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SUPREME COURT OF VIRGINIA
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RICHMOND, VIRGINIA

IN THE

Supreme Court of Virginia

AT RICHMOND

RECORD NO. 760523

CARMEN C. CHAVEZ,

Appellant,

v.

THE CONTINENTAL INSURANCE COMPANY,

Appellee,

SUPPLEMENT TO APPENDIX

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1 difficulty the plaintiff had before October 12, 1970?
2 A I'm sorry. I didn't understand.
3 Q Do you have any knowledge of any problem or
4 difficulty that the plaintiff had physically prior to
5 October 12, 1970?
6 A Well, when she sits for example now --
7 Q Before.
8 A Before?
9 Q Yes, sir. Were there problems or diffi-
10 culties you knew of?
11 A No, not before. Unh unh.
12 Q After 1970 would you describe what, if
13 any, changes you observed in her physical condition.
14 A Well, she walks very straight, and some-
15 tims she limps, and at one time we had her over to our house
16 for a dinner and as long as she was seated in a soft chair
17 she was all right. So when we came to the dining room to
18 have dinner, she sat at the straight back chair and she was
19 shifting, so I asked her what was wrong, and she says, well,
20 I don't want to be any bother but could you give me a pillow?
21 I can't sit straight. So I gave her a pillow.
22 Q When was the last time that you saw her
23 either at your house or her house?
24 A We were at her house last Sunday for
25 dinner.

Q What, if any, observations were you able to make about her physical condition at that time that might have been different from what her condition was prior to October 12, 1970?

A Well, she couldn't pick up her little daughter. Her little daughter came to her and wanted her to get into her arms. She bent down and she made a terrible face when she picked her up. When she went down to pick up the baby.

Q What, if any, difference have you noticed in her ability to walk or her carriage after the accident as related to before the accident?

MR. MARKS: Your Honor, the witness has already testified to that.

THE COURT: I believe she testified to that. Objection sustained.

Q What, if any, use have you made of Mrs. Chavez in her profession as a hair dresser?

A Yes, sir. She used to be my hair dresser.

Q Is she your hair dresser now?

A No, sir. She cannot do it.

Q How long has that been so?

A Since the accident.

Q Have you discussed having your hair done with her after the accident?

always came to her home.

Q On each visit you came to her home as a result of her invitation?

A Yes. Or, no, twice we went on our own. We called and said are you all right? Can we come and visit you?

Q All right. When she invited you, what was the nature of the occasion?

A There was no nature of occasion. We were just friends.

Q You would just come as a social guest for a meal?

A No, sir. She couldn't cook.

Q She couldn't cook?

A Couldn't cook.

Q Can she cook now?

A Yes. Somehow. She cooked for us Sunday.

Q Somehow she prepared the meal that you all had on Sunday?

A Yes, sir.

Q Did she serve it as well?

A No. Her husband put it on the table.

Q How about the visit before that? Did you have a meal then? Before last week.

A Before last week? No, sir.

1 in-law over there?
2 A I really don't know.
3 Q Was it before you moved away?
4 A Oh, yes.
5 Q How long before you moved away?
6 A I really can't answer that. I just don't
7 remember.
8 Q When was the last time you have been at
9 her home?
10 A I saw her in the summer time in July.
11 Q Of this year?
12 A That is correct.
13 Q Where did you see her?
14 A I saw her on the sidewalk.
15 Q Where?
16 A In front of her home.
17 Q What was she doing?
18 A She was pushing the baby in a carriage.
19 Q Where was she going with the baby, do you
20 know?
21 A Just for a short walk.
22 Q For a short walk with the baby in the
23 carriage?
24 A Yes, sir.
25 Q How did you happen to see her there?

1 A I was just passing by in the car.
2 Q You were just in the neighborhood and
3 drove by, stopped and talked?
4 A Stopped and talked to her, right. That
5 is correct.
6 Q That was in July of 1975?
7 A That is correct.
8 Q How old was the baby then?
9 A Well, it was two in April, I think.
10 Q Two in April. That would make it two and
11 a fraction then.
12 A That is correct.
13 Q In July. All right. Before that, when was
14 the last time you saw her?
15 A I think it was a year ago in August.
16 Q A year ago last August, you mean?
17 A That I saw her. I had talked to her on the
18 phone.
19 Q Where did you see her?
20 A I went to her home.
21 Q By invitation?
22 A I called her and told her I was going to
23 come over and visit. She said that's fine.
24 Q That was fine?
25 A Yes.

whether she was making any improvement. Then lead us up to today as to what problems and difficulties she has from your observation.

A Well, right after she got out from the hospital, she was able to move around better, but then we had to look, trying to, kept taking care of her from there on, and we were going back to him to check every couple of weeks or whatever was necessary. And, well, she had problems working and standing up too much or sitting down for too long and -

Q What can you say about today? What activities can or can she not do? Can you describe what her abilities are?

A Activities like sports activities?

Q Any household activities.

A As long as she has plenty of rest, she can do little things around the house. Like before usually she used to clean the house in five hours. Now it takes three days. What she does is like when she is going to mop, mop the kitchen floor or vacuum, clean it or something like that, she has to do a little bit for a little while, then stop, lay down, and take a break or sit down and rest and then go back and do a little bit more. She cannot try to force herself to do too much like ironing clothes, she cannot do that. She's not able to do it. She can do it for a few

you.

NOTE: At this point recess is had, Whereupon court is reconvened and the hearing continues, viz:

THE COURT: All right, Mr. Marks.

CROSS-EXAMINATION

BY MR. MARKS:

Q Mr. Chavez, after you mailed your letter of June 5th, I believe it was, wasn't it to the home office of the company?

A Yes, sir.

Q You got a response back, did you not, in which they, dated June 20th. Will you look and see whether you can recognize this letter as being the response they made?

A Yes, sir.

MR. MARKS: We will offer that.

THE COURT: We will mark that as Defendant's Exhibit A.

Q Now, in this letter, Mr. Chavez, the company asked you why it was that you did not notify them

earlier than you had. Will you tell us why you did not?

A Well, at the time that she went to work the last time, we were waiting and hoping that she was going to be well. That was our hope all along. But, after she went back to work the fourth time, which was the last time she tried, and she was unable to do it, then I decided to write the insurance company.

Q Didn't you have a booklet that had been given you by Eastern Airlines telling you that a notice of the accident must be given within thirty days?

MR. MOORE: Your Honor, I object in that all it states within reasonable period thereafter.

MR. MARKS: All right.

MR. MOORE: Let me ask that question. I think it is a material question.

THE COURT: I will let the question stand.

Q Will you answer?

A Yes.

Q All right, sir. And was there any reason why that at that point you could not or Mrs. Chavez could not or someone in her behalf could not have notified the company within thirty days of the fact that she had been in this accident?

A Well, not really.

Q Not really. Was there any reason why then

1 nobody could have notified the company of the happening of
2 the accident between that thirty-day period and June 5 of
3 1972 when you actually did do it? Is there any physical
4 reason why they could not have been told?
5 A Not physical reason on my side. Well, the
6 only reason that I didn't write the letter right away is
7 because I knew about insurance. I knew that was covered under
8 the policy, but I didn't know the extent of her injuries.
9 Q Didn't you know that you were supposed to
10 notify them of an accident which she suffered?
11 MR. MOORE: I am going to object to that,
12 Your Honor. It is a conclusion of law, I believe,
13 which the Court will have to pass on. On that
14 basis, I would object to the form of the question.
15 THE COURT: I will allow the question to
16 stand.
17 Q Didn't you know that, Mr. Chavez?
18 A I knew she was covered under the policy
19 disability.
20 Q You knew she was down --
21 A As of that time.
22 Q You knew she was down, didn't you?
23 A Well, I knew she had an accident. She was
24 injured.
25 Q Not working.

