



NO. 95-12951-D

JEANIE LEIGH FLEMING, individually and as,	)	IN THE DISTRICT COURT
Personal Rep. of the Heirs and Estate	)	
of ROY FLEMING, Deceased; and THOMAS	)	
RICHARD GORMAN and ROSE MARY	)	
GORMAN;	)	
	)	
Plaintiffs,	)	
	)	
v.	)	DALLAS COUNTY, TEXAS
	)	
	)	
OWENS-CORNING FIBERGLAS	)	
CORPORATION, et al.,	)	
	)	
	)	
Defendants.	)	95TH JUDICIAL DISTRICT

**SECOND SUPPLEMENTAL RESPONSES OF DEFENDANT NORFOLK SOUTHERN
RAILWAY COMPANY TO REQUESTS FOR PRODUCTION
PROPOUNDED BY PLAINTIFF JEANIE LEIGH FLEMING**

Defendant Norfolk Southern Railway Company (NSRC) f/k/a Southern Railway Company (Southern), for its second supplemental answers to Plaintiff's Requests for Production, states as follows:

PRELIMINARY STATEMENT

NSRC has supplemented its response to these discovery requests to the best of its ability and in good faith, given the approximately 24 hour time period allotted by the Court to do so in its Order compelling additional discovery responses. NW's investigation is continuing, and additional supplemental answers may ultimately be provided. NSRC believes the plaintiff's decedent was never an NSRC employee, and that these responses are in large part irrelevant, and in no way waives any right to object to the admissibility of this information at trial. NSRC incorporates by reference the Preliminary Statement provided in its initial response to these discovery requests.

REQUESTS FOR PRODUCTION

REQUEST FOR PRODUCTION NO. 1: Produce any and all documents, (memoranda and/or other writings, including but not limited to books, pamphlets, or other written materials of any kind or character) in your possession, custody or control which would indicate that asbestos fibers, when inhaled, can be hazardous to the health of human beings.

RESPONSE: NSRC states that its counsel has obtained many journal articles and other writings in connection with the defense of NSRC and asbestos related FELA actions, and all such articles are equally available to Plaintiff's counsel. See also documents identified in NSRC's supplementary answer to Interrogatory No. 18 (Plaintiff's First Set of Interrogatories) and NSRC's supplementary answer to Interrogatory No's 3 and 17 (Plaintiff's Second Set of Interrogatories), which may be responsive to this request.

REQUEST FOR PRODUCTION NO. 2: Produce any and all documents, (memoranda and/or other writings) in your possession, custody or control that in any way related to the hazards of asbestos and/or airborne asbestos.

RESPONSE: See response to Request No. 1 above.

REQUEST FOR PRODUCTION NO. 3: Produce (any) and all publications in your possession, custody or control which were disseminated or published by any person, trade association or organization of any type and that contain information relating to the hazards of asbestos and/or airborne asbestos.

RESPONSE: See response to Request No. 1 above.

REQUEST FOR PRODUCTION NO. 4: Produce any and all safety meeting minutes or other documents, memoranda and/or writings that refer to the dangers of asbestos and/or safety measures to be taken by crew members or workers or employees in the vicinity of asbestos-containing products

and/or machinery requiring the use of asbestos or asbestos/containing products and/or materials on Defendant's railroad.

RESPONSE: Other than the documents referred to in response to Request No. 1 above, NSRC is not aware of any other responsive documents. Prior to 1983 NSRC did not specifically inform employees regarding potential hazards of asbestos and/or diseases potentially associated with asbestos exposure, because it had no reason to believe that its employees were at risk.

REQUEST FOR PRODUCTION NO. 5: Produce any and all contracts, memoranda, and/or other writings that in any way reflect arrangements made for the removal of asbestos and/or the installation of asbestos-containing products on Defendant's railroad(s).

RESPONSE: NSRC states that it is in the process of investigating whether any responsive documents exist with regard to plaintiff's decedent's work location, and will supplement this Request as appropriate.

REQUEST FOR PRODUCTION NO. 6: Produce any and all documents that in any way reflect a removal plan or organized written criteria or schedule for the removal of asbestos on Defendant's railroad(s).

RESPONSE: See response to Request No. 5 above.

