

NO. 97-01769-F

CHARLES EDWARD HERION,	§	IN THE DISTRICT COURT
	§	
Plaintiffs,	§	
	§	
vs.	§	DALLAS COUNTY, TEXAS
	§	
NORFOLK SOUTHERN RAILWAY	§	
COMPANY, individually and	§	
as a subsidiary of	§	
NORFOLK SOUTHERN CORPORATION,	§	
and as successor-in-interest	§	
to SOUTHERN RAILWAY COMPANY,	§	
	§	
Defendants.	§	116TH JUDICIAL DISTRICT

**OBJECTIONS AND RESPONSES OF DEFENDANT, NORFOLK SOUTHERN
RAILWAY COMPANY, TO PLAINTIFF'S REQUESTS FOR ADMISSION**

COMES NOW, Defendant Norfolk Southern Railway Company (NSRC), Individually and as a subsidiary of NORFOLK SOUTHERN CORPORATION, and as successor-in-interest to SOUTHERN RAILWAY COMPANY, Defendant in the above-referenced matter, and files this its Objections and Responses to Plaintiff's Requests for Admission and would show the Court the following:

PRELIMINARY STATEMENT

The following responses are being provided after diligent investigation and inquiry by Defendant. However, because some of the evidence relating to the matters inquired about by Plaintiffs' request for admission occurred more than forty (40) years ago, the availability of persons involved and the existence of applicable documents has been limited.

As a result of the foregoing factors, many of the individuals who might have had personal

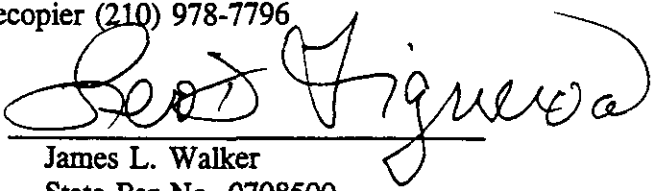
knowledge of the matters to which Plaintiffs' request for admission relate are deceased, retired, or are otherwise unavailable to NSRC, and investigations to date indicate that at least some documents which relate to matters inquired about by these requests may have been destroyed in keeping with normal corporate record retention policy. Accordingly, some responses are possibly incomplete. NSRC's investigation is continuing and should additional information surface, supplemental responses will be submitted. The following is a part of and is incorporated by reference in every response provided hereinafter:

This response is accurate as of the date of the Answers of Defendant Norfolk Southern Railway Company to Plaintiffs' Request for Admission. However, NSRC's investigation is continuing, and NSRC cannot exclude the possibility that it may be able to obtain more complete information or even information which indicates that the response being supplied is incorrect. NSRC objects to responding to this request in regard to any period of time other than the period during which it allegedly employed Plaintiff. NSRC objects to providing information about geographic locations and operating units within the system other than those at which and for whom Plaintiff worked. the basis for such objections are that any responses would be irrelevant to the subject matter of the pending litigation, would not be reasonably calculated to lead to the discovery of admissible evidence, and would be burdensome and oppressive to NSRC.

The responses that follow, unless otherwise apparent from the context, are limited to the specific period (approximately 1939 to approximately 1957) that NSRC allegedly employed Plaintiff as a laborer and machinist; and to the area in and around Spencer, North Carolina, the place where Plaintiff allegedly worked for NSRC.

Respectfully submitted,

JACKSON & WALKER, L.L.P.
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By: 

James L. Walker
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ATTORNEYS FOR DEFENDANT, NORFOLK
AND SOUTHERN RAILWAY COMPANY

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the above and foregoing document was served by certified mail, return receipt requested, to Mr. Peter Kraus/Ms. Judy Bradshaw, Baron & Budd, A Professional Corporation, 3102 Oak Lawn Avenue, Suite 1100, Dallas, Texas 75219, on this the 13th day of June, 1997.

All defense counsel may request a copy of this document.


