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DEPT. OF TRANSPORTATION
DOCKET SECTION

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BEFORE THE
DEPARTMENT OF TRANSPORTATION
WASHINGTON, D.C.

Application of)
)
 PAN AMERICAN AIRWAYS, INC.)
)
 for a certificate of Public Convenience)
 and Necessity under 49 U.S.C. 41102 to)
 engage in interstate scheduled air)
 transportation)

DOCKET OST-96-1211 - 17

SUPPLEMENT NO. 5 TO APPLICATION
OF PAN AMERICAN AIRWAYS, INC.

Communications with respect to this document should be sent to:

Martin R. Shugrue, Jr.
President & Chief
Executive Officer
PAN AMERICAN AIRWAYS, INC.
9300 N.W. 36th Street
Miami, FL 33178

Berl Bernhard
William C. Evans
John R. Mietus, Jr.
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CHARTERED
901 15th Street, N.W.
Washington, D.C. 20005
(202) 371-6000
Attorneys for
PAN AMERICAN AIRWAYS, INC.

June 18, 1996

BEFORE THE
DEPARTMENT OF TRANSPORTATION
WASHINGTON, D.C.

Application of)	
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PAN AMERICAN AIRWAYS, INC.)	
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and Necessity under 49 U.S.C. 41102 to)	
engage in interstate scheduled air)	
transportation)	

SUPPLEMENT NO. 5 TO APPLICATION
OF PAN AMERICAN AIRWAYS, INC.

Pan American Airways, Inc. (“Pan Am”) respectfully supplements its March 26, 1996 application in the above-captioned docket to bring some updated information to the attention of the Department and to respond to certain requests made in the May 15, 1996 letter to Pan Am from Carol Woods of the Air Carrier Fitness Division.

1. Since the filing of the application, Pan Am has successfully completed two private offerings. The first offering was expected to raise \$6.0 million; the company received \$10.5 million. The second offering also was expected to raise \$6.0 million; the company received \$8.1 million (plus \$500,000 in other assets).

2. Pan Am has appointed as its new Director of Security Lloyd Anderson, an airline veteran with an extensive background in aviation security, Brief biographical information is provided below, and his **résumé** is provided as Exhibit 15. His addition to Pan Am’s management does not alter the compliance information provided in sections 1, m, o, p, and q of Exhibit 1 to the Application:

Lloyd P. Anderson, Director of Security, U.S. citizen. Mr. Anderson holds no shares of Pan Am Parent stock. After service in the U.S. Army Air Force and Air Force, he began his career in commercial aviation at Eastern Air Lines in the late 1950s as a flight engineer, ultimately acting as captain of a variety of propeller and jet aircraft and as Eastern's Corporate Director and Chief Pilot **(1981-83)**, responsible for about 1100 flight crew members, before retiring from Eastern in 1986. He has consulted on a part-time basis since 1974, and on a **full-time** basis since 1986, on airline, labor, and aviation security issues, providing services to the FM, Federal law enforcement and defense agencies, airlines, the Airline Pilots Association, corporate flight departments, and security-related companies.

3. In the application, Exhibit 1, paragraph **(f)**, Pan Am inadvertently neglected to state that Martin R. Shugrue, Jr., also served on the Board of Directors of Continental Airlines, Inc.

4. Paragraph 3 of the May 15, 1996, letter requests information concerning actions brought against Mr. Shugrue and Mr. Sicilian or other key personnel of Pan Am or other affiliated entities, including FHMG during the past five years. Except as noted below, no legal actions have been instituted in the five years ending May 21, 1996, charging Mr. Shugrue, Mr. Sicilian, and any other key personnel of the applicant or of FHMG with fraud, fraudulent misrepresentation, gross negligence, and/or breach of fiduciary duty:

Martin R. Shuerue, Jr.: As indicated in the application, Mr. Shugrue, during his tenure as Trustee, has been named in numerous actions against the Eastern Estate. **On** February 6, 1995, Mr. Shugrue was discharged as Trustee and, therefore, no longer has access to the files of Eastern. Mr. Shugrue contacted Mr. Sicilian, the President and Liquidating Agent of Eastern, and requested his assistance in responding to the Department's inquiry and Mr. Sicilian agreed to help. As a result, affidavits were prepared by the following Eastern officials dealing with claims against the Estate:

<u>Official</u>	<u>Position</u>	<u>Subject Matter</u>
Barbara J. Daniel	Assistant to the Secretary	Shareholder Actions
Robert R. Baujan	Vice President Finance	Finance Related Actions
Ronald T. Bevans , Jr.	Director, Legal	Travel Agency Actions
Alan C. Gibson	Vice President Employee Relations Affairs	Labor Actions

The affidavits are attached as Exhibits 16-19.