1 A She wasn't working yet. She was still in
2 bed three and a half to four weeks after the accident.
3 Q She was not getting well, as far as you could
4 see.
5 A She was not getting well, no, she wasn't.
6 Q Why didn't you let them know at that point?
7 A Well, I thought that in order for us to
8 file a claim through that particular policy, she had to be
9 unable to work or disabled.
10 Q All right, sir.
11 A Up to that point we didn't know if she was
12 going to be able, or whether she was going to go back to
13 work.
14 Q Let me ask you this question then. When
15 did you first know that she was totally disabled? I'm not
16 talking about anything permanently. When did you first know
17 that she was down and unable to work?
18 MR. MOORE: Your Honor, that is a conclusion
19 again of law which I object to the form. He can
20 ask what facts he knows or whatever. That is a
21 conclusion of law that he is asking this witness.
22 THE COURT: I will allow the question to
23 stand, Mr. Moore.
24 Q Would you answer the question, please.
25 A That was right after she tried to go back to

1 work the fourth time. The first three times she felt she
2 was unable to do it, and even though we still waited and she
3 tried again. The last time she tried, then I was, I just
4 was convinced she was not going to be able to do it again.
5 Q Let me ask you this question then. You
6 read the provision in the pamphlet, did you not? You were
7 familiar with it. You had it there.
8 A I had it there, yes.
9 Q And it says, does it not, that the disabili-
10 ty is supposed to commence within 180 days after the accident,
11 does it not? In order for there to be a claim. You knew
12 that also, did you not?
13 A Continuing for twelve consecutive months.
14 Q Didn't you know, also, after the expiration
15 of 180 days that she wasn't totally disabled?
16 A 180 days, I didn't know she was totally
17 disabled yet.
18 Q Don't you know she was not, as a matter of
19 fact?
20 A No.
21 Q She was up and around, was she not?
22 A She was sick, but it was not anything
23 definite.
24 Q She was up and around.
25 A When?

1 Q After the accident, for any period of time.
2 A Yes. For a little while. She was discharged
3 from working.
4 Q She was walking.
5 A Walking.
6 Q Riding in cars?
7 A Yes.
8 Q Going to the doctor's office for instance?
9 A That's right.
10 Q She was not confined to bed in any way.
11 A She was part of the time. But, of course,
12 she did went out with me to the doctor and she did move
13 around.
14 Q She did go to the store.
15 A No.
16 Q With you.
17 A No. I go to the store.
18 Q She does not do any shopping?
19 A No. I do the shopping.
20 Q Always?
21 A Most always, yes.
22 Q Have you been doing it ever since you were
23 married?
24 A No. Ever since the accident I do it like
25 the grocery shopping. I do the grocery shopping. She cannot

1 lift anything heavy, so I do the grocery shopping.
2 Q All right. Let me ask you this question:
3 Did she go to the store with you in the car?
4 A She have, yes.
5 Q How often?
6 A Maybe --
7 Q Does she go with you now?
8 A Yes.
9 Q Does she tell you what to buy?
10 A Well, she wants something to buy, yes, she
11 tells me what to buy.
12 Q Who decides what you are going to eat at
13 your house? Do you decide or does she?
14 A Both decide.
15 Q That is a mutual thing, is it?
16 A That's right.
17 Q Does she cook?
18 A Yes, she cooks. I help her.
19 Q How long has she been doing the cooking,
20 doing some of the cooking?
21 A Some of the cooking, well, you mean right
22 after the accident or how many years?
23 Q When did she start in after the accident?
24 A For the last, I would say about year and
25 a half or so. Maybe two. Well, year and a half.

Q Maybe two?

A All right.

Q She has been doing the cooking more and more, has she not?

A I wash the dishes, though.

Q I what?

A I do the washing.

Q All right. Let me ask you this question, Mr. Chavez. She went to the hospital right after the accident, did she not?

A Immediately, right after, immediately, yes.

Q She was looked over and they told her that they could find no reason why she should not go home. Isn't that right?

A Well, I went there and picked her up, brought her home.

Q When did you pick her up?

A That same day of the accident, the evening.

Q How long was she at home before she went back to the hospital?

A Well, from the day that she spent three weeks, three and a half weeks in bed. And maybe it was a month and a half or so before she started going to the Fairfax Hospital.

1 Q During that three and a half weeks, she
2 was seen by Dr. Barrister, wasn't she?
3 A Dr. Barrister, yes.
4 Q Did she go to his office?
5 A Yes. I took her there.
6 Q She rode in the car to his office for these
7 visits.
8 A Yes.
9 Q How often did she go to Dr. Barrister
10 during that period of time?
11 A During those three weeks?
12 Q Yes, during the time after the hospital.
13 A Couple times.
14 Q Did he come to the house at all?
15 A No. He never come to the house.
16 Q At his suggestion or at the suggestion of
17 one of his associates --
18 A Yes.
19 Q -- she went into Fairfax Hospital. Is
20 that correct?
21 A That is correct.
22 Q How did she get to the Fairfax Hospital?
23 A I took her there.
24 Q You took her in the car? Did she walk in?
25 A Yes.

Q She walked out to the car from your house?

A You mean from the house to the car?

Q Yes. From your house to the car.

A Oh, yes.

Q She walked from the car into the hospital?

A That's right.

Q She was put to bed in the hospital, was she not?

A Yes.

Q She was given an intensive course of physical therapy?

A That is correct.

Q All right. This consisted of some traction and some heat treatment and things of that kind, is that correct?

A That is correct.

Q During that time did you go to see her?

A Well, the first, when she was going to Fairfax Hospital she was going as an outpatient.

Q All right. She had been going back and forth, had she not?

A That's right.

Q When she got there, she would have a physical therapy treatment, then go home again?

A That's right.

she was just walking around.

Q I see. You have a son, do you not?

A Yes, sir.

Q How old is he?

A Now he is thirteen.

Q Then he would have been ten, in 1972?

A In '72?

Q He would have been nine?

A Nine, ten, somewhere in there.

Q All right. You also have a daughter.

A Yes. We do have one now.

Q When was your daughter born?

A '70 -- when was this? She is now, she is two and a half years old now.

Q Would April, 1975 be about right? '73 I mean.

A '73, yes.

Q All right, fine. Now, when did you all first learn that she was going to have a baby?

A When her doctor told her so.

Q When was that? How long before the baby got here did you first know about it?

A Well, there was about seven months, maybe.

Q Seven months? All right. During the time that she was, before that seven month period of time, which

1 would take it back, let's say to -- from April of 1973 to
2 September perhaps of 1972.
3 A Yes
4 Q Before September of 1972, what was her
5 activity at home?
6 A Before?
7 Q Yes. Before, what was she doing around the
8 house? What kind of thing was she doing? Was she going out
9 in the car? What was she doing?
10 A She wasn't doing not really much. She was
11 just resting and doing maybe a little things, you know, that--
12 Q Around the house?
13 A Around the house, yes.
14 Q Looking after the boy?
15 A Yes. She was looking after the boy.
16 Q Was your mother there then?
17 A My mother was there.
18 Q All the time up to the time she became
19 pregnant?
20 A Well, sometimes, all the time, sometimes
21 she had to go back home and go back again.
22 Q How often was your mother there?
23 A She was there very often.
24 Q How often is very often, Mr. Chavez?
25 A She spent there the first six or eight

1 or maybe sitting, reading a book or doing little things that
2 she could be doing.
3 Q Such as what little things?
4 A Well, she could be fixing something to
5 eat or something.
6 Q Well, the baby was subsequently born, was
7 it not?
8 A Oh, yes, she was.
9 Q She was a normal healthy baby and she had
10 no complications with respect to delivery. Isn't that a
11 fact?
12 A That's right.
13 Q How long was she in the hospital after
14 having had the baby?
15 A After she had the baby?
16 Q Yes. How long was she there during the
17 time she was having the baby?
18 A As I recall about four or five days.
19 Q How did she come home, in the car?
20 A In the car.
21 Q You went to get her?
22 A (Nodding head indicating yes).
23 I went to get her.
24 Q You and she brought the baby home together.
25 A That is correct.

1 Q After she got home from the hospital with
2 the new baby, what did she do? With respect to the baby
3 now, did she look after her?
4 A Oh, yes.
5 Q What sort of work did she do looking after
6 the baby? Did she change its clothes and diapers and so on
7 like that?
8 A I guess the usual work you do.
9 Q She fed the child, gave it its food?
10 A Yes. Yes, with a --
11 Q Fixed formula?
12 A Yes. She did. Sometimes I did, sometimes
13 she did it. But usually she fed the baby, yes.
14 Q She would get the bottle and --
15 A Yes.
16 Q -- take care of the feeding operations.
17 All right. During this time she was up and around then, was
18 she not?
19 A Yes. Yes.
20 Q Does your wife drive, Mr. Chavez?
21 A She haven't drove a car ever since the last
22 five years.
23 Q Can she drive? Does she know how to
24 drive?
25 A I don't know if she have remember how to

A She was working as a hair dresser.

