

HERRMANN LAW GROUP

AVIATION, PERSONAL INJURY, & INSURANCE LAW

— EST. 1950 —

FORMER SENATOR & INSURANCE COMMISSIONER

Karl Herrmann (1915-1997) Founder

April 4, 2019

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Group Chief Executive Officer
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Indira Baruna, President Director
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Peng Lim
Global Head of Aviation
Kennedys Legal Solutions
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Re: Illegal R&D, Lion Air Crash JT610

Dear All:

The U.S. law firm **HERRMANN LAW GROUP** together with Indonesian law firm **DANTO DAN TOMI & REKAN** represents families of 24 deceased victims of Lion Air crash of flight JT 610 in the Java Sea near Karawang, West Java, Indonesia on October 29, 2018. **[See Ex. 1, List of Decedents]**

On behalf of these victims, we demand you immediately pay each family the Rp 1.254 billion (\$88,725.58 USD) mandated by Indonesia law without requiring they sign your illegal Releases and Discharge (R&D).

The history of your activities begins with a November 1, 2018 press release issued by Indra Baruna, President Director of Tugu Pratama Insurance Co. He baited the trap when he proclaimed:

"As the insurance company, we are ready 100% to pay our obligation to the heirs and the insured of Lion Air Group," said Indra Baruna, President Director of Tugu Insurance.

Big family of Tugu Insurance are conveying deepest condolences for the tragic event. "As the insurance company, we are ready 100% to pay our obligation to the heirs and the insured of Lion Air Group," said Indra Baruna, President Director of Tugu Insurance

Related with disbursement of claim, Indra stated that, obligation and commitment of Tugu Insurance is to settle the claims as soon as possible. Tugu Insurance is ready to do so. Coordination and good cooperation of interested parties is required to accelerate the process.

Indra also stressed that, "The amount of insurance for the passengers, is regulated in polis agreement and of course we are referring to Ministry

of Transportation's Regulation No. 77 Year 2011 about Air Carrier's Responsibility Article 3 (a), that passengers who died in an airplane that was caused by an airplane crash or an event that related to air transportation were compensated Rp. 1,250,000,000.00 (one billion two hundred fifty million rupiahs) per passenger."

Tugu Insurance and Lion Air Group have good cooperation that covered several types of full coverage insurance, for the plane, passengers and air crew. Fast and good service is the commitment of Tugu Insurance as service company that engaged in general insurance. "We will definitely going to pay the claim of Lion Air JT-610 soon," said Indra. [See: Ex. 2: Tugu Press Release]

Tugu's President Director lured the victims by accurately stating the insurers' obligation to pay quick and easy, but he did not mention the hook—the illegal R&D. Victims would have to forfeit all their rights to receive full compensation from those responsible for the accident, not only Lion Air but also Boeing and more than 1000 other potential defendants. [See: **Ex. 3, R&D Releasees**]

The *Aviation Law of Indonesia* is not subject to interpretation. It means exactly the words written. Chapter 8 *Responsibility of Carrier*; Para 2, Article 141 provides that Lion Air is strictly liable to pay these victims the above amount as set by MOTR No. 77/2011 Articles 3 & 5. Like life insurance, no proof of fault or damages is required. Victims need only establish that their loved one died in the crash and that they are their decedent's legal heirs. Nothing more.

Instead of fulfilling your duty, you all conspired to violate Indonesian law by compelling victims to sign an illegal R&D, in which they are forfeiting all their rights to receive full compensation by releasing Lion Air, Boeing and over 1000 other potential defendants. This is a direct violation of the *Aviation Law of Indonesia*, Article 186, which expressly forbids your illegal R&D:

Paragraph 14, **Special Requirements**

Article 186

1. The carrier is **forbidden** to have an agreement or special requirement that **releases** carrier's responsibility or determine lower limit for compensation than is regulated by this law.

... [See: **Ex. 4, Aviation Laws of Indonesia**]

Even worse, para 14 of your illegal R&D reads:

*14. The Releasors [victim family members] have been given the opportunity to consult with a lawyer to review and evaluate this Release and Discharge and Releasors attest that they have done so or agree to waive this right..." [See: **Ex. 6, R&D para 14.**]*

Nothing could be further from truth. You gave them no such opportunity. Truth is you refused to allow victims to have a copy of your illegal R&D so they could review it with a lawyer of their choosing. No, you required them to sign 9 pages containing 21 paragraphs of extremely complicated legal terminology meticulously concocted by

your team of lawyers while at the same time denying victims the effective assistance of counsel.