REQUEST FOR PRODUCTION NO. 7: Produce any and all documents that discuss or relate in any way to removal of asbestos from any Defendant's railroad(s).

RESPONSE: See response to Request No. 5 above

REQUEST FOR PRODUCTION NO. 8: Please produce any and all documents related to the medical condition of Plaintiff at any time during his employment with Defendant. This request specifically includes, but is expressly not limited to, any and all x-rays, x-ray reports, medical notes and/or medical records of any kind, including annual physical forms.

RESPONSE: Decedent was not employed by NSRC. Other than the medical records that may be contained in decedent's personnel file with the Nickel Plate Railroad/Norfolk and Western Railway

Company which has previously been produced to Plaintiff's counsel, NSRC has no personnel files or medical files on Plaintiff.

REQUEST FOR PRODUCTION NO. 9: Produce any and all documents that indicate and/or refer to in any way a decision and/or discourse related to ceasing the use of asbestos-containing products on Defendant's railroad(s).

RESPONSE: NSRC states that it is in the process of identifying documents potentially responsive to this Request, and will supplement this response as soon as possible.

REQUEST FOR PRODUCTION NO. 10: Produce any and all specifications, blue prints, documents, memoranda and/or other writings that reflect and/or demonstrate in the form of a map and/or chart the location and dimensions of all car(s) and/or engine(s), locomotives, roundhouses and/or shops upon which and in the vicinity of which Plaintiff worked and specifically including, but not limited to, the location and/or placement, repair, installation and/or use of asbestos-containing products and/or materials at any time within the last thirty-five (35) years on the railroad(s).

RESPONSE: Decedent was not employed by NSRC. NSRC has no Nickel Plate documents responsive to this Request. NSRC would note that the group of 47 index cards which indicated the purchase of asbestos containing products by Nickel Plate had been previously produced in this cause. Plaintiff is referred to said index cards.

REQUEST FOR PRODUCTION NO. 11: Produce any photographs of asbestos products in place or asbestos products being fabricated and/or utilized on Defendant's railroad(s).

RESPONSE: NSRC states that it is in the process of identifying documents potentially responsive to this Request with regard to Plaintiff's decedent's work locations, and will supplement this response as necessary.

REQUEST FOR PRODUCTION NO. 12: Produce any actual warning signs or photographs of warning signs or other statements in place at any time relating to asbestos-containing products [in place] at any time during the last thirty-five (35) years on Defendant's railroad(s).

RESPONSE: NSRC is not aware of any items responsive to this request. Discovery and investigation continue.

REQUEST FOR PRODUCTION NO. 13: Produce any documents which indicate in any way that individuals claimed injury to their lungs as a result of exposure to asbestos on any of Defendant's railroad(s).

RESPONSE: NSRC states that it is in the process of identifying relevant, non-privileged documents potentially responsive to this Request, and will supplement this response.

REQUEST FOR PRODUCTION NO. 14: Produce any documents, minutes or other notes or records from any meetings at which the hazards and/or potential hazards of asbestos were discussed by officers, agents, and/or employees of Defendant.

RESPONSE: None. See Response to Request for Production No. 9.

REQUEST FOR PRODUCTION NO. 15: Produce any and all documents, including invoices, shipping receipts, bills of lading, purchase orders, or other documents of a similar nature related to the purchase of asbestos-containing products for use on Defendants' railroad(s).

RESPONSE: NSRC has no documents reflecting asbestos product purchases for any time prior to or during the time decedent was employed by the Nickel Plate Railroad and Norfolk and Western Railway Company.

REQUEST FOR PRODUCTION NO. 16: Produce any and all documents reflecting in any way any inspections by labor inspectors, insurance company inspectors or anyone from Defendant's company or hired by Defendant where asbestos-containing products were being used or installed and that

included the taking or measure of "dust counts." This request specifically includes any and all of Defendant's railroad(s) and railway car(s) and/or engine(s) and/or locomotive(s) and/or roundhouse(s) or shops during the last thirty-five (35) (35 years).

RESPONSE: See Response to Request for Production No. 5.

REQUEST FOR PRODUCTION NO. 17: In the event that Defendant performed or had performed any dust level counts with respect to asbestos dust on any of its railroads, produce any documents that in any way reflect or discuss the results of such studies or counts and actions, or potential actions, if any, taken as a result of such counts or studies.

