

70871

Charles E Cederroth
Senior Vice President

Marsh Aviation
1166 Avenue of the Americas New York, NY 10036
212 345 3352 Fax: 212 345 3413
charles.e.cederroth@marshmc.com

DEPARTMENT OF TRANSPORTATION

00 JAN 21 AM 9:40

January 20, 2000

ORIGINAL

MARSH

U.S. Department of Transportation Dockets
Docket No. (FAA- 1999-6265) - 4
400 Seventh St. SW
Room Plaza 401
Washington, D.C. 20590

**Subject: Federal Aviation Administration
14 CFR Part 450
Financial Responsibility Requirements for Licensed Reentry Activities;
Proposed Rule Docket No. FAA-1999-6255; Notice No. 99-17**

Dear Sirs;

We are responding to the captioned proposed rule in our role as professional Risk and Insurance Consultant to the Aerospace Industry.

Our aim is to identify certain risk issues and detail their impact on the Launch Industry based on current Insurance industry conditions.

Particular focus is given to RLV activities during the In-Orbit period where US Government "indemnification" is not available.

Not all RLV missions will be limited to deployment of satellites. We can therefore foresee RLV activity to include such missions as docking and/or coming into close proximity with other spacecraft such as ISS, Shuttle, Hubble or another RLV. We can anticipate that these activities may occur during the In-Orbit period. We can also anticipate that certain of these vehicles may be manned.

In this regard, potential does exist for catastrophic events resulting in Bodily Injury and Property Damage during the In-Orbit period

Industry must therefore consider the following factors in analyzing risk during In-Orbit activities:

- Without Indemnification, Industry participants must consider protecting themselves by purchasing the maximum amount of insurance that will be available in the marketplace. The amount of liability limits that will be available for these activities and their costs are entirely unknown, as the insurance marketplace has yet to consider and underwrite risks of this nature. Industry's risk profile will escalate beyond the treatment of Maximum Probable Loss to the handling of Maximum Possible Loss - a "betting the company" scenario.
- If confronted with unlimited loss potential without Indemnification, Launch Contractors may be unable to provide coverage under a single liability policy that includes other Private and Government Launch participants as additional insureds, as is currently the ELV norm. This will lead to all participants, including the Contractor's subcontractors and the Government's contractors and subcontractors to

Page 2

January 20, 2000

U.S. Department of Transportation Dockets

consider purchasing insurance for their respective interests alone. With all Participants purchasing their own insurance for catastrophic In-Orbit risks, insurance cost, in the aggregate, will increase significantly for any given mission.

- This factor, combined with the absence of a mandated reciprocal waiver of claims between participating launch parties, can lead to legal actions between parties and their various insurers over issues of accident cause and share of responsibility. Heretofore, the CSLA risk template has insulated the Launch industry from this inevitable cost and time consuming legal action. The Launch Contractor, in theory, has the opportunity to effect the cross waivers via contract. Without the mandate, the reality is that many customers, especially non-US customers, can be expected to use competitive pressures to transfer risk to the Contractor.

- Because the time and nature of an insured occurrence is difficult to contemplate, disagreement between Insurer and Insureds regarding whether a loss occurs during the Launch, In Orbit, or Reentry phases may occur. This will create seams between Indemnified and non indemnified activities, and potential coverage disputes regarding application of coverage and limits.

Our goal in entering this letter into the Docket is not necessarily to recommend change of the Rule Proposal, but to detail the risk issues confronting the Launch community from a the singular risk and insurance perspective.

Very truly yours,

A handwritten signature in black ink, appearing to be 'CEC/mpm', written in a cursive style.

CEC/mpm