

NO. 94-12336-K

HAROLD LARMOUR, et al.,	§	IN THE DISTRICT COURT
	§	
vs.	§	DALLAS COUNTY, TEXAS
	§	
OWENS-CORNING FIBERGLAS CORP., et al.	§	192nd JUDICIAL DISTRICT

DEFENDANT ILLINOIS CENTRAL RAILROAD COMPANY'S SECOND SUPPLEMENTAL RESPONSES TO PLAINTIFF MILFORD RAWSON'S SECOND REQUEST FOR PRODUCTION, SUBJECT TO AND WITHOUT WAIVING ITS SPECIAL APPEARANCE TO PRESENT MOTION OBJECTING TO JURISDICTION

TO: Plaintiff MILFORD RAWSON, by and through his counsel of record, Kimberly Shauck, Baron & Budd, P.C., 3102 Oak Lawn Ave., Suite 1100, Dallas, Texas 75219-4281.

Now comes Illinois Central Railroad Company ("ICRC"), Defendant, Subject to its Special Appearance to Present Motion Objecting to Jurisdiction, and files this its Second Supplemental Responses and Objections to Plaintiff Milford Rawson's Second Request for Production to Defendant, Subject to and Without Waiving Special Appearance to Present Motion Objecting to Jurisdiction, pursuant to Rules 120(a), 166b and 167 of the Texas Rules of Civil Procedure.

Respectfully submitted,

By _____
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ATTORNEYS FOR DEFENDANTS ILLINOIS CENTRAL CORPORATION and ILLINOIS CENTRAL RAILROAD COMPANY

I.

PRELIMINARY STATEMENT AND OBJECTIONS

Subject to and without waiving its current or any future special appearances, ICRC makes this preliminary statement and objections:

ICRC currently has special appearance motions pending in several cases in Dallas County, Texas, a case in Cameron County, Texas, and two cases in Jefferson County, Texas. Each of these cases involve numerous other Plaintiffs who are residents of states other than Texas. Each and every objection, response or matter contained in these responses and answers is made strictly subject to and without waiving any pending special appearance motion. To the extent that ICRC is named and served as a party in future cases in Dallas County, or any other Texas county, these responses shall also be subject to and without waiving any future special appearance motions.

ICRC expressly objects to each and every discovery request to the extent that it seeks any information in those cases wherein a special appearance is pending for the reason that such discovery requests are not related to any special appearance motion or likely to lead to the discovery of evidence admissible in a special appearance hearing. ICRC does not own or control any railroad track in Texas.

ICRC has provided substantive responses to those requests related to jurisdictional issues as it relates to those Plaintiffs who have sued ICRC. However, ICRC continues to object to each and every discovery request and/or interrogatory to the extent that it is unrestricted as to subject, time and geography on the grounds that such requests/interrogatories are unreasonably burdensome and not reasonably related to the discovery of jurisdictional evidence related to such claims.

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II.

GENERAL OBJECTIONS

1. ICRC further objects to each and every discovery request, interrogatory and request for admission to the extent that it requires ICRC to search through all corporate documents or all corporate documents for the reason that such requests are clearly over broad, unduly burdensome, exceptionally expensive, and not reasonably related to the discovery of evidence relevant to the claims of Plaintiff Milford Rawson claiming injury arising out of alleged exposure while employed by Defendant in Texas.

2. ICRC further objects to those requests as a whole, since they seek matters which are privileged under the Texas Rules of Civil Procedure and Texas Rules of Civil Evidence, including, but not limited to, information and matters precluded by the attorney/client privilege, attorney/work product exemption and the party communications privilege.

3. ICRC further objects to the definitions set forth at the beginning of Plaintiff Milford Rawson's requests as an improper attempt to give meanings to ordinary English words that are contrary to their accepted meanings and which render the requests ambiguous, overly broad and/or unduly burdensome to answer.

4. ICRC further objects to Plaintiff Milford Rawson's requests for production for the reason that they are vague and unclear since they are not limited to the period of time and/or location when and where plaintiff Milford Rawson was allegedly employed by Defendant.