RESPONSE: See response to Request No. 16.

REQUEST FOR PRODUCTION NO. 18: Please provide all documents referred to in answering Plaintiff's interrogatories propounded to the Defendant, identifying with specificity which documents were used to answer which interrogatories.

RESPONSE: None, other than the documents previously produced to Plaintiff's counsel in this case as well as in similar cases.

REQUEST FOR PRODUCTION NO. 19: (1) Please provide a curriculum vitae for each and every expert witness or expert or expert that the Defendant has retained or employed and cannot unequivocally state will not be a witness on its behalf at trial; and (2) with respect to any and all expert witness(es) identified in subpart (1), please provide any and all documents or tangible things including, but not limited to, all tangible reports, drawings, charts, exhibits, physical models, compilations of data, factual observations, tests, calculations, photographs, diagrams, sketches, movies, videotapes and tape recordings, opinions, supporting data and other documents and/or things reviewed and/or relied upon by him or her in formulating his or her opinions and conclusions on this

case, including all learned treatises (texts, articles, studies, monographs, etc.) and consultant expert work product which forms the basis, in whole or in part, of the witness(es)' opinions or which he or she believes substantiates or corroborates his or her conclusions regarding this lawsuit.

RESPONSE: These documents have previously been produced to Plaintiff's counsel.

REQUEST FOR PRODUCTION NO. 20: As to all such potential legal entities who are not now a party to this lawsuit, but who may be responsible for the incident in question, please provide:

- A. All documents tending to establish such liability; and,
- B. A list of all tangible items or things that may be reviewed tending to establish such liability, along with their location and the identity of the person to contact to view such tangible things.

RESPONSE: NSRC is aware of no such documents.

REQUEST FOR PRODUCTION NO. 21: Provide a copy of each policy of liability insurance intended to provide coverage to the Defendant, its agents and/or employees for liability on the date in question for allegations such as those delineated in Plaintiff's Original Complaint (and all amended complaints thereafter) including, but not limited to, all primary and excess policies covering the Defendant on the date in question, indicating the name and address of each carrier.

RESPONSE: NSRC is self-insured. Consequently, NSRC has no documents which are responsive to this request.

REQUEST FOR PRODUCTION NO. 22: Provide a copy of all invoices, purchase orders, agreements, contracts, correspondences, telefaxes, telexes, and/or documents of any type passing between this Defendant and any other entity regarding the acquisition, ordering, purchasing,

supplying, removal or distribution of asbestos-containing products by Defendant during the time period Plaintiff was employed by Defendant.

RESPONSE: Decedent was not employed by NSRC. See NSRC's response to Request No. 10 above.

REQUEST FOR PRODUCTION NO. 23: Provide a copy of all documents from which your present net worth may be ascertained.

RESPONSE: Punitive damages are not available on FELA actions.

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

RESPONSE: NSRC states that it is in the process of investigating whether any responsive documents exist with regard to plaintiff's decedent's work locations, and will supplement this Request as appropriate.

REQUEST FOR PRODUCTION NO. 25: Provide a copy of all medical records obtained by the Defendant relating to the Plaintiff.

RESPONSE: Any records obtained by this Defendant through depositions on written question are available for inspection and copying at the law offices of Jackson Walker, L.L.P.

REQUEST FOR PRODUCTION NO. 26: Provide a copy of all documents including but not limited to invoices, purchase orders, agreements and contracts involving Defendant as a result of the transport, use, installation, repair, replacement, removal and applying of asbestos-containing products on the railroad.

RESPONSE: NSRC states that 47 index cards which indicated the purchase of asbestos-containing products by the Nickel Plate have been produced previously to Plaintiff's counsel. See also, NSRC's Response to Request Nos. 12 and 15. Investigation and discovery continue.

REQUEST FOR PRODUCTION NO. 27: Provide a copy of all documents regarding safety, safety training and/or safety meetings provided to or for the benefit of Plaintiff and other railroad worker to asbestos or asbestos-containing products on the railroad. Include any documents given out at such safety meetings and copies of the minutes of or notes from all safety meetings held for the benefit of the employees or crew members that worked on the railroad in the last thirty-five (35) years.

