstanding increased aviation safety, reducing the comparative accident rate per passenger seat mile;

1.1.2. Larger and more expensive aircraft, wide-bodied jets, civil supersonic aircraft, in the future super Jumbo Jets;

1.1.3. More passengers per aircraft; and

1.1.4. More compensation per passenger.

1.2. Easier-to-establish manufacturing liability ("strict liability" or "liability without fault").

1.3. By reason of 1.1. and 1.2., increased attempts by other parties primarily involved in losses (including insurance underwriters) to implicate

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manufacturers "down the line".

2. Since the March 1975 Meeting, the entire position has been examined further within AECMA countries as well as internationally. Many AECMA Member Associations represented on the AECMA Product Liability Working Group, have continually re-examined the matter with their own interested Government officials and national insurance markets. At the same time discussions have taken place on behalf of the Working Group with the U.S. Industry and U.S. Government officials - and the results of all these investigations are embodied within this Final Report.

3.1. It has now become increasingly well known, that any manufacturer of any aerospace product faces unlimited or open-ended exposure for legal liabilities arising at any time during the "life" of the product of, say, twenty years, under any legal system operating anywhere in the world, now or in the future, as yet unknown.

3.2. Substantial insurance protection is available at present and it is always assumed that a manufacturer would purchase insurance protection within the

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limits of (i) availability i.e. market capacity, and (ii) affordability i.e. up to a cost which can be absorbed by the price of the product without distorting competitive trading operations.

3.3. However, on any basis there is now a gap and always must remain a gap between, on the one hand, available and affordable insurance protection and, on the other hand, the nature and amount of protection required, in order to avoid the prospect of adverse financial and other consequences, following particularly disastrous air accidents.

3.4. This presentation accordingly relates to the nature and extent of the gap and how in the general interest of the community, the problem could be resolved.

4.1. After the March 1975 Government/Industry Meeting, the Working Group was requested to obtain an independent report on the commercial aviation products liability insurance market. This was accordingly obtained and the Report of Mr.Roy J.M.Merrett dated 16th September 1975 is attached.* (The figures are already out of date but current insurance availability matches the intervening

* Appendix 1

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inflation factor.' It is necessary to mention the contrast between the duration of the insurance protection - at most one year - and the duration of the manufacturer's exposure - up to twenty years; to stress the need for a permanent guarantee as regards the "gap" between the duration and amount of the insurance protection, and the duration and amount within practical limits of the manufacturer's exposure.

4.2. It is also to be stressed that the Merrett Opinion relates to the aviation products liability insurance market, which should not be confused with any other self-contained insurance market, e.g. life, marine, fire, accident, etc.

4.3. Finally, it may be stressed that the author of the Merrett Opinion considers that the case submitted by AECMA is unanswerable.

5.1. The only other document accompanying this Report is an A.I.A. (Aerospace Industries Association of America) Analysis* of the proposals contained in the U.S. Anderson Bill (reference HR.7298) recently (May 1977) introduced in Congress (a corresponding Analysis of the previous Bill S.2992 introduced

* Appendix 2

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(February 1976) at the request of A.I.A. in the Senate was scheduled to the previous AECMA Report, and discussed at the Paris Conference on 25th March 1975: but this Bill fell away at the end of the last (94th) Congress, before the Bill had reached the stage of Congressional hearings).

5.2. The text of the Anderson Bill (HR.7298) is available, but it is not proposed to burden AECMA Governments with the text unless required, because the actual provisions involve much U.S. legislative cross-referencing, making the proposals difficult to follow in detail, but they are more clearly explained by the Analysis.

5.3. However, the essence of the Bill, as Congress is invited to record, is that manufacturers are unable, despite all possible precautions, to provide adequate financial protection regarding accident consequences, with particular regard to passengers.

6. The only statement that can be made without qualification and without fear of contradiction as regards the development of this problem during the past two years and the likely future pattern is that the position becomes increasingly worse, involving the risk of serious adverse

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financial and other consequences of major disasters which are against the general interests of the community. This is evidenced, for instance, by the encroachment of the concept of strict or no-fault liability against an innocent manufacturer, and such serious accidents as the D.C.10 case, Zagreb, and Tenerife.

7. The Working Group do not wish to accept the proposition that the "ultimate" disaster - of the kind to which this Report primarily relates - must actually happen, before the case is proved. However, the Tenerife disaster constitutes the worst aircraft accident in the history of civil airline travel, involving a total of 580 fatalities and 62 injured survivors, many seriously injured. It has also been said that what happened at Tenerife might have been infinitely worse but for a chance of fate, with one or more Jumbo Jets on an adjacent runway loaded with passengers - so that a disaster involving fatalities measured in hundreds might perhaps have been measured in thousands.

8. It is therefore not to be surprised at that it has been established with the insurance market, and the underwriters readily concede, that the ultimate disaster is something which "could well happen".

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9.1. This situation therefore leads directly to a choice of one of two alternative courses: one is to wait for it to happen on the basis that it is now too soon (as has been said - and it is not in dispute that an ultimate disaster has not yet taken place, exhausting available insurance protection and going on to involve the adverse financial and other consequences outlined later by this Report. Even the D.C.10 disaster appears likely to be contained by the insurance covers of the parties concerned, partly doubtless by reason of the fact that there was no 100% liability, but liabilities were shared between a number of different parties).

9.2. The other or contrary argument, is that when it ceases to be too soon, it becomes too late: so that (as these proposals advocate) the possibility should be accepted and urgent steps taken now to provide a solution, albeit hopefully never, or scarcely ever, to be employed.

10. In the event that aerospace manufacturers are left facing open-ended liabilities, whether wholly or partly on a faul or no-fault basis, consequences adverse to the general interests of the community, may be considered likely to

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