LEO D. FIGUEROA

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REQUESTS FOR ADMISSION

REQUEST FOR ADMISSION NO. 1: Admit or deny that asbestos-containing products were in general use aboard Defendant's railroad during the time period Plaintiff was employed by Defendant.

RESPONSE: Defendant objects to the form and substance of this request on the following grounds:

1. the request is overly broad;
2. the request is unlimited in terms of geographic scope;
3. the request is vague;
4. the request is ambiguous;
5. the overly broad nature of the request is such that it would be unduly burdensome and prohibitively expensive to gather the information necessary to respond to this request; and,
6. the request exceeds the scope of discovery permitted by Rule 166b of the Texas Rules of Civil Procedure.

Subject to and without waiving the foregoing objections, this request for admission is denied as stated.

REQUEST FOR ADMISSION NO. 2: Admit or deny that Defendant transported, ordered, purchased or otherwise acquired asbestos-containing products, asbestos-containing friction products, machinery requiring the use of asbestos or asbestos-containing products.

RESPONSE: Defendant objects to the form and substance of this request on the following grounds:

1. the request is overly broad;
2. the request is unlimited in terms of time;
3. the request is unlimited in terms of geographic scope;
4. the request is vague;
5. the request is ambiguous;
6. the request is multifarious;
7. the request seeks information which is not relevant and which is not reasonably calculated to lead to the discovery of admissible evidence;
8. the overly broad nature of the request is such that it would be unduly burdensome and prohibitively expensive to gather the information necessary to respond to this request; and,
9. the request exceeds the scope of discovery permitted by Rule 166b of the Texas Rules of Civil Procedure.

Subject to and without waiving the foregoing objections, this request for admission is denied as stated.

REQUEST FOR ADMISSION NO. 3: Admit or deny that Defendant used or implemented on Defendant's railroad, asbestos-containing products.

RESPONSE: Defendant objects to the form and substance of this request on the following grounds:

1. the request is overly broad;
2. the request is unlimited in terms of time;
3. the request is unlimited in terms of geographic scope;
4. the request is vague;
5. the request is ambiguous;
6. the request is multifarious;
7. the overly broad nature of the request is such that it would be unduly burdensome and prohibitively expensive to gather the information necessary to respond to this request; and,
8. the request exceeds the scope of discovery permitted by Rule 166b of the Texas Rules of Civil Procedure.

Subject to and without waiving the foregoing objections, this request for admission is denied.

REQUEST FOR ADMISSION NO. 4: Admit or deny that Defendant's carts, engines and/or locomotives which Plaintiff worked on or around were unreasonably dangerous and unfit because of the presence of and/or use of asbestos-containing products.

RESPONSE: Defendant objects to the form and substance of this request on the following grounds:

1. the request is overly broad;
2. the request is vague;
3. the request is ambiguous;
4. the request is multifarious; and,
5. the request is argumentative.

Subject to and without waiving the foregoing objections, this request for admission is denied.

REQUEST FOR ADMISSION NO. 5: Admit or deny that Plaintiff was a railroad worker, as that term is generally understood, during his employment with Defendant.

RESPONSE: Defendant objects to the form and substance of this request on the following grounds:

1. the request is vague;
2. the request is ambiguous; and,
3. that the request is argumentative.

Subject to and without waiving the foregoing objections, Defendant states as follows: NSRC has not located a personnel file or medical file pertaining to Plaintiff's alleged employment and has no other written record to substantiate Plaintiff's allegation that he was an employee of NSRC, therefore, NSRC is unable to admit or deny Request No. 5.

REQUEST FOR ADMISSION NO. 6: Admit or deny that Plaintiff, in the course and scope of his work as a railroad worker and/or employee of Defendant, worked on and/or around Defendant's railroad, railway cars, engines and/or locomotives, shops, roundhouses, and transfer sheds where asbestos, and asbestos containing products were present.