RESPONSE: Decedent was not employed by NSRC. NSRC is aware of no such documents which were generated prior to or during the time of decedent's alleged employment with the Nickel Plate Railroad and Norfolk and Western Railway.

REQUEST FOR PRODUCTION NO. 28: Provide a copy of all Defendant's safety and policy manuals regarding the use of or exposure to asbestos-containing products from 1930 to the present.

RESPONSE: See NSRC's Response to Request for Production No. 1.

REQUEST FOR PRODUCTION NO. 29: Provide a copy of all personnel files maintained by Defendant and/or any agent of Defendant concerning the Plaintiff including but not limited to all earnings files, administrative files, and any files concerning any physical examination conducted by the Defendant or for the benefit of the Defendant regarding Plaintiff either for hiring purposes, screening purposes or otherwise.

RESPONSE: Decedent was not employed by NSRC. Decedent's personnel file with the Nickel Plate Railway and Norfolk and Western Railway Company has previously been provided. NSRC has no personnel file or employment information on Plaintiff since he was not employed by NSRC.

REQUEST FOR PRODUCTION NO. 30: Provide a copy of all reports, investigations, transcripts, memoranda, correspondence and/or documents of any type you received from, or sent to any city, county, state, or federal entity, including but not limited to the EPA, NIOSH, NIESH or OSHA

regarding either the potential health hazards or dangers associated with exposure to asbestos-containing products or airborne asbestos, and/or regarding any surveys, testing or other actions taken to determine the presence of and concentration of airborne asbestos on such of Defendant's railroad(s).

RESPONSE: NSRC that it is in the process of investigating whether any responsive documents exist with regard to plaintiff's decedent's work locations, and will supplement this Request as appropriate.

REQUEST FOR PRODUCTION NO. 31: Provide a copy of all safety inspection or site inspection records referencing in any way asbestos or asbestos-containing products used on Defendant's railroad(s).

RESPONSE: See answers to previous discovery requests concerning this subject matter.

REQUEST FOR PRODUCTION NO. 32: Provide a copy of all Defendant's safety inspection policies and procedures in effect during the time Plaintiff was employed by Defendant regarding the handling of, application, use or exposure to asbestos-containing products.

RESPONSE: See Response to Request for Production No. 1.

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 experts or made by you, your attorney, or persons acting as your agents or representatives, and pertaining to any of Defendant's railroad(s), including, but not limited to, locomotives, engine rooms, boiler rooms, railyards, roundhouses, shops and/or common areas, concerning any asbestos-containing products in those areas. Request is hereby made for one print of each photograph or video recording produced in response to this request.

RESPONSE: None related to the Plaintiff's claims herein.

REQUEST FOR PRODUCTION NO. 34: Produce a copy of any reports prepared by any person you plan to call as an expert witness at the time of trial which pertain to the incident made the basis of this suit, specifically including all factual observations and opinions of consulting experts, if such consulting expert's opinion forms the basis of any opinions, theories, or conclusions reached by any testifying experts, and any accompanying photographs, drawings, charts, models, video recordings or other visual aids to such reports. If any expert has not prepared a written report, or if the information mentioned above has not been compiled into report form, then request is hereby made that each expert make a written report containing all said information and that each report be produced for inspection and copying.

RESPONSE: None, other than those previously produced in connection with Norfolk and Western Railway Company's responses to Plaintiff's request No. 34.

REQUEST FOR PRODUCTION NO. 35: Any and all documents prepared by, delivered to, or in the possession of any person you plan to call as an expert witness at the time of the trial, or who won't be called as a witness but whose work product forms a basis in whole or in part of an expert who will be called to testify, which related to any fact or matter that is the subject of or related to the subject of this suit.

RESPONSE: See response to No. 34 above.

REQUEST FOR PRODUCTION NO. 36: All witness statements or other documents generated or obtained in any investigations into the asbestos exposure made the basis of this lawsuit whether signed or unsigned. If you contend any such document is privileged, please identify specifically each document withheld, along with the specific privilege asserted.

RESPONSE: None.

REQUEST FOR PRODUCTION NO. 37: Any models, visual aids, experiments, documents or other writings or any items of demonstrative evidence prepared or preserved by you, your attorney, your experts, or any other person acting on your behalf that will or may be used in the trial of this lawsuit.