5. ICRC expressly incorporates each and every general objection and preliminary statement into its response to each request for production, subject to and without waiving its Special Appearance Motion Objecting to Jurisdiction.

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SECOND SUPPLEMENTAL RESPONSES TO PLAINTIFF MILFORD RAWSON'S SECOND REQUEST FOR PRODUCTION

REQUEST FOR PRODUCTION NO. 24: Provide a copy of all photographs, diagrams, videotapes, slides and/or movie film of the railroad, railway car(s) and/or engine(s) and/or locomotive(s) owned or operated by Defendant including, but specifically not limited to the engine room, boiler room, common areas, living quarters, railroads, roundhouses.

RESPONSE: Subject to Defendant's special appearance and without waiving same, Defendant hereby incorporates its preliminary statement and general objections. Defendant further objects to answering this request for the reason that it overly broad and because of its breadth seeks information and matters privileged pursuant to the mental impression and work product privilege, Tex. R. Civ. P. 166b(3)(a); the witness statement exemption, Tex. R. Civ. P. 166b(3)(c); the party communications privilege, Tex. R. Civ. P. 166b(3)(d); and the lawyer/client privilege, Tex. R. Civ. Evid. 503.

Defendant further objects to this request for the reason that it seeks information which is irrelevant, immaterial and not reasonably calculated to lead to the discovery of admissible evidence related to Defendant's jurisdictional contacts, if any, with the State of Texas and is, therefore, beyond the scope of permissible discovery while Defendant has a Special Appearance motion pending.

Defendant further objects to this request for the reason that it does not limit itself to a reasonable time period as related to the issues in this case, and is, therefore, beyond the scope of permissible discovery.

Defendant further objects to this request for the reason that it is overly broad, burdensome, harassing and would require an unreasonable amount of time and expense on the part of Defendant to compile.

Subject to and without waiving its previously filed objection, defendant states that it does not have possession of any such documents relating to the Vicksburg shops or any specific locomotive operated by Plaintiff other than previously produced.

With respect to Plaintiff's place of employment, including Vicksburg and Meridian, Defendant has not located any videotapes, slides or movie films of any area where plaintiff may have worked. Plaintiff has made further inquiry beyond that normally required with respect to the possible locations of photographs and diagrams, and has yet to locate any such materials.

REQUEST FOR PRODUCTION NO. 33: Provide a copy of any and all photographs or video recordings, sketches, drawings, or pictures in Defendant's custody or control or that of your attorney, or of any agent or representative of you or your attorney, whether made as part of the reports of

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experts or made by you, your attorney, or persons acting as your agents or representatives, and pertaining to any of Defendant's railroad, railway car(s) and/or engine(s), and/or locomotive(s), engine rooms, boiler rooms, railyards, roundhouses, shops and/or common areas, concerning any asbestos-containing products, friction products and/or machinery requiring the use of asbestos or asbestos-containing products and/or materials contained within those areas. Request is hereby made for one print of each photograph or video recording produced in response to this request.

RESPONSE: Subject to Defendant's special appearance and without waiving same, Defendant hereby incorporates its preliminary statement and general objections. Defendant further objects to answering this request for the reason that it is overly board and because of its breadth seeks information and matters privileged pursuant to the mental impression and work product privilege, Tex. R. Civ. P. 166b(3)(a); the witness statement exemption, Tex. R. Civ. P. 166b(3)(c); the party communications privilege, Tex. R. Civ. P. 166b(3)(d); and the lawyer/client privilege, Tex. R. Civ. Evid. 503.

Defendant further objects to this request for the reason that it seeks information which is irrelevant, immaterial and not reasonably calculated to lead to the discovery of admissible evidence related to Defendant's jurisdictional contacts, if any, with the State of Texas and is, therefore, beyond the scope of permissible discovery while Defendant has a Special Appearance motion pending.

Defendant further objects to this request for the reason that it does not limit itself to a reasonable time period as related to the issues in this case, and is, therefore, beyond the scope of permissible discovery.

Defendant further objects to this request for the reason that it is overly broad, burdensome, harassing and would require an unreasonable amount of time and expense on the part of Defendant to compile.