Q Where?

A At the time she was working at the Ambassador Beauty Shop in Silver Spring, Maryland.

Q Has she ever done any work other than hair dressing?

A No, not that I know.

Q Not that you know, except the work around the house, of course.

A That's right. Around the house.

Q Can she read and write English with no great problem?

A She can read it, but I don't think she can write it too well. Neither do I.

Q Now, Mr. Chavez, after you got the letter which has been marked as Exhibit A, a form was sent in that response, was it not, in that letter for you all to fill out, have the doctor fill out?

A I believe so, yes.

Q I will ask you to look at this and tell us whether or not that is the form that was filled out and sent in?

A Yes. That looks like the one.

MR. MOORE: That is.

MR. MARKS: That is it. We will offer that.

A I don't recall if I sent any.

Q Did you look at what Dr. Shiner had said about your wife's condition before you mailed the form in?

A Yes.

Q It is true that he had given her treatment on a number of dates as shown here. That is correct, is it not?

A Yes.

Q It is also true that she had been in the hospital from January 24, 1971 to a date of discharge February 12, 1971.

A Yes.

Q That is at the Northern Virginia Doctors' Hospital. Okay?

A Yes.

Q And you were familiar with the fact, were you not, that Dr. Shiner on this form says that he could not tell whether she was disabled or not at that point.

A Well, whatever he says here.

Q Undetermined, does it not?

A Undetermined, yes.

Q He says she was partially disabled from October 12, 1970 through the present time. Isn't that what he said to the insurance company when he filled out the form at your request for the purpose of making this claim?

1 Q Yes, sir.
2 A Yes, we have gone out.
3 Q Where have you gone? What kind of places?
4 A We went to, we went to South America one
5 time.
6 Q When did you go?
7 A I don't remember. When did we go?
8 Q Was it since the accident?
9 A It was after the accident.
10 Q All right. I thought it was. Now, tell us,
11 had the baby come yet at that point?
12 A Yes.
13 Q All right, sir.
14 A That was, that was, that was four months
15 ago. Five months ago.
16 Q Five months ago you went to South America?
17 A We went to her parents.
18 Q To her parents. Did you take the baby with
19 you?
20 A Yes.
21 Q How about the boy?
22 A Everybody went.
23 Q How did you travel? Airline?
24 A Yes. On the airplane.
25 Q Where did you leave from? Dulles or D.C?

1 A We went from here, from D. C.
2 Q From D. C. How long were you in the air
3 on that run?
4 A From here to Miami two hours.
5 Q Did you get off the plane at Miami?
6 A Got off the plane at Miami.
7 Q And changed planes?
8 A Changed planes.
9 Q All right. And from Miami you went to
10 where in Colombia?
11 A Bogota.
12 Q How long of a run is that? To Bogota?
13 A That's less than four hours.
14 Q All right. You arrived, is it down to
15 the airport at Bogota?
16 A No. The family were waiting for us there.
17 Q But the plane went down to the airport, did
18 it not?
19 A Oh, yes.
20 Q You all got off, did you not?
21 A We did get off.
22 Q You all had gotten on the plane at D. C.
23 and had gotten off at Miami, changed planes for Bogota, th en
24 during the flight you were aboard, then you got off at
25 Bogota. All right. The family was there waiting for you, is

that right, with a car, I take it?

A That's right.

Q How far did you have to walk to get to the car?

A Not very far. Maybe 100 feet.

Q She wasn't in a wheel chair, was she?

A No.

Q She was walking along, along with you.

A Along with me.

Q How long did you all stay down there?

A About twenty days.

Q During the time you were down there, what all kind of things did you do?

A Well, I did a lot of things. I did a lot of things, but she spent most of the time in the house. She was so sick she could hardly move. Because she usually gets -- on our way we have to spend two or three hours sitting on the chair. Sitting too long she becomes very sick. On the airplane, although she got up and walked along the aisle for a little while, when she got to Bogota, she was so sick there that she was able to go out maybe one or twice she went out with us to sightsee from the car.

Q What did she do while you all went out sightseeing in the car?

A She was there at the house. I don't know

1 what she was doing.

2 Q You don't know what she was doing there at
3 all. All right. When the time came to leave, how did you
4 all get to the airport at Bogota?
5 A Her father took us in the car.
6 Q In the car?
7 A Yes, sir.
8 Q She walked from the car to the plane?
9 A Yes. She walked from the car to the plane.
10 Q And she walked up the ramp to the plane?
11 A Up the steps, yes.
12 Q All right. She got aboard.
13 A That's right. Went and sat.
14 Q When she got aboard, she stood up and
15 walked around, up and down the aisle some while in flight?
16 A She did that, yes, because --
17 Q All right. And did you change at Miami
18 again?
19 A On the way back, yes.
20 Q How far did you have to travel between planes
21 at Miami?
22 A Travel? Not very much, not very far.
23 Q Did you go up in the airport and sit back
24 down again?
25 A No. We went into the airport, just going

1 from one gate to the next.
2 Q You walked through the airport and got on
3 the plane at another gate?
4 A Yes.
5 Q A different plane?
6 A Different plane. Leaving about an hour and
7 a half after, something like that.
8 Q You had a layover for about an hour and a
9 half. What did you do in the airport while that was going
10 on?
11 A Just went to the gate and sat.
12 Q All right, sir. And when you got home,
13 did you have your car parked at D. C?
14 A I had my car parked at the airport, yes,
15 sir.
16 Q You walked out to the car and got in it and
17 went home?
18 A I went to get the car, brought the car
19 back to the terminal to pick her up.
20 Q She walked out of the terminal, got into the
21 car, then you all went home.
22 A That's right.
23 Q So much for that trip. Have you been
24 anywhere since then? The two of you?
25 A Where else we went? We went to, we went to

1 Orlando one time.
2 Q When was that?
3 A I don't recall the date.
4 Q Was it after the baby was born or before
5 the baby was born?
6 A After.
7 Q After the baby was born. How long ago would
8 it have been then about? Was it this year?
9 A I think it was about eight months ago,
10 something like that.
11 Q Eight months ago?
12 A Nine months ago.
13 Q Was it around Christmas time in 1974?
14 A I don't, I don't recall which day it was
15 that we went.
16 Q All right, sir. You flew down to Orlando,
17 of course.
18 A Yes.
19 Q What did you do while you were down there?
20 A We went to a motel.
21 Q Did you have a rented car or what?
22 A No. We didn't rent a car, because the only
23 place we went was the --
24 Q Motel?
25 A -- motel, and they had a little bus that

1 picked us up right out at the airport.
2 Q You rode the bus to the motel. How long
3 did you stay there at that time?
4 A We stayed about four days. Three or four
5 days.
6 Q What did you all do while you were there?
7 A The only thing we did was went to Disney.
8 Q Disney World?
9 A Yes.
10 Q She went along with you?
11 A Yes.
12 Q How long did you stay at Disney World?
13 A We went two times there, spent a few
14 hours there.
15 Q Each time did the cildren go that time,
16 too?
17 A How?
18 Q Did the children go?
19 A Yes.
20 Q They went and stayed with the two of you.
21 Did they go off by themselves?
22 A No. They stayed with us.
23 Q You all went with them wherever they went?
24 A That's right.
25 Q Now, before Orlando, where had you been?

A That's it, that I recall.

Q Those are the only two trips you have made out of town since the accident, is that right?

A Yes, that she made.

Q The two of you made together.

A Yes. Yes.

Q When the little girl was a baby, I understand your wife rolled her in the carriage out on the sidewalk in front of the house. Is that right or wrong?

A Yes. She put her in the carriage.

Q Put her in the carriage and --

A Rolled her around on the sidewalk there.

Q Did she take the carriage up and down the steps?

A No. We kept it, we kept it what you call the carriage, is that how you call it? We kept it down on the first floor, which is level. You don't have to go up and down.

Q It is rolled out the front door and down the steps?

A On the back door we have a sliding door, goes out the back.

Q Straight onto a patio type place, is it?