RESPONSE: Defendant may use the curriculum vitae of any experts previously designated, all the medical records pertaining to the Plaintiff, any x-ray and/or pathology materials, all of which have been produced to Plaintiffs.

REQUEST FOR PRODUCTION NO. 38: Please provide curriculum vitae for all expert witnesses that Plaintiffs intend to consult or call as witnesses at the trial of this case.

RESPONSE: Plaintiff should have the curriculum vitae of all the expert witnesses that NSRC intends to call as a witness at the trial of this case. Any such curriculum vitae in the possession of NSRC have previously been produced to Plaintiff.

REQUEST FOR PRODUCTION NO. 39: Copies of all depositions of any person previously employed by you specifically including, but not limited to Defendant or Defendant's employees, representatives, or agents, taken in connection with any alleged asbestos exposure at Defendant's railroad(s).

RESPONSE: None other than the copies of depositions previously produced to Plaintiff's counsel in other cases.

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 Defendant and Defendant's 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 Defendant, Defendant's insurer or any agent or representative of Defendant or Defendant's insurer concerning this incident

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

RESPONSE: NSRC is aware of no such non-privileged documents.

REQUEST FOR PRODUCTION NO. 41: Provide a copy of all accident, injury or illness reports concerning the Plaintiff prepared by and/or for Plaintiffs' employer(s) and/or agents in the general course of business.

RESPONSE: Decedent was not employed by NSRC. Any such reports would be contained in plaintiff's decedent's personnel file, previously produced to plaintiff's counsel.

REQUEST FOR PRODUCTION NO. 42: Provide copies of any and all safety standards, regulations, rules or codes pertaining in any way to asbestos or inhalation of toxic fumes or substances, whether promulgated by government or private industry, or Plaintiff's employer from 1930 to the present.

RESPONSE: Decedent was not employed by NSRC. See response to Request No. 1 above. Government' standards, regulations, rules or codes are equally available to plaintiff's counsel.

REQUEST FOR PRODUCTION NO. 43: Provide a copy of any and all contracts and/or agreements of any kind (if oral, reduce the agreement to writing) made by Defendant to supply masks and/or other safety equipment to the Plaintiff or any other employees or railroad workers.

RESPONSE: Decedent was not employed by NSRC. Masks were available on request; NSRC is aware of no "agreements" concerning their provision. Because this request does not specify the other "safety equipment" to which it refers, NSRC cannot further response to this request.

REQUEST FOR PRODUCTION NO. 44: Provide copies of any and all documentation evidencing Defendant's compliance with the Boiler Inspection Act, formerly U.S.C. §20701, during the last thirty-five (35) years.

RESPONSE: None related to Plaintiff's claims herein.

REQUEST FOR PRODUCTION NO. 45: Provide copies of any and all documentation which in any way relates to the transport by Defendant's railroad(s) of asbestos-containing products.

RESPONSE: See responses to previous discovery requests concerning this subject matter.

REQUEST FOR PRODUCTION NO. 46: Provide a copy of all documents, reports and other materials identified in Answer to Interrogatory No. 12.

RESPONSE: No documents or other materials are identified in answer to Interrogatory No. 12.

REQUEST FOR PRODUCTION NO. 47: Please produce any and all x-rays, MRIs, CT-scans, videotapes, or other electronically or technologically created representations, depictions, picturizations, imaging or imagery collected by Defendant in the course of discovery.

RESPONSE: NSRC is aware of no responsive documents other than plaintiff's discovery responses.

REQUEST FOR PRODUCTION NO. 48: Provide copies of any and all documentation relating to a National Claims Registry and/or any other entity, group, organization or membership which catalogued, reported upon or collected information relating to claims of work related injuries by railroad workers.

RESPONSE: NSRC is aware of no responsive documents.

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ATTORNEYS FOR DEFENDANT, NORFOLK
SOUTHERN RAILWAY COMPANY

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the above and foregoing was served by hand delivery, to Mr. Peter Kraus/Ms. Kimberly A. Castles, Baron & Budd, A Professional Corporation, 3102 Oak Lawn Avenue, Suite 1100, Dallas, Texas 75219, on this the 30th day of January, 1998.

All defense counsel may request a copy of this document.

Leo Figueroa / James L. Walker
LEO D. FIGUEROA

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