



94-12680-K

MARVIN ENGLISH, JR.; LEO ALBERT	§	IN THE DISTRICT COURT OF
BESEMAN; LAURIER VICTOR COITEUX;	§	
KENNETH RAYMOND DITZLER; LUTHER	§	
THOMAS DINSMORE; DANIEL FEGLER;	§	
JAMES EDWARD JOHNSON; RUE LEE	§	
ALLEN and MAE REDA ALLEN; ALBERT	§	
FISHER; and DUANE WILLIAM KRUGER;	§	
Plaintiffs,	§	
	§	
v.	§	DALLAS COUNTY, TEXAS
	§	
OWENS-CORNING FIBERGLAS	§	
CORPORATION; et al.,	§	
Defendants.	§	192 ND JUDICIAL DISTRICT

**DEFENDANT'S FIRST AMENDED RESPONSE
TO PLAINTIFF'S REQUEST FOR ADMISSION**

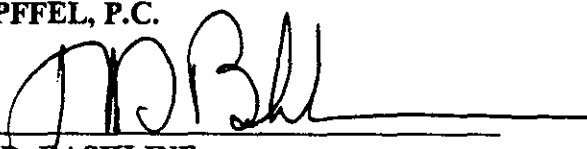
COMES NOW the Defendant, The Burlington Northern and Santa Fe Railway Company, by and through its attorney, J.D. Bashline, *MCLEOD, ALEXANDER, POWEL & APFFEL, P. C.*, and for its Response to Plaintiff's Request for Admission, states as follows:

GENERAL OBJECTIONS APPLICABLE TO EACH REQUEST

Defendant objects to Plaintiff's definition of Defendant to include legal entities other than Defendant which is beyond the scope of permissible discovery and to each and every request which seeks information from entities other than the named Defendant, including separate entities for which Plaintiff worked in the past when such entities were not a part of this organization.

Respectfully submitted,

**MCLEOD, ALEXANDER, POWEL &
APFFEL, P.C.**


J. D. BASHLINE

State Bar No. 01869600

2285 America Tower, 2929 Allen Parkway

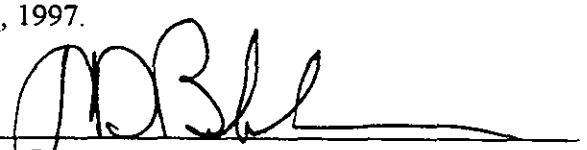
Houston, Texas 77019

Phone: (713) 527-9393; Fax: (713) 527-9437

**ATTORNEYS FOR DEFENDANT THE
BURLINGTON NORTHERN AND SANTA FE
RAILWAY COMPANY**

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing instrument has been sent by certified mail, return receipt requested to all counsel of record via regular mail, certified mail and/or facsimile on this the 30 day July, 1997.


J. D. Bashline

RESPONSES TO REQUEST FOR ADMISSION

REQUEST FOR ADMISSION NO. 1: Admit or deny that asbestos-containing products were in general use aboard Defendant's railway cars, engines and/or locomotives during the time period Plaintiff was employed by Defendant.

RESPONSE:

Defendant objects to this request as vague and ambiguous. Defendant further objects to the use of the term "general use" as it is undefined and thus Defendant is unable to respond without a specific definition of such term.

Without waiver of these objections: Plaintiff was not employed by this Defendant. After reasonable inquiry concerning this request and based on lack of specific information on Plaintiff's actual work tasks, unable to admit or deny.

REQUEST FOR ADMISSION NO. 2: Admit or deny that Defendant ordered, purchased or otherwise acquired asbestos-containing products, asbestos-containing friction products, machinery requiring the use of asbestos or asbestos-containing products and/or materials for use during the time period Plaintiff was employed by Defendant.

RESPONSE:

Defendant objects to this request as overly broad, vague and ambiguous. Subject to said objection, Defendant admits that the entity that Plaintiff claims he was employed with would have likely purchased some products which contained some asbestos at some period of time during the time period Plaintiff was employed.