A Patio type place. She doesn't have to go up and down.

1 Q The carriage was kept on the first floor?
2 A It's kept there now.
3 Q Did she take it in and out of the house
4 herself or did you have to do it for her?
5 A No, she can.
6 Q She can do that?
7 A Yes.
8 Q She could roll the baby around in the area,
9 is that right?
10 A Yes.
11 Q How often did she take the baby out?
12 A I would say at the time every couple of
13 days.
14 Q Every couple of days, weather permitting,
15 of course.
16 A That is correct.
17 Q How often has she seen the doctor lately?
18 A The last time she saw him was almost a
19 couple months ago.
20 Q What doctor did she see a couple months
21 ago?
22 A Dr. Shiner.
23 Q Before that when had she seen him the last
24 time?
25 A Before that, maybe a month. I don't recall

1 fell several times, and she continued to require quite a bit
2 of medication, even after discharge from the hospital. And
3 she required marked restriction of activities. She was unable
4 to do any lifting, bending, participation in athletics,
5 that sort of thing, and she had been under my care -- I
6 have been seeing her since 1971. On numerous occasions I would
7 say roughly at least once a month or so, except for several
8 periods where she was pregnant, and I believe she left the
9 country on a couple of occasions, she still continues to
10 require medication, she still exhibits on physical examination
11 evidence of spasm and tenderness basically in the lower
12 cervical area of the neck and the area between the shoulder
13 blades.
14 Q Were there X-rays taken of her spine on
15 various occasions?
16 A Yes. X-rays have been taken on several
17 occasions.
18 Q Were the indications abnormal condition on
19 them?
20 A The X-rays have not revealed any evidence
21 of any broken bones. There have been no evidence of any
22 fractures or dislocations.
23 Q Have you prescribed for her drugs and, if
24 so, what type?
25 A She has had various medications, but at the

1 a permanent disability in reference to her spine. The reasons
2 being the orthopedic injuries, sprains, strains, fractures,
3 that sort of thing, may take anywhere up to a year to heal.
4 If they do not heal within a year, then the probability of
5 them healing is essentially nil. And by the fact that it has
6 lasted for almost five years now, and the fact that on
7 physical examination her objective findings substantiate her
8 complaints of pain, stiffness, et cetera, then she definitely
9 does have a permanent disability.
10 Q Doctor, I show you this Exhibit B of the
11 defendants, which is the form I guess was submitted to you
12 by Mr. Chavez. On there are shown certain findings that you
13 made. I believe that is dated July 10, 1972. Directing your
14 attention to the item which describes how long has patient
15 been continuously totally disabled, I guess it is unable to
16 work, isn't it? You have undetermined. Would you please
17 explain what you mean by that.
18 A Undetermined refers to the fact that I had
19 no idea how long her symptoms would develop at that time.
20 Because it was less than a year since the time of the injury,
21 and she was still having quite a bit of problems. Now if
22 the, if this had been dated, let's say October --
23 Q Doctor, if I made --
24 MR. MARKS: It was more than a year.
25 A I'm sorry. I thought the accident. I'm

1 sorry. 1970 the accident occurred? Undetermined at that
2 time meant that I could not tell how long her injuries were
3 going to last.
4 Q Now, at the time you got that, filled that
5 form out, was there any definition that was furnished to
6 you at that time under the terms of the policy as to what
7 total disability meant?
8 A Yes.
9 Q At the time that form was given to you?
10 A I believe so. I had a form.
11 Q Was it furnished to you at that time or
12 later?
13 A Let me check. I can tell you in a second.
14 Let me just find that form.
15 Q Let me ask you this, Doctor. Does the
16 form itself contain anything that describes what they mean
17 by permanent disability?
18 A Yes.
19 Q The form itself does?
20 A Are you referring to this?
21 Q Exhibit B.
22 A This thing? No, it does not. No, it has
23 nothing.
24 Q Nothing attached to that which would
25 explain what was intended by the meaning of total disability,

1 injuries and arthritis because during pregnancy the harmone,
2 especially cortisone in the pregnant individual is quite
3 elevated, and as you probably know, cortisone is one of the
4 drugs that is used specifically for arthritis and musculo-
5 skeletal injuries, and since the level is so high, the body
6 at that time, it produces an alleviating effect on the
7 symptoms. And frequently people have no problems at all
8 during pregnancy.
9 MR. MOORE: All right. No further
10 questions.
11
12
13 CROSS-EXAMINATION
14 BY MR. MARKS:
15 Q Dr. Shiner, you saw the lady for the first
16 time when?
17 A January 20, 1971.
18 Q All right, sir. And you almost immediately
19 thereafter put her in the hospital.
20 A That is correct.
21 Q At that time the X-rays of her cervical
22 spine showed normal.
23 A Yes.
24 Q Have they ever shown anything but normal?
25 A They have always been normal, I believe.

1 Yes, sir.
2 Q Has there ever been symptomology shown up
3 of a bony nature or otherwise on X-rays taken during the
4 course of her care and treatment?
5 A No.
6 Q Has she ever been completely confined to
7 bed other than during the time she was in the hospital?
8 A Yes, she has.
9 Q When was that?
10 A On several occasions when her symptoms were
11 quite severe, she has been in bed.
12 Q At your orders?
13 A Yes.
14 Q How long a time?
15 A I would say two or three days at a time.
16 Q When was the last time that that has
17 occurred?
18 A Pardon?
19 Q When was the last time that that has
20 occurred?
21 A It would be in December of 1974.
22 She had an episode of severe pain.
23 Q Did she come to see you with it?
24 A She called me at that time.
25 Q You told her to go to bed?

activities can she perform on a commercial basis?

MR. MOORE: I am going to object, Your Honor. It is related to what -- unless he is going to tie in where she was trained and her occupation, the only evidence presented so far is she has been for eleven years a hair dresser, that she was trained for that. Now I don't believe that is our criteria. It is some other occupation, unless it is directly related to that. I don't believe it is relevant or material.

THE COURT: I will allow the question to stand.

Q Doctor, what sort of activity of the type women normally engage in for money can she do?

A She would have to assume a position on a part-time basis. She is not able to work full time. And it would be a sedentary type of occupation, probably as a receptionist, or something which involves basically sitting for a few hours at a time.

Q Could she do clerical work at a desk?

A At a desk, yes, sir.

Q You mentioned receptionist.

A As long as it did not involve too much bending.

Q Could she do bookkeeping?

1 A Yes.
2 Q Could she teach hair dressing?
3 A Could teach hair dressing? That, I don't
4 know.
5 Q Why not?
6 A It would be a demonstrative type teaching.
7 Q Is there any other activity of a commercial
8 basis you think she could engage in?
9 A Nothing that I can think of right now.
10 Q Could she cook?
11 A Sure.
12 Q All right. Is she able to make beds?
13 A Limitedly, yes.
14 Q Can she do hostess work?
15 A In a restaurant, you mean?
16 Q Yes. That is a form of a receptionist.
17 A Yes. It is part-time. She could do that.
18 Q All right. Fine. So, she is not totally
19 restricted from any useful activity, is she.
20 A Not totally, no. For certain things, correct.
21 Q She may work, according to you on a partial
22 basis.
23 A Yes.
24 Q And at such activities as you have described.
25 A That is correct.

1 Q To whom did you make those reports, sir?
2 A Mr. William Moore.
3 Q This gentleman here? Her attorney?
4 A Yes.
5 Q Did you see her on or about the 12th of
6 February, 1973?
7 A That is correct, I did.
8 Q What was her condition then, according to
9 your recollection and/or your file?
10 A I have the statement she was seven months
11 pregnant and she was still having intermittent difficulty in
12 her back, and she mentioned at that time, last week after she
13 had been standing a period of an hour or so at the Emigration
14 Office she developed quite a bit of severe pain.
15 Q She had been to the Emigration Office and
16 had stood there for an hour or so?
17 A Yes, sir.
18 Q Did she advise you as to why she had made
19 the trip to the Emigration Office?
20 A No.
21 Q Did you find any muscle spasm at that time?
22 A Yes.
23 Q Where was it?
24 A The muscle spasm, I have in my notes,
25 present as it was in the past, and it was in the thoracic

my report dated August 22, 1973, when I mentioned, I'm sorry. Did you say permanent total disability?