Other than as described in the above affidavits, neither Pan Am, Mr. Shugrue nor Eastern is aware of any actions instituted against Mr. Shugrue during the past five years, charging him with fraud, fraudulent misrepresentation, gross negligence or breach of fiduciary duty. However, in preparing this response, Pan Am also has determined that its response to 14 C.F.R. § 204.3(p) in the original application inadvertently excluded a reference to a 1990 civil action, *Vail v. Pan Am Cop.*, filed in New Jersey state court. Plaintiffs named former Pan Am Corporation, the former Pan American World Airways, and executives of those companies, including Martin R. Shugrue, Jr., Thomas G. Plaskett and C. Edward **Acker**, as co-defendants and alleged various theories of breach of contract, fraud, misrepresentation, and deceptive business practices arising out of the former airline's advertising of enhanced security from 1986 through 1989. The action was removed to Federal court, then remanded to New Jersey state court, 752 F. Supp. 648 (**D.N.J. 1990**), where the trial court granted defendants' motion for summary judgment, which action was affirmed on appeal, ending the case. 616 **A.2d** 523, 260 N.J. Super. 292 (**N.J. Super. A.D.**

1992). In addition, Mr. Shugrue was named as a counterclaim defendant in the litigation described in the paragraph dealing with actions involving Mr. Sicilian.

John J. Sicilian: Except as noted below, during the past five years, there have been no actions instituted against Mr. Sicilian charging him with fraud, fraudulent misrepresentation, gross negligence or breach of fiduciary duty.

As part of its plan of reorganization proposed in September 1994, Eastern revealed that it intended to create a subsidiary, Eastern Automated Service Corporation (“EASC”) to commercially exploit certain computer software licenses and copyrights that it possessed. Continental Airlines (“Continental”), System One Information Management, Inc. (“System One”) and EDS challenged those rights. After extensive preliminary litigation before the Bankruptcy Court in New York and the Bankruptcy Court in Delaware, the parties agreed to litigate the issues in the federal district court for the Southern District of New York in an action captioned Martin R. Shugrue, Jr., Trustee against Continental Airlines, Inc., System One Information Management Corporation and Electronic Data Systems Corporation, 94 Civ. 8672 (DC) (S.D.N.Y.).

In December 1995, Eastern and EDS entered into a settlement agreement regarding all computer software at issue in the case other than the computer reservations system (“CRS”) software. The settlement essentially provided Eastern with the relief it sought when it instituted the lawsuit, namely that Eastern will have a nonexclusive license to use for any purpose, including the provision of commercial services to third parties, the software owned by EDS and used by EDS or System One to provide services to Eastern.

Despite the settlement with EDS, Continental and System One have resisted acknowledging Eastern's rights. Therefore, Eastern continues to seek a declaration of its copyright and license rights to the CRS software. Presently pending are Continental's and System One's Motion for Summary Judgment against Eastern's Complaint, Eastern's Motion to Substitute Amadeus KG for System One and Continental as the Defendant in Eastern's Complaint, and Eastern's Motion to Disqualify Counsel for Continental and System One. By July 11, these motions will be at issue.

In the fall of 1995 Continental and System One **filed** a counterclaim against Eastern. One count of the counterclaim involves an allegation of fraud. The counterclaim also named Mr. Shugrue as Trustee (even though he no longer functions as such), Mr. Sicilian as Liquidating Agent (even though he is the sole officer and director of Eastern) and EAL **Newco**, Inc. (which does not exist). Eastern has served a Motion to Dismiss and Motion for Summary Judgment on System One's and Continental's Counterclaim. This motion should be at issue by the end of July 1996.

