



No. 96-06239-A

JOSEPH LEE DENNIS, ET AL,

Plaintiffs,

VS.

OWENS-CORNING FIBERGLAS
CORPORATION, ET AL,

Defendants.

§ IN THE DISTRICT COURT OF

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DALLAS COUNTY, T E X A S

14TH JUDICIAL DISTRICT

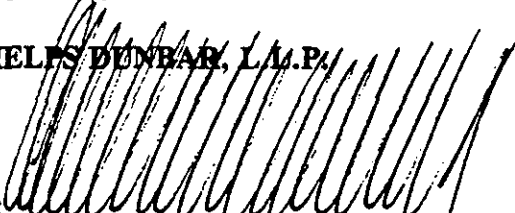
**DEFENDANT SOUTHERN PACIFIC TRANSPORTATION COMPANY'S
RESPONSES AND OBJECTIONS TO PLAINTIFF BENNIE DUNBAR'S
REQUEST FOR ADMISSIONS**

COMES NOW Southern Pacific Transportation Company, one of the Defendants in the above styled and numbered cause, and in accordance with the Texas Rules of Civil Procedure files this its Responses and Objections to Plaintiff Bennie Dunbar's Request for Admissions.

DATED: March 10, 1997

Respectfully submitted,

PHELPS DUNBAR, L.L.P.

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**ATTORNEYS FOR DEFENDANT SOUTHERN
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CERTIFICATE OF SERVICE

The undersigned hereby certifies that on this 10 day of March, 1997, a true and correct copy of Defendant Southern Pacific Transportation Company's Responses and Objections to Plaintiff Bennie Dunbar's Request for Admissions was served on all known counsel of record via first class mail, certified, return receipt requested.

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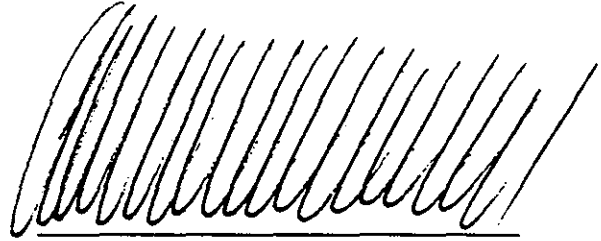
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A handwritten signature in black ink, consisting of a series of loops and strokes, positioned above a horizontal line.

David Lee Crawford

**DEFENDANT SOUTHERN PACIFIC'S RESPONSES AND OBJECTIONS TO
PLAINTIFF'S REQUEST FOR ADMISSIONS**

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:

Objection. Defendant objects to this request as overly-broad, unduly-burdensome, and not limited as to location. It is so overly broad and general that it subjects Defendant to undue burden and unnecessary expense in its defense of this matter. It seeks information which is not material or relevant to this litigation and which is not reasonably calculated to lead to the discovery of relevant or admissible evidence, in that it inquires into work locations at which Plaintiff did not work. Subject to and without waiving the foregoing objection, Defendant admits that asbestos containing materials were in use on Defendant's locomotives during the time period of Plaintiff's employment.

REQUEST FOR ADMISSION NO. 2:

Admit or deny that Defendant transported, ordered, purchased or otherwise acquired asbestos-containing products, asbestos-containing friction products, and machinery requiring the use of asbestos or asbestos-containing products.

RESPONSE:

Objection. Defendant objects to this request as overly-broad, unduly-burdensome, and not limited as to time or location. It is so overly broad and general that it subjects Defendant to undue burden and unnecessary expense in its defense of this matter. It seeks information which is not material or relevant to this litigation and which is not reasonably calculated to lead to the discovery of relevant or admissible evidence, in that it inquires into work locations at which Plaintiff did not work and time periods in which he was not employed. Subject to and without waiving the foregoing objection, Defendant admits that asbestos containing materials were in use on Defendant's locomotives during the time period of Plaintiff's employment.

REQUEST FOR ADMISSION NO. 3:

Admit or deny that Defendant used or implemented on Defendant's railroad, asbestos-containing products.

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RESPONSE:

Objection. Defendant objects to this request as overly-broad, unduly-burdensome, and not limited as to time or location. It is so overly broad and general that it subjects Defendant to undue burden and unnecessary expense in its defense of this matter. It seeks information which is not material or relevant to this litigation and which is not reasonably calculated to lead to the discovery of relevant or admissible evidence, in that it inquires into work locations at which Plaintiff did not work and time periods in which he was not employed. Subject to and without waiving the foregoing objection, Defendant admits that asbestos containing materials were in use on Defendant's locomotives during the time period of Plaintiff's employment.

REQUEST FOR ADMISSION NO. 4:

Admit or deny that Defendant's cars, 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:

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:

Admitted.

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 containing products were present.

RESPONSE:

Defendant is unable to admit or deny this request at this time.

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 admits that its work rules in effect during the period of Plaintiff's employment required that all employees use respirators in excessively dusty conditions, regardless of the source or composition of the dust.

REQUEST FOR ADMISSION NO. 8:

Admit or deny that Plaintiff was employed by Defendant or by a predecessor-in-interest of Defendant.

RESPONSE:

Admitted.

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 is unable to admit or deny this request at this time.

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:

Denied. During the period of Plaintiff's employment, all Southern Pacific employees were subject to safety rules which required that employees use respirators in excessively dusty conditions.