Q Total permanent disability.

A Total permanent disability.

Q Permanent or total either one. Or words to that effect. Disability that will be permanent, of a total nature rather than partial.

MR. MOORE: Your Honor, I am going to object on the same grounds. We have not confined this to the terms of the policy that we are talking about.

THE COURT: I will let the question stand.

A The only area I have would be on February 4, 1974, I said she can be stated to be permanently disabled for this particular type of occupation.

Q For hair dressing?

A That's right.

Q But you have never said, have you, Doctor, that there is no gainful occupation that she can go into?

A That is correct. That particular statement has not been made.

Q You have never made it.

A No, sir.

Q The disability that you have described would not be one that would prevent her from moving around,

1 know my limits, so I know what I can do each dav.
2 Q And what you can't do.
3 A And how to do it.
4 Q You made a trip to Bogota.
5 A Yes.
6 Q That was some twenty days all told, was
7 it?
8 A Yes.
9 Q You also made a trip to Disney World.
10 A Yes.
11 Q Were you able to do the things on the trip
12 to Disney World that you wanted to do?
13 A No. We planned to stay in Disney World for
14 five days, and, you know, to do that you have to do a lot of
15 walking.
16 Q I didn't know that.
17 A We did quite a bit of walking then, you
18 know, we have the baby, and, of course, my boy is a big help
19 to me, because, you know, he is thirteen now and even before,
20 you know, when I just start getting sick, he's helping me
21 with cleaning, bathroom, vacuum cleaning --
22 Q Of course he is around the house you're
23 A When we went to Disney World my husband, he
24 rented a wheel chair and he carried me around. And my boy would
25 push the baby on the carriage. So I will wait for them to

go do the things they want to see. I wait for them with the baby. And when I went to Bogota, Dr. Shiner, as you know, told me to take breaks. So I will get up and walk. But when I get there I was sick. I was limping quite a bit.

Q I take it you consulted Dr. [illegible] before you went to Bogota?

A I don't remember but -- I say not consult me. When I went over there he told me --

Q He told you then.

A He told me when we take long trips, you know, to take breaks.

Q Move around some. Not sit too long, and all the rest of these things.

A Yes. And then when I get to Bogota, I was not feeling well. I was limping. And the two first days I spent just lying in bed and being waited on. I know the first two days, yes, and then I just have to rest and I just not, weren't to go out much. I did go out for a couple times, but not too far away. And, you know, just stay around the house.

Q Were those two trips the one to Orlando and the one to Bogota the only trips you all have made?

A Yes, sir. That's it.

Q You have gone nowhere by automobile?

A We have gone by automobile. I don't remember where it was. I know I have had a trip, it was a

1 think it was in July.

2 Q Let's go from there then. Have you had
3 company at home?

4 A Yes.

5 Q Do you do the cooking?

6 A Yes. If I have company and I'm going to
7 do the cooking, it's the only thing I do, so I can rest and
8 I will be able to take care of the company.

9 Q I see what you mean. All right. Now, Mrs.
10 Chavez, when your husband in June of 1972 wrote to the
11 insurance company, did you know he was writing? Did he
12 tell you he was going to do it?

13 A Yes, he did.

14 Q All right. And at that time did you think
15 that you were totally and permanently unable to perform any
16 occupation of any kind?

17 A Well, yes, sir, because if you are not able
18 to do what I have to do in my house, how can I go and work
19 outside?

20 Q What medical man had told you at that
21 time that that was your situation? Dr. Shiner told you?

22 A What do you mean?

23 Q That you were totally unable to perform any
24 occupation or employment and would be the rest of your life?

25 A Well, he didn't say exactly, you know, it

1 JURY OUT

2 So on both points, Your Honor, I would
3 submit that the evidence should not be stricken and
4 should be allowed to go to the jury with the
5 caveat as provides vis-a-vis if there is no dispute
6 as to what is a reasonable period of time, the
7 Court would rule on it as a matter of law. If it
8 is a dispute, then it is left to the jury to
9 determine whether on the circumstances of this
10 case, reasonable notice and proof of loss were
11 filed.

12 There was no objection to the form that the
13 defendant has been contacted or submitted to the
14 insured, and the cases generally read substantial
15 compliance is what is required, and on that basis I
16 think the case is eminently suited for the jury
17 and should be allowed to go to the jury.

18 THE COURT: Where is there evidence, Mr.
19 Moore, that you have made out a case of permanent
20 total disability as defined in the provisions of
21 that policy? The term here is engaging in any
22 occupation.

23 MR. MOORE: Yes, sir, but --

24 THE COURT: -- or in profession or employ-
25 ment for which she is fitted by reason of education,

JURY OUT

training or experience for the remainder of her life.

MR. MOORE: That's right.

THE COURT: All right. Now we have eliminated, I don't think there is any question about eliminating hair dressing. She has had experience, obviously she had a high school education, and even your own medical testimony has indicated she certainly can do a job that does not require her great exertion.

MR. MOORE: Well, on a part-time basis, was all that he said, on that basis, because she couldn't sit for long periods of time.

THE COURT: The thing starts out permanent total disability.

MR. MOORE: That's right. It has to be. For there is nothing in her education, training, or experience that qualified her for anything to do with other than hair dressing or related to that. She cannot type. She speaks, you know, from listening to her testify, English as a second language. She has had no experience in that regard. She never has been employed in any other capacity. Nowhere is there any evidence --

EXHIBIT NO. A
PL( ) DEF( ) COM( )
CASE NO. L6740
DATE 9-25 1975
JUDGE:

AIR MAIL

June 20, 1972

Mr. Francisco Chavez
4646 Evansdale Road
Woodbridge, Va. 22191

Claim #TG-5A1702
Policy #GSR-2025 (Continental Insurance Co)
Employer: Eastern Airlines, Inc.
Dependent: Carmen

Dear Mr. Chavez:

This will acknowledge receipt of your letter dated June 5, 1972, reporting an accident which occurred over a year and a half ago.

The enclosed claim proof is being furnished to you under a full reservation of the Company's rights and should not be construed as an admission of any liability.

Accordingly, one of our representatives will be in touch with you shortly but the enclosed claim proof is to be completed in its entirety and returned to us promptly. In addition, the policy requires written notice of claim within 30 days after the occurrence or commencement of any loss covered by the policy so please explain to us why we were not notified of this claim sooner.

Very truly yours,

V. F. Matarazzo, Examiner
Accident & Health Claims Department

VFM:EM
Enc.

TG - SA1702
F. Chavez - Dep Carmen

Members of THE CONTINENTAL INSURANCE COMPANIES
- [x] THE CONTINENTAL INSURANCE COMPANY
- [ ] FIREMEN'S INSURANCE COMPANY OF NEWARK, NEW JERSEY
- [ ] THE FIDELITY AND CASUALTY COMPANY OF NEW YORK
- [ ] COMMERCIAL INSURANCE COMPANY OF NEWARK, NEW JERSEY
- [ ] .....

CLAIMANT'S PRELIMINARY STATEMENT

ACCIDENT OR SICKNESS CLAIM
EXHIBIT NO. B
PL( ) DEF(✓) COM( )
CASE NO. L6740
DATE 9-25 19 75
JUDGE:

COMPLETE AND RETURN IMMEDIATELY

l Name Carmen Cecilia Chavez	Date of Birth Nov. 1/40 Height 4-11 Weight 95
icy letter and number	
roup policy, give name of group	Eastern Airlines Inc.
e employer's name and address	N/A
t was your occupation when disabled?	Hair Stylist
	Hair Stylist
JAMES J. SCHEINER, M.D. DIPLOMATE, AMERICAN BOARD OF ORTHOPAEDIC SURGERY	Date Oct. 12, 1970 at 9:30 A.M.
	Date Oct. 12, 1970 at ..... P.M. A.M.
JRS BY APPOINTMENT ONE: 573-3107 524-1195 BOULEVARD MEDICAL CENTER 8301 ARLINGTON BOULEVARD FAIRFAX, VIRGINIA — 22030	See Attached Statement
lness, house confinement from	Date ....., 19..... to .....
n did, or will, you resume any part of your :?	Date ....., 19..... at ..... P.M. A.M.
Work?	Date ....., 19..... at ..... P.M. A.M.
spitalized, give name and address of hospital. e Fairfax Hospital 00 Gallows Road ~~ls Church, Va. 22046~~ As Out Patient From 10/12/70-1/13/71 Northern Va. Doctors Hosp.	Northern Virginia Doctors Hospital 601 S. Carlyn Springs Road Arlington, Va. 22204
pital confinement	from 1-24, 1971 at A.M. P.M. to 2-12, 1971 at A.M. P.M.
is your physician's or surgeon's name and address?	James J. Scheiner, M.D. 803 Arlington Blvd. Fairfax, Va. 22030
ou insured for disability in any other organization?	No
e companies and state amount of benefits	

CL 7822-G FRONT

Printed in U.S.A.