RESPONSE: Defendant objects to the form and substance of this request on the following grounds:

1. the request is overly broad;
2. the request is vague;
3. the request is ambiguous;
4. the request is multifarious; and,
5. the request is argumentative

Subject to and without waiving the foregoing objections, Defendant states NSRC has not located a personnel file or medical file pertaining to Plaintiff's alleged employment and has non other written record to substantiate Plaintiff's allegation that he was an employee of NSRC, therefore, NSRC is unable to admit or deny Request No. 6.

REQUEST FOR ADMISSION NO. 7: Admit or deny that Defendant was aware during the periods of time Plaintiff worked for Defendant that airborne asbestos dust created a potential health hazard to those who breathed such dust.

RESPONSE: Defendant objects to the form and substance of this request on the following grounds:

1. the request is overly broad;
2. the request is vague;
3. the request is ambiguous; and,
4. the request is argumentative.

Subject to and without waiving the foregoing objections, this request for admission is denied.

REQUEST FOR ADMISSION NO. 8: Admit or deny that Plaintiff was employed by Defendant or by a predecessor-in-interest of Defendant.

RESPONSE: Defendant objects to the form and substance of this request on the following grounds:

1. the request is overly broad;
2. the request is vague;
3. the request is ambiguous; and,
4. the request is argumentative.

Subject to and without waiving the foregoing objections, Defendant states NSRC has not located a personnel file or medical file pertaining to Plaintiff's alleged employment and has no other written record to substantiate Plaintiff's allegation that he was an employee of NSRC, therefore, NSRC is unable to admit or deny Request No. 8.

REQUEST FOR ADMISSION NO. 9: Admit or deny that Plaintiff worked on and/or around Defendant's railroad in areas where asbestos-containing products were installed, used, prepared for use, replaced or repaired, stored or loaded, unloaded or transported.

RESPONSE: Defendant objects to the form and substance of this request on the following grounds:

1. the request is overly broad;
2. the request is vague;
3. the request is ambiguous; and,
4. the request is multifarious.

Subject to and without waiving the foregoing objections, NSRC has not located a personnel file or medical file pertaining to Plaintiff's alleged employment and has no other written record to substantiate Plaintiff's allegation that he was an employee of NSRC, therefore, NSRC is unable to admit or deny Request No. 9.

REQUEST FOR ADMISSION NO. 10: Admit or deny that defendant did not distribute any literature or warnings of any kind to its employees during the period of time Plaintiff worked for Defendant regarding the potential health hazards to those who breathe airborne asbestos dust.

RESPONSE: Defendant objects to the form and substance of this request grounds that the request is argumentative.

Subject to and without waiving the foregoing objections, Defendant states that the NSRC has not located a personnel file or medical file pertaining to Plaintiff's alleged employment and has no other written record to substantiate Plaintiff's allegation that he was an employee of NSRC, therefore, NSRC is unable to admit or deny Request No. 10.

REQUEST FOR ADMISSION NO. 11: Admit or deny that asbestos-containing products were placed on or used in the conduct of Defendant's railroad during the time period Plaintiff was employed by Defendant including the following asbestos-containing products:

- | | |
|--|---------------------------|
| a. any asbestos-containing product and/or machinery requiring the use of asbestos or asbestos-containing products and/or materials | h. asbestos cement |
| b. asbestos tiles | i. asbestos block |
| c. asbestos millboard | j. asbestos packing |
| d. asbestos friction products | k. boilers |
| e. asbestos pipecovering | l. brake shoes |
| f. asbestos gaskets | m. brake linings |
| g. asbestos joint compound | n. clutch linings |
| | o. firebrick |
| | p. refractories/castables |
| | q. turbines |

RESPONSE: Defendant objects to the form and substance of this request on the following grounds:

1. the request is overly broad;
2. the request is unlimited in terms of geographic scope;
3. the request is vague;
4. the request is ambiguous;
5. the request is multifarious;
6. the request is argumentative;
7. the request seeks information which is not relevant and which is not reasonably calculated to lead to the discovery of admissible evidence; and,
8. the overly broad nature of the request is such that it would be unduly burdensome and prohibitively expensive to gather the information necessary to respond to this request.