REQUEST FOR ADMISSION NO. 3: Admit or deny that Defendant used or implemented upon Defendant's railway cars, engines and/or locomotives on which or in the vicinity of which Plaintiff worked, asbestos-containing products, asbestos-containing products, asbestos-containing friction products or machinery requiring the use of asbestos or asbestos-containing products.

RESPONSE:

Defendant objects to this request as vague and ambiguous. Subject to said objection, Defendant does not have sufficient knowledge or information to either admit or deny said request. Defendant has made reasonable inquiry concerning this request and the information known or obtainable does not enable Defendant to admit or deny.

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

products and/or asbestos-containing friction products on these railway cars, engines and/or locomotives.

RESPONSE:

Defendant objects to this request as vague and ambiguous. Subject to said objection, this request 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 admits that from information supplied by Plaintiff, he was employed by one or more railroads. The remainder of this request is denied.

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 where asbestos, asbestos containing products and/or machinery calling for the use of asbestos or asbestos containing products were present.

RESPONSE:

Defendant objects to this request as vague and ambiguous. Subject to said objection, because Plaintiff was not employed by this Defendant, but by a predecessor entity, Defendant does not have sufficient knowledge or information to either admit or deny said request. Defendant has made reasonable inquiry concerning this request and the information known or obtainable does not enable Defendant to admit or deny.

REQUEST FOR ADMISSION NO. 7: Admit or deny that Defendant was aware at any time 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:

Deny.

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

RESPONSE:

Admit as to Great Northern.

REQUEST FOR ADMISSION NO. 9: Admit or deny that Plaintiff worked on and/or around Defendant's railway cars, engines and/or locomotives where asbestos-containing products, asbestos-containing friction products and/or machinery requiring the use of asbestos or asbestos containing products and/or materials were installed, used, prepared for use, replaced or repaired.

RESPONSE:

Defendant objects to this request as vague and ambiguous. Subject to said objection, Defendant does not have sufficient knowledge or information to either admit or deny said request. Defendant has made reasonable inquiry concerning this request and the information known or obtainable does not enable Defendant to admit or deny.

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 this request as vague and ambiguous. Subject to said objection, Defendant does not have sufficient knowledge or information to either admit or deny said request. Defendant has made reasonable inquiry concerning this request and the information known or obtainable does not enable Defendant to admit or deny.

REQUEST FOR ADMISSION NO. 11: Admit or deny that the friction products and/or machinery requiring the use of asbestos or asbestos-containing products and/or materials were placed on or used in Defendant's railway cars, engines and/or locomotives during the time period Plaintiff was employed by Defendant and upon Defendant's railway cars, engines and/or locomotives where Plaintiff worked were 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 |

RESPONSES:

Defendant objects to this request as vague and ambiguous. Subject to said objection, Defendant does not have sufficient knowledge or information to either admit or deny said request as respects Plaintiff's prior employer(s). Defendant has made reasonable inquiry concerning this request and the information known or obtainable does not enable Defendant to admit or deny.

REQUEST FOR ADMISSION NO. 12: Admit or deny that Defendant engaged in any abatement programs for the removal of asbestos or asbestos-containing products, asbestos-containing friction products and/or machinery requiring the use of asbestos or asbestos-containing products and/or materials at any time since 1965 on Defendant's railroad, railway cars, engines and/or locomotives during the time of Plaintiff's employment.

RESPONSE:

Defendant objects to this request as vague and unintelligible given Plaintiff's alleged dates of employment. Without waiver of this objection: As to Great Northern, after reasonable inquiry, unable to obtain information to be able to admit or deny this request.

REQUEST FOR ADMISSION NO. 13: Admit or deny that Defendant was aware of the presence of and/or use of asbestos-containing products and/or machinery requiring the use of asbestos or asbestos-containing products and/or materials during the time period Plaintiff was employed by Defendant and upon Defendant's railroad, railway cars, engines and/or locomotives where Plaintiff worked.

RESPONSE:

Defendant objects to this request as vague and ambiguous. Subject to said objection, Defendant does not have sufficient knowledge or information to either admit or deny said request. Defendant has made reasonable inquiry concerning this request and the information known or obtainable does not enable Defendant to admit or deny.

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:

Deny.