Subject to and without waiving its previously filed objection, defendant states that to its knowledge, it does not possess any such documents related to the Vicksburg shops or any specific locomotive upon which plaintiff worked.

With respect places of Plaintiff's employment, including Vicksburg and Meridian, Defendant has located no documents responsive to the request. Defendant has in its possession various photographs of steam locomotives, most of which relate to the period prior to 1946, which it will make available for inspection and copying and/or reprinting at Plaintiff's request.

REQUEST FOR PRODUCTION NO. 40: Provide a copy of each and every document (including all reports, memos, photographs, statements and any material collected or acquired of any investigation, and all correspondence between yourself and your insurer, and any reports, notes or any other documents regarding testing, examinations, inspections, or opinions related in any way to asbestos or any other communication from any individual or entity to yourself, your insurer or any

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agent or representative of yourself or your insurer concerning this incident or any injuries or disabilities allegedly resulting therefrom) in your possession or control or that of your insurer, health insurer, disability insurer, liability insurer, or other insurer, relating to your claim or the investigation of this incident by yourself, your insurer, or any individual or entity engaged for such a purpose.

RESPONSE: Subject to Defendant's special appearance and without waiving same, Defendant hereby incorporates its preliminary statement and general objections. Defendant further objects to answering this request for the reason that it is overly broad and because of its breadth seeks information and matters privileged pursuant to the mental impression and work product privilege, Tex. R. Civ. P. 166b(3)(a); the witness statement exemption, Tex. R. Civ. P. 166b(3)(c); the party communications privilege, Tex. R. Civ. P. 166b(3)(d); and the lawyer/client privilege, Tex. R. Civ. Evid. 503.

Defendant further objects to this request for the reason that it seeks information which is irrelevant, immaterial and not reasonably calculated to lead to the discovery of admissible evidence related to Defendant's jurisdictional contacts, if any, with the State of Texas and is, therefore, beyond the scope of permissible discovery while Defendant has a Special Appearance motion pending.

Defendant further objects to this request for the reason that it does not limit itself to a reasonable time period as related to the issues in this case, and is, therefore, beyond the scope of permissible discovery.

Defendant further objects to this request for the reason that it is overly broad, burdensome, harassing and would require an unreasonable amount of time and expense on the part of Defendant to compile.

Subject to its objection, Defendant states that it has no documents responsive to the request other than documents which are privileged communications.

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CERTIFICATE OF SERVICE

The undersigned attorney certifies that a copy of the foregoing Defendant Illinois Central Railroad Company's Second Supplemental Responses to Plaintiff Milford Rawson's Second Request for Production Subject to and Without Waiving Special Appearance to Present Motion Objecting to Jurisdiction was faxed to the below-listed counsel on February 23, 1998, and was also deposited in a mail box located near 5000 West Main Street, Belleville, Illinois, with proper postage prepaid at approximately 5:00 p.m. on February 23, 1998, addressed to the following:

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OWENS-CORNING FIBERGLAS CORP.,	§	
ILLINOIS CENTRAL RAILROAD	§	
COMPANY, et al.	§	160TH JUDICIAL DISTRICT

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VERIFICATION

BEFORE ME, the undersigned authority, on this day personally appeared CHARLES G. GARRETT, who after being sworn, stated upon his oath that he is the Risk Manager of Illinois Central Railroad Company and as such is authorized to verify Defendant Illinois Central Railroad Company's Second Supplemental Responses to Plaintiff Milford Rawson's Second Request for Production Subject to and Without Waiving Special Appearance to Present Motion Objecting to Jurisdiction, and states that he has read and understands the same, and that all statements contained in the aforementioned supplemental responses are within his personal knowledge and are true and correct.

ILLINOIS CENTRAL RAILROAD COMPANY

BY _____
CHARLES G. GARRETT
Risk Manager

SUBSCRIBED AND SWORN TO BEFORE ME, this 24 day of FEB, 1998, to certify which witness may hand and seal of office.

_____
Notary Public in and for the State of TENNESSEE

NotaryExpirationDate 5-1-2001