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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 | m. | brake linings |
| b. | asbestos tiles | n. | clutch linings |
| c. | asbestos millboard | o. | firebrick |
| d. | asbestos friction products | p. | refractories |
| e. | asbestos gaskets | q. | turbines |
| f. | asbestos gaskets | | |
| g. | asbestos joint compound | | |
| h. | asbestos cement | | |
| i. | asbestos block | | |
| j. | asbestos packing | | |
| k. | boilers | | |
| l. | brake shoes | | |

RESPONSE:

Objection. Defendant objects to this request as overly-broad, unduly-burdensome, and not limited as to location. It is so overly broad and general that it subjects Defendant to undue burden and unnecessary expense in its defense of this matter. It seeks information which is not material or relevant to this litigation and which is not reasonably calculated to lead to the discovery of relevant or admissible evidence, in that it inquires into work locations at which Plaintiff did not work. Subject to and without waiving the foregoing objection, Defendant admits that asbestos containing materials were in use on Defendant's locomotives during the time period of Plaintiff's employment. Due to the age of the records involved as well normal records retention practices, Defendant no longer retains any records indicated the types of products purchased and used during the period of Plaintiff's employment.

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:

Objection. Defendant objects to this request as overly-broad, unduly-burdensome, and not limited as to location. It is so overly broad and general that it subjects Defendant to undue burden and unnecessary expense in its defense of this matter. It seeks information which is not material or relevant to this litigation and which is not reasonably calculated to lead to the discovery of relevant or admissible evidence, in that it inquires into work locations at which Plaintiff did not work. Furthermore, Defendant objects to providing any information for the time period after Plaintiff's employment with Southern Pacific because such information is irrelevant to this case.

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:

Objection. Defendant objects to this request as overly-broad, unduly-burdensome, and not limited as to location. It is so overly broad and general that it subjects Defendant to undue burden and unnecessary expense in its defense of this matter. It seeks information which is not material or relevant to this litigation and which is not reasonably calculated to lead to the discovery of relevant or admissible evidence, in that it inquires into work locations at which Plaintiff did not work. Subject to and without waiving the foregoing objection, admitted.

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:

Denied. The state-of-the-art knowledge concerning the potential hazards to health from exposure to asbestos containing products has progressed over the years up to the present time. The first study of railroad employees and the associated risks to them was published in approximately 1983. Over the period of time covered by the literature, Southern Pacific has become aware that exposure to excessive amounts of airborne asbestos fibers can be a health hazard. Plaintiff was employed well prior to this time. However, all Southern Pacific employees were subject to work rules at the time of Plaintiff's employment which required employees to use respirators in excessively dusty conditions, regardless of the source or composition of the dust.

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:

Objection. Defendant objects to this request as overly-broad, unduly-burdensome, and not limited as to location. It is so overly broad and general that it subjects Defendant to undue burden and unnecessary expense in its defense of this matter. It seeks information which is not material or relevant to this litigation and which is not reasonably calculated to lead to the discovery of relevant or admissible evidence, in that it inquires into work locations at which Plaintiff did not work. Furthermore, Defendant objects to providing any information for the time period after Plaintiff's employment with Southern Pacific because such information is irrelevant to this case. Subject to and without waiving the foregoing objection, denied. All Southern Pacific employees were subject to work rules at the time of Plaintiff's employment which required employees to use respirators in excessively dusty conditions, regardless of the source or composition of the dust.

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:

Admitted.

REQUEST FOR ADMISSION NO. 17:

Admit or deny that during the time Plaintiff was employed by Defendant, Defendant failed to comply with requirements of the Boiler Inspection Act, formerly 45 U.S.C. 23; and restated at 49 U.S.C. 20701 et seq.

RESPONSE:

Objection. Defendant objects to this interrogatory as overly broad and unduly burdensome. Furthermore, Defendant objects to the form of this request in that Plaintiff has not specified the particular manner in which Defendant's locomotives may not have complied with the Boiler Inspection Act. Accordingly, Defendant is unable to admit or deny this request at this time

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because Plaintiff has not specified the particular manner in which Defendant's locomotives may not have complied with the Boiler Inspection Act.

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 is unable to admit or deny this request at this time.

REQUEST FOR ADMISSION NO. 19:

Admit or deny that Defendant is liable for Plaintiff's asbestos related illness.

RESPONSE:

The matter for which this admission is requested presents a genuine issue for trial and is therefore, pursuant to Tex.R.Civ.P. 169(1), denied.

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:

Objection. Defendant objects to this request as overly-broad, unduly-burdensome, and not limited as to time or location. It is so overly broad and general that it subjects Defendant to undue burden and unnecessary expense in its defense of this matter. It seeks information which is not material or relevant to this litigation and which is not reasonably calculated to lead to the discovery of relevant or admissible evidence, in that it inquires into work locations at which Plaintiff did not work and time periods in which he was not employed. Subject to and without waiving the foregoing objection, Defendant admits that asbestos containing materials were in use on Defendant's locomotives during the time period of Plaintiff's employment.

REQUEST FOR ADMISSION NO. 21:

Admit or deny that Defendant consciously decided not to warn its employees of the dangers of asbestos.

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RESPONSE:

Denied.

REQUEST FOR ADMISSION NO. 22:

Admit or deny that asbestos is still in use and/or in place on Defendant's railroad.

RESPONSE:

Objection. Defendant objects to this request in that the information it seeks is irrelevant to this case. Subject to and without waiving the foregoing objection, denied.

REQUEST FOR ADMISSION NO. 23:

Admit or deny that Defendant no longer uses asbestos on its railroad.

RESPONSE:

Objection. Defendant objects to this request in that the information it seeks is irrelevant to this case. Subject to and without waiving the foregoing objection, admitted.

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 is unable to admit or deny this request at this time.

REQUEST FOR ADMISSION NO. 25:

Admit or deny that Defendant was a member of the National Claims Registry which reported information regarding claims of railroad workers.

RESPONSE:

Denied.