Phillip Frost, M.D.: During the five years ending May 15, 1996, **Phillip** Frost has been named as a defendant in the following actions of the types described above:

Harvey M. Jasper Retirement Trust and Harvey M. Jasper Individual Retirement Account, et al. v. IVAX Corporation and Phillip Frost, et al., Class action filed in September 1994, in the U.S. District Court for the Southern District of Florida, seeking damages and equitable relief for alleged violations of the Securities and Exchange Act of 1934 and negligent misrepresentation in connection with the acquisition by IVAX of **McGaw**, Inc. The complaint essentially alleges that **IVAX** made untrue statements of material facts in

public disclosure statements, to securities analysts and to the public regarding **McGaw** financial information. At this time, Dr. Frost was Chairman, Chief Executive Officer and President of IVAX. In November 1995, defendant's motion to dismiss was denied. The parties are pursuing discovery.

James M. Sweeney v. IVAX Corporation and Phillip Frost, M.D.. Individual action by James M Sweeney, former chairman and chief executive office of **McGaw**, Inc., tiled in June 1994 in the U.S. District Court for the Central District of California, which essentially alleges the same securities laws violations and negligent misrepresentations as alleged in the Jasper action. This action, which seeks compensatory and punitive damages, has been transferred to the U.S. District Court for the Southern District of Florida. In August 1995, the Court permitted Mr. Sweeney to opt out of the Jasper case and proceed on his own. The parties are pursuing discovery.

Ventana Partnership III, L.P., and Ventana Equity Expansion Partnership IV, L.P., v. IVAX Cornoration. Phillip Frost, M.D., Isaac Kave and Andrew Zinsi. Action brought in April 1995, in the U.S. District Court for the Central District of California, which essentially alleges the same securities laws violations and negligent misrepresentations as alleged in the Jasper action. This action, which seeks compensatory and punitive damages, has been transferred to the U.S. District Court for the Southern District of Florida and is expected to be consolidated with the Jasper case. The parties are pursuing discovery.

Richard C. Pfenniger, Jr.: During the five years ending May 15, 1996, Mr. Pfenniger was named (as an officer of **IVAX**) in the Jasper litigation described above and was named in no other action of the types described above.

5. Paragraph 3 of the May 15, 1996, letter also requests information concerning the status of Pan American World Airways, Inc. v. Eclipse Holdings, Inc. This action, filed in the U.S. District Court for the Southern District of New York, was brought by Pan American World Airways, Inc. ("Pan Am Delaware"), a Delaware corporation and an affiliate of Pan Am, against Eclipse Holdings, Inc., and its shareholders, Richard Bartel, David Lockwood and David Scott. In the action, Pan Am Delaware sought to enforce the terms of an asset purchase agreement which imposed an obligation on Eclipse to execute certain documents related to the assignment of old Pan Am's trademarks. Pan Am Delaware also sought a preliminary injunction to compel Eclipse's execution of the documents required for recordation of the assignment of trademarks, which motion of Pan Am Delaware was favorably granted on March 26, 1996. Eclipse filed a counterclaim alleging that it had been damaged because it had not been granted a license by Cobb Partners, Inc., Pan Am Delaware's predecessor, to use the marks in marketing charter service. Pan Am Delaware has denied the allegations in the counterclaim. Eclipse filed a notice of appeal of the **grant**

of the preliminary injunction and the trial judge has set a schedule for discovery and other pre-trial matters. In the meantime, Eclipse has executed the documents which formed the basis for the original action.

Respectfully submitted,



Berl Bernhard

William C. Evans

John R. Mietus, Jr.

VERNER, LIIPFERT, BERNHARD,

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901 15th Street, N.W.

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Attorneys for

PAN AMERICAN AIRWAYS, INC.

June 18, 1996

PAN AMERICAN AIRWAYS, INC.
INDEX TO EXHIBITS FILED WITH SUPPLEMENT NO. 6 TO APPLICATION
JUNE 18, 1996

<u>Exhibit</u>	<u>Description</u>
15	Résumé of Lloyd Anderson
16	Affidavit of Barbara J. Daniel
17	Affidavit of Robert R. Baujan
18	Affidavit of Alan C. Gibson
19	Affidavit of Ronald T. Bevans , Jr.

PAN AMERICAN AIRWAYS, INC.