The language found in your illegal R&D was so egregious it prompted the legal expert in the Bangka Belitung Governor's office, Mr. Zaidan, to remark: *"So lacking in humanity, even Satan himself would not have written it."*¹

Overshadowing this illegal R&D is the horrendous imbalance in bargaining positions. One pictures Lion Air armed with its insurers' lawyers who wrote the 21 paragraphs of legal jargon sitting at table, ready to convince the next victim to sign. While on the other side the table sits a grieving widow, all alone, no husband, no lawyer to help her, armed with only a high school education, and desperately in need of means to clothe and feed her children.

This widow is exactly the victim these laws were humanely designed to protect. Prompt payment, without the illegal R&D, would provide immediate support for her and her children without stripping her of her right to receive full compensation from those responsible for this tragedy as provided in Article 1370, *Civil Code of Indonesia*.

Further, in a recent meeting Lion Air falsely claimed that it had satisfied its duty by simply purchasing insurance through Tugu Pratama/Global Aerospace insurance companies. Nonsense, the law is clear. It is the air carrier who has the legal duty to pay. If Tugu Pratama or Global Aerospace sold Lion Air the wrong policy, one that did not cover the payment imposed by Article 141 of the *Aviation Law*, that would have been a serious mistake. But that would be a dispute among Lion Air, Tugu, and Global Aerospace. Lion Air remains liable to make these payments. Lion Air may very well have a lawsuit against Tugu and/or Global Aerospace for failing to provide the correct terms in their policies, but that would not allow Lion Air to escape its legal obligations by lamely trying to pass responsibility off to its insurers.

We also understand the meeting was attended by Aerospace lawyers who work out of the Singapore office of Kennedys Legal Solutions law firm. These lawyers tried to defend the illegal R&D by arguing that some sort of "international custom" overrules Indonesia law. It's an absurd proposition, an entirely fake argument, without legal foundation whatsoever. An insurance coverage question such as this is controlled exclusively by the law of the country in which the coverage is issued. Regardless of how a policy may be written, it cannot affect the liability of the insured (Lion Air) under the national law of the country in which the policy was issued. In this case, the *Aviation Law of Indonesia* unquestionably controls. Lion Air owes victims this payment. You are expressly forbidden to require a release for anyone.

You have been repeatedly so instructed by officials of the Indonesian government as in the order by the Director General of Air Transportation Polama B. Pramest on February 8, 2019. **[See: Ex. 5, Order to Pay]**

We were initially mystified by your inclusion of releases for Boeing and over 1000 other potential defendants. That is until we learned that Tugu Pratama in turn purchased reinsurance from Global Aerospace² who also insures Boeing. Then it all

¹ I personally confirmed the quote with attorney Zaidan in a face-to-face meeting with him in which four other people were present at the Novotel Hotel in Pangkal Pinang, Indonesia.

² Global Aerospace CEO Nick Brown admitted his company does indeed insure both Lion Air and Boeing. <https://www.reuters.com/article/us-ethiopia-airplane-insurance-idUSKBN1QS1D8>

made sense. Like a puppeteer behind the scenes, Global Aerospace's lawyers dictated the terms in your illegal R&D. They refused victims the opportunity to take a copy of your illegal R&D for review with a lawyer. All this while Global Aerospace has a conflict of interest insuring both Lion Air and Boeing.

Now, with the second horrific crash of a Boeing 737 MAX in Ethiopia involving the same defects in equipment, design, warnings, and instruction, the toll of human agony has risen to unprecedented intensity. Rather than spending your time trying strip bereaved families of their legal rights, perhaps you should have been more concerned with remedying defects in the Boeing 737 MAX. The adage rings true: *"Never underestimate the power of greed."*

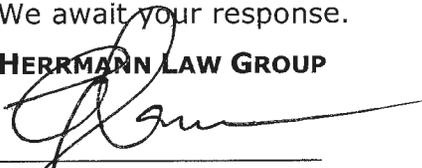
Nonetheless, we wish to conclude this demand by making clear our sole interest lies in securing just compensation for these victims. We will sue if we must, but we do not desire litigation. We strongly prefer settlement. We can envision a full settlement with you for your share of our clients' total damages—independent of our claims against Boeing or other defendants. Your insurer owes you the duty to extricate you from litigation without requiring the release of other businesses they may insure. To that end, we invite you to enter into good faith negotiations seeking a fair settlement acceptable to both sides.

However, to be abundantly clear, unless you agree to pay the amount you owe our victims and/or enter into good faith negotiations within 30 days of receipt of this letter, you are hereby given notice that our Indonesian counsel will thereafter commence a lawsuit against you here in Indonesia.

Should Boeing try to defend itself with these illegal releases in our lawsuits in the USA, we American counsel will welcome the opportunity to champion the rights of these victims in an U.S. Court of Law against such flagrant injustice.

We await your response.

HERRMANN LAW GROUP



Charles J. Herrmann
USA Attorney at Law