– ACCIDENT OR SICKNESS –

tient's name Carmen C. Chavez	Date of Birth Nov. 1/40
ture of sickness or injury escribe complications if any)	1. Acute and chronic musculoligamentous strain, cervica spine, thoracic spine and lumbar spine
condition due to pregnancy?	Yes ☐ No ☒
"yes" what was approximate date of com - ncement of pregnancy?	Date N/A, 19....
racture or dislocation, state whether complete incomplete.	Complete ☐ Incomplete ☐
racture of long bones, state type and location.	
s it confirmed by X-ray?	Yes ☒ No ☐
en did symptoms first appear or accident pen?	Date October 12, 1970
en did patient first consult you for this con- on?	Date January 1, 1971
patient ever had same or similar condition? "yes" state when and describe)	Yes ☐ No ☒
cribe any other disease or infirmity which insured might have.	none
ure of surgical or obstetrical procedure, if (Describe fully)	N/A
e dates of treatment. 71 3/23/71 4/23/71 6/23/71 9/21/71 71 3/29/71 5/19/71 7/20/71 11/10/71 1 4/13/71 5/24/71 8/26/71 12/7/71	Office 1/17/72, 3/22/72, 6/5/72, 7/17/72 Home Hospital
atient still under your care for this condition? scharged, give date.	Yes ☒ No ☐ Date, 19....
atient hospitalized, give name and address ospital.	No. Va. Drs. Hosp. Arlington, Virginia HOSPITAL CITY STATE Date Admitted 1/24, 1971 Date Discharged 2/12/, 1971
long was or will patient be continuously ly disabled (unable to work)?	From undetermined, 19.. through, 19....
cident, how long was or will patient be ally disabled?	From 10/12, 1970 through Present, 19....
ckness, was patient confined to the house? yes" give dates)	Yes ☐ No ☐ From, 19.... through, 19....
ndition due to injury or sickness arising out tient's employment? es" explain.	Yes ☐ No ☒

7/10, 1972

Signed James J. Sikemier M.D.
(Attending Physician)

Tax Identification No. 54-0844743
(This identifying number is required to be furnished under authority of law.)

rlington Blvd	Fairfax	Virginia	22030
(STREET ADDRESS)	(CITY OR TOWN)	(STATE OR PROVINCE)	(ZIP CODE)

GROUP SPECIAL RISK POLICY

No. GSR 2025

THE CONTINENTAL INSURANCE COMPANY

AGENT

Marsh & McLennan, Inc.

125 Maiden Lane

New York, N.Y. 10038

Eastern Air Lines

EXHIBIT I

The Continental Insurance Company

A Stock Company Organized 1853, Herein Called the Company

OLICY TERM—From: July 1, 1969 To: July 1, 1972

n consideration of the payment of premiums as provided herein, and subject to the terms, conditions and mitations herein contained,

GREES WITH Eastern Air Lines, Inc.
Miami International Airport
Miami, Florida

(Herein called the Policyholder)

TO INSURE such eligible persons of the Policyholder (herein individually called the Insured) and their eligible dependents, if any, (herein called Insured Dependent) identified on the Schedule of Insureds of this policy against loss described in PART I — Description of Coverage, resulting directly and independently of all other causes from bodily injuries caused by accident occurring while this policy is in force, herein called such injuries.

POLICY TERM; RENEWAL: As stated above, beginning and ending 12:01 A.M., Standard Time, at the Policyholder's address. Unless terminated as provided in Part IV and subject to the consent of the Company, this policy may be renewed for any specified term by the payment of the premium for such term at the Company's premium rates in force at the time of each such renewal.

PART I — DESCRIPTION OF COVERAGE

COVERAGE A — LOSS OF LIFE, LIMB OR SIGHT INDEMNITY: If such injuries shall result in any one of the following specific losses within one year from the date of accident, the Company will pay the benefit specified as applicable thereto, based upon the Principal Sum stated in the Schedule of Insureds; provided, however, that not more than one (the larger) of such benefits shall be paid with respect to injuries resulting from any one accident.

For Loss of Life	The Principal Sum
For Loss of—	
Both Hands or Both Feet	The Principal Sum
or Sight of Both Eyes	The Principal Sum
One Hand and One Foot	The Principal Sum
One Hand or Foot and Sight of One Eye	The Principal Sum
Speech and Hearing	The Principal Sum
One Leg or One Arm	One-Half the Principal Sum
Either Hand or Foot	One-Half the Principal Sum
Speech or Hearing	One-Half the Principal Sum
Sight of One Eye	One-Half the Principal Sum
Thumb and Index Finger of the Same Hand	One-Quarter the Principal Sum

"Loss" shall mean with regard to hands and feet, actual severance through or above wrist or ankle joint; with regard to eyes, entire and irrecoverable loss of sight; with regard to leg or arm, actual severance through or above knee or elbow joint; with regard to thumb and index finger, actual severance through or above metacarpophalangeal joints; with regard to speech and hearing, entire and irrecoverable.

PART II — AGGREGATE LIMIT OF LIABILITY

The Company shall not be liable for any amount in excess of the aggregate limit stated in the application of the Policyholder.

If the aggregate amount of all indemnities otherwise payable by reason of coverage provided under this policy exceeds such aggregate limit of liability, the Company shall not be liable as respects each Insured for a greater proportion of the indemnity otherwise payable than the aggregate limit of liability bears to the aggregate amount of all such indemnities.

PART III — EXCLUSIONS

This policy does not cover loss caused by or resulting from any one or more of the following:

A. Intentionally self-inflicted injuries, suicide or any attempt thereat, while sane or insane;

B. Declared or undeclared war or any act thereof;

C. Accident occurring while the Insured is serving on full-time active duty in the Armed Forces of any country or international authority (any premium paid to be returned by the Company pro-rata for any such period of full-time active duty);

D. Illness, disease, pregnancy, childbirth, miscarriage, bodily infirmity or any bacterial infection other than bacterial infection occurring in consequence of an accidental cut or wound;

E. Travel or flight in any vehicle or device for aerial navigation, including boarding or alighting therefrom,

(1) while being used for any test or experimental purpose; or

(2) while the Insured is operating, learning to operate or serving as a member of the crew thereof; or

(3) while being operated by or for or under the direction of any military authority, other than transport type aircraft operated by the Military Airlift Command (MAC) of the United States of America or the similar air transport service of any other country; or

(4) any such aircraft or device which is owned or leased by or on behalf of the Policyholder or any subsidiary or affiliate of such Policyholder.

Attached to and forming a part of policy form A & H UN 10976GSR

Entire Contract; Changes: This policy, including the Policyholder's application, endorsements and the attached papers, if any, constitutes the entire contract of insurance. No change in this policy shall be valid until approved by an executive officer of the Company and unless such approval be endorsed hereon or attached hereto. No agent has authority to change this policy or to waive any of its provisions.

Notice of Claim: Written notice of claim must be given to the Company within thirty days after the occurrence or commencement of any loss covered by the policy, or as soon thereafter as is reasonably possible. Notice given by or on behalf of the Insured or the beneficiary to the Company at Newark, New Jersey, or to any authorized agent of the Company, with information sufficient to identify the Insured, shall be deemed notice to the Company.

Claim Forms: The Company, upon receipt of a notice of claim, will furnish to the claimants such forms as are usually furnished by it for filing proofs of loss. If such forms are not furnished within fifteen days after the giving of such notice the claimant shall be deemed to have complied with the requirements of this policy as to proof of loss upon submitting, within the time fixed in the policy for filing proofs of loss, written proof covering the occurrence, the character and the extent of the loss for which claim is made.