EXHIBIT 15

RESUME OF MR. LLOYD P. ANDERSON

LLOYD P. ANDERSON
(703) 620-2418

11232 Sorrel Ridge Ln.
Oakton, Virginia 22124

EDUCATION:	Bachelor of Science, Mechanical Engineering - University of Pittsburgh	1950
	FBI Crisis Management and Hostage Negotiation - University of Virginia	1979-1 980
	FBI Swat training. - FBI Academy, Quantico Virginia	1980
EMPLOYMENT HISTORY:	Eastern Airlines - Captain L-101 1, A-300, B-727, DC-9, L-I 88, L-I 049, DC-7, DC-6, DC-4, C-440, M-494.	1963-1986
	Eastern Airlines - Engineering Flight Test and three-engine Ferry Division	1964-1 969
	Eastern Airlines Contract Consultant as Flight Operations Security Coordinator responsible for developing methods and procedures for coordination of efforts between Corporate Security and Flight Operation Divisions.	1986-1 987
	Eastern Airlines Corporate Director and Chief Pilot responsible for administrative management of approximately 1100 flight crew members domiciled in crew bases of Washington, Baltimore, and Philadelphia.	1981-1983
	Developed and managed Alcohol Recovery Program (HIMS) for Eastern Airlines Flight Crews	1978- 1983
	Developed Industry Procedures for the management and handling of Bomb Threats against U.S. Civil Aviation as a member of FAA/FBI/ALPA Crisis Management and Flight Crew Security Training Program Task Force	1980-1 986
	FBI, Delta, and Seal Team#6 Hostage Recovery Team Consultant regarding methods, techniques, and training pertaining to aircraft hijacking.	1982-1 986
	FAA Security Consultant as Industry Expert during hijacking Incidents including TWA #847 (Beruit), PAA #073 (Karachi), Continental Airlines DC-9 (IAD), and PSA #1771 (LAX).	1979-1 987
	Continental Airlines Contract Consultant representing the Airline in the on-scene FBI/FAA command post in the event of a hijacking of an Continental aircraft.	1986-1991
	SRSA Inc. Contract Consultant for development of: 1) GAO Study Re: Effectiveness of the current Aircarrier Standard Security Plan {ACSSP}. 2) FAA Crisis Management Planning Guide Manual for U.S. Airports. 3) FAA Technical Center Study Re: Systems Integration of Screening Equipment and Procedures for both current and future technology systems.	1986-1 988
	Developed and taught Air Carrier Flight Crew Security and Crisis Management Training Programs for Eastern Airlines, South African Airways, Continental Airlines, Peoples Express, Scandinavian Airlines, US Africa Airways, Eagle Airlines and MCI and Mobile Oil Corporate Flight Crews.	1974-1 995

Helliwell Inc. Contract Consultant as Technical Advisor for the production of multiple FAA Security Video Training Films.	1986-I 995
U.S Delegate to International Federation of Airline Pilots Security Study Group.	1981-1986
AVSEC Corp. Contract Consultant involving development and teaching Department of State and FAA Security Training Programs.	1986-I 987
National Chairman of Airline Pilots Association Flight Security Committee dealing directly with FAA and the FBI for development of Flight Crew Security Training Programs which included Crisis Management techniques.	1974-I 987
National Chairman of Airline Pilots Association Hazardous Materials Committee dealing directly with FAA and responsible for initiating, monitoring, and developing procedures for the carriage of Hazardous Materials aboard commercial aircraft.	1974-I 984
Astrophysics Corp. Contract Consultant for the development and production of Color X-ray Passenger Screening Training Program	1987-I 988
The Fairfax Group Ltd, Contract Consultant regarding litigation relating to the Newark Airport Terminal.	1988
AVSEC Corp. Contract Consultant involving development and teaching of ICAO Crisis Management Training.	1988-I 993
ATA/FAA Project manager, co-developer and instructor of U.S. Aircarrier "Train-the-Trainer" Passenger Screener Training Program.	1990-I 994
U.S. Government Contractor for Foreign Airport Security Surveys and development of Emergency Response Plans.	1989-I 995
U.S. Government Contractor for development and implementing Foreign Airport Security Management Training.	1989-I 995
U.S. Government Contractor for developing and implementing Foreign Airport Security Field Training Exercises (FTXs.)	1990-1995
Contractor consultant representing the Airline Pilots Association in various Industry/U.S. Government Aviation Advisory Committees.	1989-I 995
Contract consultant to the Airline Pilots Association for testimony before The Presidents Commission On Aviation Security.	1990-I 995
Contract Consultant to the Airline Pilots Association in the area of Security and Crisis Management as it relates to Flight Crews.	1986-I 994
Contract Consultant to FAA Federal Air Marshal Training Program.	1980-I 995

PAN AMERICAN AIRWAYS, INC.