Subject to and without waiving the foregoing objections, Defendant states that NSRC has not located a personnel file or medical file pertaining to Plaintiff's alleged employment and has no other written record to substantiate Plaintiff's allegation that he was an employee of NSRC, therefore, NSRC is unable to admit or deny Request No. 11.

REQUEST FOR ADMISSION NO. 12: Admit or deny that Defendant engaged in no abatement programs for the removal of asbestos at any time since 1965.

RESPONSE: Defendant objects to the form and substance of this request on the following grounds:

1. the request is overly broad;
2. the request is unlimited in terms of geographic scope;
3. the request is vague;
4. the request is ambiguous;
5. the request is multifarious; and,
6. the request exceeds the scope of discovery permitted by Rule 166b of the Texas Rules of Civil Procedure.

Subject to and without waiving the foregoing objections, this request for admission is denied.

REQUEST FOR ADMISSION NO. 13: Admit or deny that Defendant was aware of the presence of and/or use of asbestos-containing products at the Railroad during the time period Plaintiff was employed by Defendant.

RESPONSE: Defendant objects to the form and substance of this request on the following grounds:

1. the request is overly broad;
2. the request is unlimited in terms of geographic scope;
3. the request is vague;
4. the request is ambiguous;
5. the request is multifarious;
6. the request is argumentative;
7. the request seeks information which is not relevant and which is not reasonably calculated to lead to the discovery of admissible evidence;
8. the overly broad nature of the request is such that it would be unduly burdensome and prohibitively expensive to gather the information necessary to respond to this request; and,
9. the request exceeds the scope of discovery permitted by Rule 166b of the Texas Rules of Civil Procedure.

Subject to and without waiving the foregoing objections, this request for admission is denied.

REQUEST FOR ADMISSION NO. 14: Admit or deny that Defendant became aware of the potential health hazards of airborne asbestos during the time periods in which Plaintiff was employed by Defendant.

RESPONSE: Defendant objects to the form and substance of this request on the following grounds:

1. the request is overly broad;
2. the request is vague;
3. the request is ambiguous; and,
4. the request is argumentative

Subject to and without waiving the foregoing objections, this request for admission is denied.

REQUEST FOR ADMISSION NO. 15: Admit or deny that Defendant did not continuously provide face masks to railroad employees working with or around asbestos from 1945 to the present for the purpose of protecting these employees from inhaling asbestos.

RESPONSE: Defendant objects to the form and substance of this request on the following grounds:

1. the request is overly broad;
2. the request is unlimited in terms of geographic scope;
3. the request is vague;
4. the request is ambiguous;
5. the request is multifarious; and
6. the request is argumentative.

Subject to and without waiving the foregoing objections, this request for admission is denied.

REQUEST FOR ADMISSION NO. 16: Admit or deny that during the time Plaintiff was employed by Defendant, it was foreseeable that asbestos-containing products on Defendant's railroad would or could be removed, stripped, replaced or repaired at some time after installation.

RESPONSE: Defendant objects to the form and substance of this request on the following grounds:

1. the request is overly broad;
2. the request is unlimited in terms of geographic scope;
3. the request is vague;
4. the request is ambiguous;
5. the request is multifarious;
6. the request is argumentative;
7. the request seeks information which is not relevant and which is not reasonably calculated to lead to the discovery of admissible evidence; and,
8. the request exceeds the scope of discovery permitted by Rule 166b of the Texas Rules of Civil Procedure.

Subject to and without waiving the foregoing objections, this request for admission is denied.

REQUEST FOR ADMISSION NO. 17: Admit or deny that during the time Plaintiff was employed by Defendant, Defendant failed to comply with the requirements of the Boiler Inspection Act, formerly 45 U.S.C. §23; and restated at 49 U.S.C. §20701 et seq.