Proofs of Loss: Written proof of loss must be furnished to the Company at its said office within ninety days after the date of such loss. Failure to furnish such proof within the time required shall not invalidate nor reduce any claim if it was not reasonably possible to give proof within such time, provided such proof is furnished as soon as reasonably possible and in no event, except in the absence of legal capacity, later than one year from the time proof is otherwise required.

Time of Payment of Claims: Indemnities payable under this policy will be paid immediately upon receipt of due written proof of such loss.

Payment of Claims: Indemnity for loss of life will be payable in accordance with the beneficiary designation and the provisions respecting such payment which may be prescribed herein and effective at the time of payment. If no such designation or provision is then effective, such indemnity shall be payable to the estate of the Insured. Any other accrued indemnities unpaid at the Insured's death may, at the option of the Company, be paid either to such beneficiary or to such estate. All other indemnities will be payable to the Insured.

Physical Examinations and Autopsy: The Company at its own expense shall have the right and opportunity to examine the person of the Insured when and as often as it may reasonably require during the pendency of a claim hereunder and to make an autopsy in case of death where it is not forbidden by law.

Legal Actions: No action at law or in equity shall be brought to recover on this policy prior to the expiration of sixty days after written proof of loss has been furnished in accordance with the requirements of this policy. No such action shall be brought after the expiration of three years (or the minimum time, if more than three years, permitted by law in the State where the Insured resides) after the time written proof of loss is required to be furnished.

Change of Beneficiary: The right to change of beneficiary is reserved to the Insured and the consent of the beneficiary or beneficiaries shall not be requisite to any change in beneficiary.

Policy Termination by the Policyholder or the Company: This policy may be terminated by the Policyholder on the first renewal date, or at any time thereafter, by mailing or delivering to the Company at its Home Office, Newark, New Jersey, written notice of such termination, effective on receipt or on such later date as may be specified in such notice. In the event of such termination at a date other than the renewal date, the earned premium shall be computed, and the Company will return promptly the unearned portion of any premium paid.

This policy may be terminated by the Company as of any renewal date by mailing or delivering to the Policyholder, at the last address shown on the records of the Company, written notice stating when, not less than 30 days thereafter, such termination shall be effective.

Conformity With State Statutes: Any provision of this policy which, on its effective date, is in conflict with the statutes of the state in which the Insured resides on such date is hereby amended to conform to the minimum requirements of such statutes. This policy is not in lieu of and does not affect any requirements for coverage by Workmen's Compensation Insurance.

Certificates of Insurance: The Company will issue to the Policyholder, for delivery to the persons insured hereunder, certificates of insurance containing the principal terms of the policy and the Policyholder shall maintain a complete record of such persons.

Examination of Records: The Company shall be permitted to examine the Policyholder's records relating to this policy at any reasonable time, and from time to time until two years after the expiration of this policy or until final adjustment and settlement of all claims hereunder, whichever is the later.

IN WITNESS WHEREOF, THE CONTINENTAL INSURANCE COMPANY has caused this policy to be signed by its President and Secretary and countersigned by its duly authorized agent.

Geoffrey Savery
Secretary

W. W. Scutworth
President

Countersigned_____
Licensed Resident Agent

APPLICATION TO
THE CONTINENTAL INSURANCE COMPANY

Application is hereby made for Group Accident Insurance based on the following statements and representations.

1—Name of Policyholder? Eastern Air Lines, Inc.

Address? Miami International Airport
Miami, Florida

Type of Business or Organization? Commercial Airline

2—Persons eligible to become insured under this policy shall be all those described below, for whom written application is made, including any who become eligible during the term of the policy. With respect to applications received on or before policy effective date, individual insurance begins on policy effective date. With respect to applications received after policy effective date, individual insurance shall begin on the first day of the month following the month in which the application is received. Eligibility shall cease automatically upon attainment of age 70 and coverage for any such Insured shall terminate on the renewal date next following the attainment of such age. Coverage of any Insured who ceases to be an eligible person as described below, for any reason other than age, shall terminate at the expiration of the next following premium due date.

Class	Description of Eligible Persons	Number of eligible Persons
I	All regular, permanent employees, including flight personnel under age 65.	25,000 - Estimated
II	Spouses of Class I Insured Persons	

3—Amount of Principal Sum per person, in multiples of $5,000, shall be as follows, subject to the minimum and maximum amounts indicated:

Class	Applicable Principal Sum	Minimum Amount	Maximum Amount
See Endorsements One and Two			

4—The aggregate limit of liability per Accident shall be $ Nil

5—Premium shall be determined at an annual rate per Insured per $5,000 Principal Sum Benefit as follows:

See Endorsements One and Two

In computing the premium, no charge or credit will be made for fractional parts of a policy month with respect to additions, deletions and change in classification of Insureds.

6—Mode of premium payment under this policy shall be:
☐ Annually in advance ☒ Monthly in advance ☐ Other (specify) _____

7—The Policyholder, or the Transmittal Agent appointed by the Policyholder whose name appears below, shall submit to the Company together with the applicable premium therefor:
(a) An initial listing of eligible persons covered at the effective date of the policy
(b) At monthly intervals thereafter, a listing of eligible persons added for coverage, and Insureds whose coverage terminated, except that as of each renewal date a complete listing of Insured shall be furnished to the Company.

8—The Transmittal Agent appointed by the Policyholder is: (if none appointed, state "None")
Marsh & McLennan, Inc.
125 Maiden Lane, New York, N.Y.

9—The Policy shall become effective July 1, 1969 For the Policyholder:

Signed: _____

Title: _____

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THE CONTINENTAL INSURANCE COMPANY

SCHEDULE OF INSUREDS

Name of Policyholder: Eastern Air Lines, Inc.

Policy No: GSR 2025

Cert. #	Name of Insured	Principal Sum	Coverage Effective	Coverage Terminated
	All eligible persons for whom an enrollment form has been completed and is on file with the Policyholder for this insurance.	Various	7-1-69	7-1-72

Endorsement No. 1

It is agreed that Statement 3 of the Application shall read as follows:

- Amount of Principal Sum per person, in multiples of $5,000 shall be as follows, subject to the minimum and maximum amounts indicated:

Sum	Available Principal Sum	Minimum Amount	Maximum Amount
I	As applied for	$10,000	$250,000.*
I	50% of the Principal Sum applicable to a Class I Insured Person	$ 5,000	$125,000.

*Limits in excess of $150,000. available only to those eligible persons whose annual earnings exceed $7,500. and further subject to a maximum of 20 times annual earnings (rounded to the next higher $10,000. of insurance.)

It is further agreed that Statement 5 of the Application shall read as follows:

- Premium shall be determined at a monthly rate per Insured per $5,000 Principal Sum Benefit as follows:

$0.275

Nothing herein contained shall be held to vary, alter, waive or extend any of the Agreements, Conditions, Declarations, Exclusions, Limitations or Terms of the undermentioned policy other than as stated hereon.

Effective date July 1, 1969 Attached to and forming part of Policy No. GSS 2025

of The Continental Insurance Company

Issued to Eastern Air Lines, Inc.

Geoffrey Savery
Secretary

President

Countersigned

Licensed Resident Agent

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Endorsement No. 1 (Cont.)

It is further agreed that Part XXI Exclusions, is amended as follows:

Paragraph (4) of Exclusion D is deleted in its entirety.

Nothing herein contained shall be held to vary, alter, waive or extend any of the Agreements, Conditions, Declarations, Exclusions, Limitations or Terms of the undermentioned policy other than as stated hereon.

Effective date July 1, 1969 Attached to and forming part of Policy No. GSR 2025

of The Continental Insurance Company

Issued to Eastern Air Lines, Inc.

Geoffrey Savery
Secretary

W R Rostenkowski
President

Countersigned

Licensed Resident Agent

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Endorsement No. 2 (Cont.)

E. Continued

3. stunt flying, racing or endurance tests;

4. operations, (other than operations involving Policyholder owned aircraft), requiring a special permit or waiver from an authority having jurisdiction over civil aviation, even though granted, unless consented to in writing by the Company; or

5. crop dusting, crop seeding or banner towing.

Nothing herein contained shall be held to vary, alter, waive or extend any of the Agreements, Conditions, Declarations, Exclusions, Limitations or Terms of the undermentioned policy other than as stated hereon.