EXHIBIT 16

AFFIDAVIT OF BARBARA J. DANIEL

AFFIDAVIT OF BARBARA J. DANIEL

STATE OF FLORIDA)
) ss.
COUNTY OF DADE)

BEFORE ME, the undersigned authority, personally appeared Barbara J. Daniel, who first by me duly sworn deposes and states:

1. My name is Barbara J. Daniel. I have been the Assistant to the Secretary of Eastern Air Lines, Inc. ("Eastern"), since January 1977. I make this Affidavit based upon personal knowledge and based upon the business records of Eastern.

2. As Assistant to the Secretary, I have direct knowledge of shareholder legal actions brought against Eastern over the past ten years. This knowledge would include legal actions, if any, that would have named Martin R. Shugrue, Jr. in his capacity as Trustee of Eastern beginning on April 19, 1990. I am not aware of any shareholder- actions naming Mr. Shugrue when such actions were initiated.

3. There were a significant number of shareholder litigations involving Eastern initiated in the 1980's before Mr. Shugrue assumed the role at Eastern as described above. Thus, Mr. Shugrue would not have been named in the initiation of such litigation.

4. After April 19, 1990, Mr. Shugrue would have assumed responsibility for any type of shareholder litigation instituted prior to his tenure as Trustee. However, Mr. Shugrue's responsibility would have ended on February 6, 1995 when he was released as Trustee of Eastern by the Bankruptcy Court.

5. No judgments adverse to Eastern or Mr. Shugrue were rendered in any shareholder litigation against Eastern. All such shareholder suits were resolved in the Plan of Reorganization approved by the Bankruptcy Court in December 1994, and which became effective on February 6, 1995.

FURTHER AFFIANT SAYETH NOT


Barbara J. Daniel

PAN AMERICAN AIRWAYS, INC.

EXHIBIT 17

AFFIDAVIT OF ROBERT' R. BAUJAN

AFFIDAVIT OF ROBERT R. BAUJAN

STATE OF FLORIDA)
) ss.
COUNTY OF DADE)

BEFORE ME, the undersigned authority, personally appeared Robert R. Baujan, who first by me duly sworn deposes and states:

1. As Vice President Finance of Eastern Air Lines, Inc., I am unaware of any charges of fraud, fraudulent misrepresentation, gross negligence, breach of fiduciary duty, or similar charges against Martin R. Shugrue, Jr., as Trustee of Eastern Air Lines, Inc. (since his appointment as Trustee from April 19, 1990 through February 6, 1995), as regards financial related areas. Specifically, this would cover areas such as Insurance, Financial Reporting, Cash Management, Taxes and Pension matters.

2. As evidence of this, there have been no notices regarding any matters referencing Martin R. Shugrue, Jr. filed with the insurance carriers under Eastern's Director and Officers Liability Policy, Pension Trust Liability Policy, Employee Crime Policy, and General Liability Policy (except for the claims referenced in Mr. Gibson's affidavit).

FURTHER AFFIANT SAYETH NOT


Robert R. Baujan

PAN AMERICAN AIRWAYS, INC.

EXHIBIT 16

AFFIDAVIT OF ALAN C. GIBSON

4. I cannot recall, to the best of my recollection in settling any issue on behalf of Eastern that I was involved, that Mr. Martin R. Shugrue, as Trustee of Eastern, was charged with unfair or anticompetitive business practices, fraud, fraudulent misrepresentation, gross negligence, breach of fiduciary duty, felony or antitrust violations, with the exception of the following civil litigation:

- A. Beddell et al v. Eastern Air Lines Variable Retirement Plan for Pilots et al (CIV. Case 100 93-12074 (D. MASS) Martin R. Shugrue is a named defendant. This case has been settled. A settlement conference has been scheduled by the U. S. District Court for the purpose of resolving one remaining issue that does not involve Eastern. The lawsuit alleged breach of fiduciary duty with respect to the investment and expenditure of assets in the Eastern Air Lines Variable Benefit Retirement Plan for Pilots. It is noted that Eastern or Mr. Shugrue have absolutely no authority to act regarding investment decisions or expenditures of the Plan.