REQUEST FOR ADMISSION NO. 15: Admit or deny that Defendant did not continuously provide face masks to crew members working with or around asbestos, asbestos-containing products, asbestos-containing friction products and/or machinery requiring the use of asbestos and/or asbestos-

-containing products upon Defendant's railway cars, engines and/or locomotives from 1945 to the present for the purpose of protecting these crew members from inhaling asbestos, air borne asbestos fibers and/or dust.

RESPONSE:

Defendant objects to this request as vague, ambiguous and argumentative, and that it assumes facts in evidence; specifically, that a mask was necessary or required if there was indeed asbestos in Plaintiff's work environment, and further assumes there was asbestos in Plaintiff's workplace. Without waiver of these objections: denied as phrased.

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 railway cars, engines and/or locomotives would or could be removed, stripped, replaced or repaired at some time after installation.

RESPONSE:

Defendant objects to this request as vague, ambiguous and argumentative, and that it assumes facts not in evidence. Without waiver of these objections: Denied in view of the ambiguity and vagueness of the request.

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:

Deny.

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 this request as vague and ambiguous. Subject to said objection, Defendant does not have sufficient knowledge or information to either admit or deny said request. Defendant has made reasonable inquiry concerning this request and the information known or obtainable does not enable Defendant to admit or deny at this time.

ALL 0157 * 1026

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HOUSTON OFFICE

July 30, 1997

Re: Cause No. 94-12680-K; *Marvin English, Jr., et al v. Owens-Corning Fiberglas Corporation, et al.*; In the 192nd Judicial District of Dallas County, Texas.

Ms. Kimberly Shauck
Baron & Budd, P.C.
3102 Oak Lawn Avenue, Suite 1100
Dallas, Texas 75219-4281

Dear Kimberly:

You sent letters to me and to my associate, John Rabel, regarding interrogatories, requests to produce, and requests for admissions in this case; your letter was dated July 23rd.

First, your letters address responses owed by Defendant, *Burlington Northern, Inc.* Please check with Ms. Castles; I am sure you will find that, by Rule 11 Agreement, *Burlington Northern, Inc.* is no longer a party to this case.

As regards discovery replies from Burlington Northern Railroad Company, you will find enclosed amended discovery responses from The Burlington Northern and Santa Fe Railway Company, as successor-in-interest to the Burlington Northern Railroad Company.

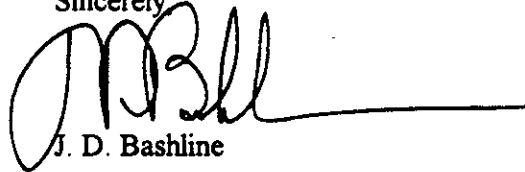
The *supplemental* interrogatory answers, and the *amended* responses to requests for production and requests for admissions add *some* but *not much* by way of new information to our 1996 responses. The *addition* of further information is because we know *a little* more about this Plaintiff's claim than we did in 1996. However, the difficulty in answering *the bulk* of your discovery responses is that this Plaintiff never worked for The Burlington Northern and Santa Fe Railway Company, *nor* for Burlington Northern Railroad Company. Instead, he claims to have worked for

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a separate corporation, the Great Northern Railroad, a company which separately existed between 1890 and March, 1970. At that time, the Great Northern and other railroads were merged into the Burlington Northern Railroad Company. According to the limited discovery you folks have provided us to date, Plaintiff was employed by the Great Northern during the late 1940's and the early 1950's. For that reason, The Burlington Northern and Santa Fe Railway Company has no information on Plaintiff, aside from what you have produced to us or what we have learned from subpoenaing medical records identified by you. And, at this point, there exist *no* records from the Great Northern responsive to your discovery requests.

I trust this explanation helps you understand the answers we have provided. If you still find the answers unsatisfactory, you can set the matter for a hearing. However, I suggest you do not do so until after the Plaintiff is deposed, which deposition is now not scheduled until August 27th in your offices.

Sincerely

A handwritten signature in black ink, appearing to be 'J.D. Bashline', with a long horizontal line extending to the right.

JDB/go

Z 443 844 618



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PS Form 3800, March 1993

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