RESPONSE: Defendant objects to the form and substance of this request on the following grounds:

1. the request is overly broad;
2. the request is unlimited in terms of geographic scope;
3. the request is vague;
4. the request is ambiguous;
5. the request is multifarious;
6. the request is argumentative;
7. the request seeks information which is not relevant and which is not reasonably calculated to lead to the discovery of admissible evidence;
8. the overly broad nature of the request is such that it would be unduly burdensome and prohibitively expensive to gather the information necessary to respond to this request; and,
9. the request exceeds the scope of discovery permitted by Rule 166b of the Texas Rules of Civil Procedure.

Subject to and without waiving the foregoing objections, this request for admission is denied.

REQUEST FOR ADMISSION NO. 18: Admit or deny that Plaintiff filed suit against Defendant within three (3) years of the date of discovering his asbestos-related condition or the existence of any asbestos-related causes of action.

RESPONSE: Defendant objects to the form and substance of this request on the ground that the request is premature and multifarious.

Subject to and without waiving the foregoing objections, Defendant states that the NSRC has no knowledge if or when the Plaintiff "discovered" his alleged asbestos-related condition or nor has Plaintiff offered proof of his employment with NSRC, therefore, NSRC is unable to admit or deny Request No. 18.

REQUEST FOR ADMISSION NO. 19: Admit or deny that Defendant is liable for Plaintiff's asbestos related illness.

RESPONSE: Deny.

REQUEST FOR ADMISSION NO. 20: Admit or deny that Defendant knew or had reason to know that asbestos was in use on its railroad since the 1930's.

RESPONSE: Defendant objects to the form and substance of this request on the following grounds:

1. the request is overly broad;
2. the request is unlimited in terms of geographic scope;
3. the request is vague;
4. the request is ambiguous;
5. the request is multifarious;
6. the request is argumentative; and,
7. the request exceeds the scope of discovery permitted by Rule 166b of the Texas Rules of Civil Procedure.

Subject to and without waiving the foregoing objections, this request for admission is denied.

REQUEST FOR ADMISSION NO. 21: Admit or deny that Defendant consciously decided not to warn its employees of the dangers of asbestos.

RESPONSE: Deny.

REQUEST FOR ADMISSION NO. 22: Admit or deny that asbestos is still in use and/or in place on Defendant's railroad.

RESPONSE: Defendant objects to the form and substance of this request on the following grounds:

1. the request is overly broad;
2. the request is unlimited in terms of geographic scope;
3. the request is vague;
4. the request is ambiguous;
5. the request is multifarious;
6. the request is argumentative;
7. the request seeks information which is not relevant and which is not reasonably calculated to lead to the discovery of admissible evidence; and,
8. the request exceeds the scope of discovery permitted by Rule 166b of the Texas Rules of Civil Procedure.

REQUEST FOR ADMISSION NO. 23: Admit or deny that Defendant no longer uses asbestos on its railroad.

RESPONSE: Defendant objects to the form and substance of this request on the following grounds:

1. the request is overly broad;
2. the request is unlimited in terms of geographic scope;
3. the request is vague;
4. the request is ambiguous; and,
5. the request is argumentative.

REQUEST FOR ADMISSION NO. 24: Admit or deny that Defendant acquired knowledge, during the 1930's of the Alton Railroad's responses to the Illinois Occupational Diseases Act.

RESPONSE: Defendant objects to the form and substance of this request on the following grounds:

1. the request is overly broad;
2. the request is vague;
3. the request is ambiguous;
4. the request is multifarious; and,
5. the request is argumentative.

Subject to and without waiving the foregoing objections, this request for admission is denied.

REQUEST FOR ADMISSION NO. 25: Admit or deny that Defendant was a member of the National Claims registry which reported information regarding injury claims of railroad workers.

RESPONSE: Defendant objects to the form and substance of this request on the following grounds:

1. the request is vague; and,
2. the request is ambiguous;
3. the request is argumentative; and
4. the request is multifarious

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