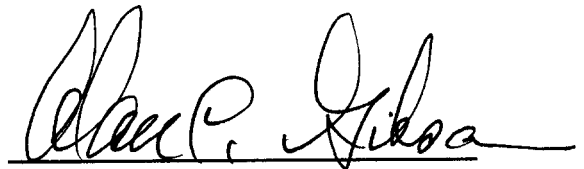
- B. Air Line Pilots Association International. Charles H. Copeland and Jack N. Moqus v. Eastern Air Lines, Inc., William R. Tegtman and Noel R. Honohan CIV. 90-1642 NESBITT (S. D. Florida). Martin R. Shugrue was a named defendant. The lawsuit alleged breach of fiduciary duty because defendants deprived participants of right to process pension plan disputes; defendants refused to participate in the Pension Dispute Board preventing plaintiffs from fulfilling their own statutory fiduciary obligations and defendants refused to carry out their duties as Pension Dispute Board members. In accordance

with the Settlement Agreement signed between Eastern Air Lines and the Air Line Pilots' Association, International on July 27, 1992, this litigation was dismissed with prejudice.

I declare under penalty of perjury that the foregoing is true to the best of my knowledge, information and belief.

FURTHER AFFIANT SAYETH NOT.

Executed on June 13, 1996.

A handwritten signature in cursive script, reading "Alan C. Gibson", written over a horizontal line.

Alan C. Gibson

PAN AMERICAN AIRWAYS, INC.

EXHIBIT 19

AFFIDAVIT OF RONALD T. BEVANS, JR.

AFFIDAVIT OF RONALD T. BEVANS, JR.

State of Florida }

County of Dade }

I, RONALD T. **BEVANS**, JR., do depose and say:

1. I am employed as Director, Legal Affairs, for Eastern Air Lines, Inc. ("Eastern") and, as such, am authorized to make this Affidavit.

2. I have personal knowledge of the matters stated herein and, if called as a witness, am competent to testify regarding these matters. All matters stated herein are true and correct to the best of my knowledge.

3. As the Director, Legal Affairs, I have direct knowledge of various legal matters, including litigation in which Eastern Airlines and its officers have been involved over the past five years. This knowledge includes actions involving Martin R. Shugrue, Jr. in his capacity as the Trustee of the Estate of Eastern Air Lines, Inc.

4. Specifically, I was involved in overseeing the conduct of litigation initiated in November 1993 by the Trustee against 7,617 Defendants - all of whom were travel agencies indebted to Eastern for monies resulting from sale of traffic documents for travel on Eastern Airlines prior to shutdown. These cases were brought in the Bankruptcy Court and referred to alternative dispute resolution by the Court.

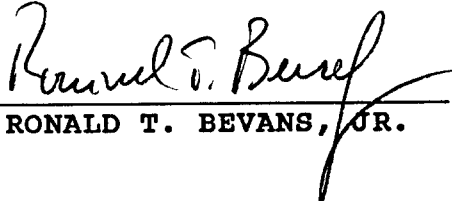
5. Many of the Defendants in these cases asserted counterclaims against Eastern and, by implication, the Trustee since the Trustee was in November 1993 charged with responsibility for the bankruptcy estate of Eastern Airlines. However, my review and recollection of the counterclaims reflects that none of the counterclaims asserted any allegations of fraud, fraudulent misrepresentation, gross negligence, breach of fiduciary duty or the like against Martin R. Shugrue, Jr. All counterclaims asserted related merely to certain agencies' alleged entitlement to monies from Eastern based upon the Defendant's business relationship with Eastern prior to the shutdown of the airline.

AFFIDAVIT OF RONALD T. BEVANS, JR.

6. There have been no adverse judgments rendered against Eastern Airlines, its officers or the Trustee on any counterclaims filed by any of the 7,617 Defendants in the travel agency cases.

7. More generally, my duties include involvement in various other litigation matters brought by and against Eastern in State and Federal Courts, including the U.S. Bankruptcy Court for the Southern District of New York. Many of those cases remain pending as of the date of this Affidavit. However, to the best of my knowledge, in no case has the opposing party or parties asserted that Mr. Shugrue engaged in any type of fraud, fraudulent misrepresentation, gross negligence, breach of fiduciary duty, or the like.

FURTHER AFFIANT SAYETH NOT.



RONALD T. BEVANS, JR.

CERTIFICATE OF SERVICE

I hereby certify that I have, this 18th day of June, 1996, caused the attached Supplement No. 5 to Application of Pan American Airways, Inc. to be served by first class mail, postage prepaid, on:

Mr. David R. Harrington
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William C. Evans