Effective date July 1, 1969 Attached to and forming part of Policy No. GSR 2025

of The Continental Insurance Company

issued to Eastern Air Lines, Inc.

Geoffrey Savery
Secretary

W. R. Rutherford
President

Countersigned

Licensed Resident Agent

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Endorsement No. 2

It is agreed that:

Only full-time flight status personnel of the Policyholder under age 65, are eligible for the insurance described in this endorsement.

The insuring clause as it appears on the face of the policy is deleted in its entirety and the following is substituted therefor:

To insure such eligible persons of the Policyholder (herein individually called the Insured) identified on the Schedule of Insureds of this policy against loss resulting directly and independently of all other causes from bodily injuries caused by accident occurring while this policy is in force, herein called such injuries while acting as a pilot or crew member in any previously tried, tested and approved aircraft provided the Insured Person, if he is acting as pilot or whoever else may be operating such aircraft, holds a valid and current Certificate of Competency of a rating authorizing him to operate such aircraft.

The amount of Principal Sum per person, shall be in multiples of $5,000 subject to a minimum of $10,000. and a maximum of $75,000.

The premium determined at a monthly rate per Insured per $5,000 Principal Sum benefit shall be as follows:

$0.50

With respect to the coverage described in Section 2 of this endorsement only, E of Part III Exclusions is amended to read:

E. Travel or flight in any vehicle or device for aerial navigation, including boarding and alighting therefrom.

1. While being used for any test or experimental purposes in aircraft other than aircraft described in Section 2 of this Endorsement.

2. Aerobatic flying, as defined by the Federal Aviation Agency, other than that prescribed by the Federal Aviation Agency or other authority having jurisdiction over civil aviation, for instruction of student pilots.

Nothing herein contained shall be held to vary, alter, waive or extend any of the Agreements, Conditions, Declarations, Exclusions, Limitations or Terms of the undermentioned policy other than as stated hereon.

Effective date July 1, 1969 Attached to and forming part of Policy No. GSR 2025

of The Continental Insurance Company

Issued to Eastern Air Lines, Inc.

Geoffrey Savery
Secretary

W. R. Rotzenmate
President

Countersigned

Licensed Resident Agent

Endorsement No. 3

[illegible]

[illegible] BENEFICIARY DESIGNATION [illegible] 69, are eligible for the insurance [illegible]

[illegible] Indemnity for loss of life will be payable in accordance with the beneficiary designation appearing on the enrollment form for this insurance and kept on file with the Policyholder. [illegible] If no such beneficiary is named, or if the named beneficiary is not surviving, then benefits shall be payable to the first surviving of the following preference beneficiaries:

a. spouse, if living, otherwise to

b. children equally, if living, otherwise to

c. parents equally, if living, otherwise to

d. brothers and sisters equally, if living, otherwise to

e. estate of the Insured Person suffering the loss.

Nothing herein contained shall be held to vary, alter, waive or extend any of the Agreements, Conditions, Declarations, Exclusions, Limitations or Terms of the undermentioned policy other than as stated hereon.

Effective date July 1, 1969 Attached to and forming part of Policy No. GSR 2025

of The Continental Insurance Company

Issued to Eastern Air Lines, Inc.

Geoffrey Savery
Secretary

W R Hotzelmann
President

Countersigned

Licensed Resident Agent

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Endorsement No. 4

In consideration of the payment of the premium charged it is hereby understood and agreed that:

(1.) If insured hereunder Frank Cafara is to be considered riding as a passenger while training a flight engineer of a purchaser of one of the Policyholder's aircraft.

(2.) The limit of indemnity applicable to Frank Cafara while training a flight engineer of the Company purchasing one of their aircraft shall be $50,000 Principal Sum or the amount of coverage in force whichever is the lesser.

Nothing herein contained shall be held to vary, alter, waive or extend any of the Agreements, Conditions, Declarations, Exclusions, Limitations or Terms of the undermentioned policy other than as stated hereon.

Effective date July 1, 1969 Attached to and forming part of Policy No. GSA 2025

of The Continental Insurance Company

Issued to Eastern Air Lines, Inc.

Geoffrey Savery
Secretary

W R Rotsbeart
President

Countersigned

Licensed Resident Agent

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Endorsement No. 5

It is hereby understood and agreed that as respects Arthur J. St. John only, the "BENEFICIARY DESIGNATION" as it appears on his enrollment form is deleted and the following substituted therefor.

BENEFICIARY

Loss, if any, as respects accidental death only shall be payable to the beneficiary or beneficiaries named in the enrollment form for this insurance and kept on file with the Policyholder.
If no such beneficiary is named, or if the named beneficiary is not surviving, then benefits shall be payable to the first surviving of the following preference beneficiaries.

a. spouse, if living, otherwise to
b. children equally, if living, otherwise to
c. parents equally, if living, otherwise to
d. estate of the Insured Person suffering the loss.

Nothing herein contained shall be held to vary, alter, waive or extend any of the Agreements, Conditions, Declarations, Exclusions, Limitations or Terms of the undermentioned policy other than as stated hereon.

Effective date July 1, 1969 Attached to and forming part of Policy No. GSR 2025

of The Continental Insurance Company

Issued to Eastern Air Lines, Inc.

Geoffrey Savey
Secretary

W R Rostelmann
President

Countersigned

Licensed Resident Agent

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Endorsement No. 6

In consideration of premium to be reported monthly, it is hereby understood and agreed that:

(1) For the purposes of this insurance all consultants of the Policyholder and all employees of the law firm of Gambrell, Harlan, Russell & Moye shall be considered full-time employees of the Policyholder and eligible for coverage under this policy.

(2) The age limitation as set forth in the "Eligibility" provision of this policy shall not apply to consultants of the Policyholder.

Nothing herein contained shall be held to vary, alter, waive or extend any of the Agreements, Conditions, Declarations, Exclusions, Limitations or Terms of the undermentioned policy other than as stated hereon.

Effective date July 1st, 1969 Attached to and forming part of Policy No. GSR 2025

of The Continental Insurance Company

Issued to Eastern Air Lines Inc.

Geoffrey Savery
Secretary

President

Countersigned

Licensed Resident Agent

1. 3 Item

Endorsement No. 7

PERMANENT TOTAL DISABILITY

In consideration of the premium charged, it is agreed that Part I of the policy DESCRIPTION OF COVERAGE is hereby amended to include the following benefit:

Permanent Total Disability means such disability commencing within 180 days from the date of accident and continuing for twelve consecutive months, which shall prevent the Insured from engaging in any occupation or employment for which he is fitted by reason of education, training and experience for the remainder of his life.

The Company will pay the Permanent Total Disability Benefit equal to the difference between the Principal Sum and the total of any other payments made under COVERAGE A on account of such injuries.

Nothing herein contained shall be held to vary, alter, waive or extend any of the Agreements, Conditions, Declarations, Exclusions, Limitations or Terms of the undermentioned policy other than as stated hereon.

Effective date July 1, 1969 Attached to and forming part of Policy No. CSI 225

of The Continental Insurance Company

Issued to Eastern Air Lines, Inc.

Geoffrey Savery
Secretary

W W Wentworth
President

Countersigned

Licensed Resident Agent

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Endorsement No. 8

In consideration of an annual minimum and deposit premium of $1,500, it is agreed that paragraph B of Part III Exclusions of the Policy is deleted only with respect to full-time flight status personnel of the Policyholder who are pilots enrolled under this policy while participating in Cuban Airlift Freedom Flights.

Coverage shall exclude travel to and from the airport in the United States from which the flights originate.

Premium for this extension shall be earned at a rate of $.01 per $1,000. per person per round trip for coverage applicable under Plan I and a rate of $.02 per $1,000. per person per round trip for coverage applicable under Plan II.

It is further agreed that the Policyholder will report the exposure to the Company on a monthly basis.

Nothing herein contained shall be held to vary, alter, waive or extend any of the Agreements, Conditions, Dec-otions, Exclusions, Limitations or Terms of the undermentioned policy other than as stated hereon.

fective date January 5, 1971 Attached to and forming part of Policy No. GSR 2025

The Continental Insurance Company

sued to Eastern Air Lines, Inc.

Geoffrey Savery
Secretary

W R Matsdorf
President

Countersigned

Licensed Resident Agent

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