

No. A153112



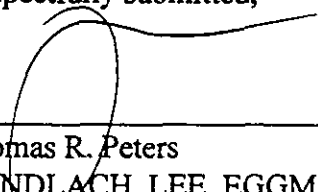
DONALD WOODROW DEVINE, ET AL	§	IN THE DISTRICT COURT
	§	
Plaintiffs,	§	JEFFERSON COUNTY, TEXAS
	§	
vs.	§	
	§	
OWENS-CORNING FIBERGLAS	§	
CORPORATION, et al.,	§	58TH JUDICIAL DISTRICT
	§	
Defendants.	§	

**DEFENDANT ILLINOIS CENTRAL RAILROAD COMPANY'S SECOND
SUPPLEMENTAL RESPONSES AND OBJECTIONS TO
PLAINTIFF THOMAS BARIA'S FIRST SET OF INTERROGATORIES,
SUBJECT TO AND WITHOUT WAIVING SPECIAL APPEARANCE
TO PRESENT MOTION OBJECTING TO JURISDICTION**

TO: THOMAS BARIA, by and through his counsel of record, Rebecca Lipscomb,
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 its Second Supplemental Responses and Objections to Plaintiff Thomas Baria's First Set of Interrogatories, Subject to and Without Waiving Special Appearance to Present Motion Objecting to Jurisdiction, pursuant to Rule 120a, 166b and 168 of the Texas Rules of Civil Procedure.

Respectfully submitted,

By 
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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 these objections:

ICRC currently has special appearance motions pending in two cases involving two Plaintiffs in Dallas County, Texas. Each of these cases involve numerous 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, 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 will provide substantive responses to those requests related to jurisdictional issues as they relate to those Plaintiffs who have sued ICRC and as otherwise contained herein subject to specific and general objections. However, ICRC objects 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.

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 interrogatories are clearly over broad, unduly burdensome, exceptionally expensive, and not reasonably related to the discovery of evidence relevant to the claims of Plaintiff claiming injury arising out of alleged exposure while employed by Defendant in Texas.

2. ICRC further objects to those interrogatories as a whole, since they seek matters which are privileged under the Tex. R. Civ. P. and Tex. R. Civ. Evid., 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 Plaintiffs' interrogatories 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 Plaintiffs' interrogatories as vague since they are not limited to the time and location when and where Plaintiffs were allegedly employed by ICRC.

5. ICRC expressly incorporates each and every general objection and preliminary statement into its response to each interrogatory, subject to and without waiving its special appearance motion objecting to jurisdiction.

**SECOND SUPPLEMENTAL RESPONSES AND OBJECTIONS
TO PLAINTIFF THOMAS BARIA'S FIRST SET OF INTERROGATORIES**

INTERROGATORY NO. 13: Has Defendant or any of its predecessor or subsidiary companies at any time published, distributed or displayed any printed material, including brochures, pamphlets, catalogs, warning signs or statements, packaging or other written material of any kind or character containing any warning concerning the possibility of injury resulting from the use of asbestos-containing products and/or machinery requiring the use of asbestos-containing products and/or exposure to airborne asbestos resulting from the use of asbestos-containing products by others? If so, state:

- A. The exact wording of each warning statement and a description of the material upon which the warning was printed;
- B. The method(s) used to distribute the materials to persons likely to use the asbestos-containing products or likely to be exposed to airborne asbestos;
- C. The date each warning was first issued or distributed;
- D. The name, address, and job title of each person responsible for having drafted or issued the warning statements and/or written materials;
- E. The current location of any such printed material and the custodian thereof;
- F. The form in which such literature or printed material can be accessed, i.e., the manner in which such literature is indexed or stored.

ANSWER: Subject to Defendant's special appearance and without waiving same, Defendant hereby incorporates its preliminary statement and general objections.

Defendant further objects to this interrogatory 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 interrogatory 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 interrogatory 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 previous objections, and limited to the work locations and the time period prior to 1986 when plaintiff left Defendant's employ, Defendant states unknown. *See* deposition of Chuck Garrett taken August 21, 1997, p.90, line 8-p.91, line 17; p.123, line 10-15; page 127, line 2-5.

INTERROGATORY NO. 21: Did Defendant or any subsidiaries or predecessor(s) ever arrange for any labor agency, insurance company, government agency, inspectors or anyone from your company to go on to any Defendant's railway car(s) and/or engine(s) and/or locomotive(s) in questions where asbestos-containing products were used or present to make or take dust level counts related to asbestos dust? If so, identify with particularity the party(ies) conducting such procedure, the dates conducted, the purpose of such procedure, and all results of such procedure.

ANSWER: 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 interrogatory 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); and the lawyer/client privilege, Tex. R. Civ. Evid. 503.

Defendant further objects to this interrogatory 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 interrogatory 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 interrogatory 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 previous objections, Defendant states that, limited to plaintiff's employment from 1955 to 1986, unknown. *See* deposition of Chuck Garrett taken August 21, 1997, p.130, line 12-p.132, line 11.

INTERROGATORY NO. 22: Did Defendant or any predecessor or subsidiary obtain facts, knowledge or information from any industry, insurance company, governmental agency, union, and/or other entity regarding the potential health effects and/or health hazards created for persons exposed to airborne asbestos dust? If so, please list all sources of such information and the dates received.

ANSWER: 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 interrogatory 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); consulting expert privilege, Tex. R. Civ. P. 166b(3)(b); 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 interrogatory 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 interrogatory 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 interrogatory 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 previous objections, and limited to the time period prior to 1986, Defendant states see deposition of Chuck Garrett taken August 21, 1997, p.120, line 13-17; p.26, line 1- p.27, line 10; p.125, line 5-p.126, line 21; p.149, line 3-line 18; p.94, line 8-p.96, line 22. *See also* deposition of Kenneth Novander; *see also* notice of deposition of both Kenneth Novander and Chuck Garrett.

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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 and Objections to Plaintiff Thomas Baria's First Set of Interrogatories, Subject to and Without Waiving Special Appearance to Present Motion Objecting to Jurisdiction was deposited in a mail box located near 5000 West Main Street, Belleville, Illinois, with proper postage prepaid at approximately 5:00 p.m. on April 20, 1998 addressed to the following:

Ms. Rebecca Lipsomb
Baron & Budd, P.C.
3102 Oak Lawn Ave., Suite 1100
Dallas, TX 75219



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