

CAUSE NO. 96-01882-C

CLINTON HEUETT, ET AL.	§	**IN THE DISTRICT COURT OF**
	§	
vs.	§	**DALLAS COUNTY, T E X A S**
	§	
OWENS-CORNING FIBERGLAS	§	
CORPORATION, ET AL.	§	**68th JUDICIAL DISTRICT**

DEFENDANT'S ANSWERS TO PLAINTIFF'S SECOND SET OF INTERROGATORIES TO DEFENDANT

To: Plaintiff, DELBERT HENKEL, by and through his attorney of record, Ms. Kimberly A. Castles, Baron & Budd, P.C., 3102 Oak Lawn Avenue, Suite 1100, Dallas, Texas 75219-4281.

COMES NOW, The Burlington Northern Santa Fe Railway Company formerly known as the Burlington Northern Railroad and Burlington Northern, Inc., Defendant in the above-entitled and numbered cause, pursuant to the TEXAS RULES OF CIVIL PROCEDURE, and makes and files these its Answers to Plaintiff's Second Set of Interrogatories.

Respectfully submitted,
McLEOD, ALEXANDER, POWEL
& APFFEL, P.C.

By: _____

J.D. Bashline
TBA #01869600
802 Rosenberg; P.O. Box 629
Galveston, Texas 77553
(409) 763-2481; (713) 488-7150
(409) 762-1155 - Facsimile

ATTORNEYS FOR DEFENDANT BURLINGTON NORTHERN SANTA FE RAILWAY COMPANY

CERTIFICATE OF SERVICE

I, J.D. Bashline, do hereby certify that a true and correct copy of the foregoing instrument has been forwarded to all counsel of record this ____ day of August, 1997, by certified U.S. Mail, return receipt requested, by facsimile and regular mail or by regular mail.

J.D. BASHLINE

DEFINITIONS

As used in these Interrogatories, the following terms mean:

1. The words "Defendant," "You," "Your," "Your company," agents, employees and borrowed servants all mean the corporate Defendant answering these Request for Admissions, and any of its merged, consolidated, or acquired predecessors, divisions, subsidiaries, foreign subsidiaries, foreign subsidiaries of predecessors, and/or affiliates. This definition includes present and former officers, directors, agents, employees, and all other persons acting or purporting to act on behalf of the corporate Defendant or its predecessors, subsidiaries, and/or affiliates. "Predecessors" further means any business firm, whether or not incorporated, which had all or some of its assets purchased by you or came to be acquired by you whether by merger or consolidation. "Subsidiaries" further means any business firm, whether or not incorporated, which is or was in any way owned or controlled, in whole or in part by Defendant or its predecessors.

2. The words "document", "documents", "written materials", or "printed matter" include any written, printed, recorded or graphic matter of any kind or character, photographic or video graphic matter or sound reproductions or computer input or output, including but not limited to: brochures, pamphlets, catalogs, warning signs or statements, packaging, logs, bills of lading, invoices, transport logs, contracts, notes, rough drafts, inter-office memoranda, reports, research materials, logs, diaries, calendars, bank statements, tax invoices, diagrams, studies, manuals, minutes, by-laws, articles of incorporation, resolutions, shareholder endorsements, or partnership documents however produced or reproduced, that (1) are now or were formerly in the possession, custody, or control of the Defendant (including documents at any time in the possession, custody or control of their subsidiaries, whether domestic or international, or merged or acquired predecessors), or (2) are known or are believed to be responsive to these Interrogatories and Requests for Production regardless of who now has or formerly had custody, possession or control.

3. The words "person" or "persons" include natural persons, firms, partnerships, associations, joint ventures, corporations, and any other form of business organization or arrangement, and officers, directors, shareholders, employees, agents, and contractors of any business organization or arrangement.

4. The words "meeting" or "meetings" may mean any coincidence or presence of any persons, whether or not such coincidence or presence was pre-arranged, was formal or informal, or was in connection with some other activity.

5. The words "describe" or "description", when referring to a place, thing, or occurrence, mean to identify with sufficient particularity the place, thing, or occurrence so as to enable one to locate, examine and fully comprehend or understand the place, thing, or occurrence described.

6. The words "asbestos," "product containing asbestos fibers," "asbestos-containing products," "asbestos products" all refer to any products or materials prepared in any way for sale and/or

distribution that contained any kind of asbestos in any possible form, including, but not limited to fibers and dust. The words "asbestos materials" refer to any and all materials, substance, or matter used or assembled or fabricated during the manufacture of a product, and that contain at least some asbestos fibers. "Product" includes, but is not limited to, pipe covering, pipe turbines, cement, filler, flat siding, corrugated siding, roofing, block, gaskets, packing, plaster, joint compound, floor and ceiling tiles, mastics, boilers, raw fibers, fireproofing, shingles, panels, sheets, paper, clothing, flooring, tapes, wire, cable, casings, boards, millboard, refractory cement, boilers, firebrick, brake and clutch linings and facings, finishing compound, texture, and other construction, building, drywall, lath and insulation materials, containing trace amounts of asbestos.

7. The words "distribute," "distributed," "distributor," and "distribution" all refer to the sale, marketing, dispersal and/or shipment of asbestos-containing products for purposes of their sale, resale and/or for purposes of filling orders provided by other business concerns. The word "distributor" specifically refers to a company or its sales representatives, whether dependent or independent, responsible for sales or marketing of products.

8. The words "medical advisory capacity" refer to the duties, abilities or capabilities of any member of Defendant's staff, or any individual or organization who has contracted with Defendant, to provide services of a medical nature, including but not limited to providing medical advice.

9. The words "trade organization," or "trade association" mean any organizations or associations of business or industrial entities that are associated and/or meet for the purpose of achieving common goals and/or exchanging information related to common needs or interests, and/or learning information or facts of interest to the various members of the organization or association.

10. The words "research" and "research department" refer to efforts, whether scientific or otherwise, to develop new and/or different types of products, processes or designs of pre-existing products and is meant to incorporate all efforts that specifically contemplated the possible alteration of products.

11. The words "medical department" and "safety department" refer to an individual or a section or group of individuals working for Defendant, either directly or in a contractual capacity, whose purpose was or is to provide guidance, assistance, or advice concerning any aspects of medical health, including but not limited to, the safety of Defendant's workers and the safety of individuals using or exposed to asbestos products.

12. The words "industrial hygiene surveys" mean surveys, tests, interviews, or other procedures taken or effectuated for the purpose of determining the possibility or existence of detrimental health effects caused by exposure to asbestos.

13. The words "potential health hazards," or "health hazards" refer and relate to any injury, effect, damage, scarring, wound, impairment or disability of any part of the human anatomy, including but not limited to the lungs and lung linings, that is caused by or associated with exposures

to asbestos dust and fibers.

14. The terms "test" and "testing" are used in their broadest sense, including but not limited to, studies of atmospheric dust samples, studies of the concentration of asbestos in such airborne test sample, studies of the lung conditions of workers (by x-ray or other means of medical surveillance), pulmonary function studies of workers, animal studies, pathological studies, industrial hygiene studies, risk assessment studies, cost benefit analyses and any other studies concerning health and safety.

15. The terms "the railroads," "railroad", "railway cars and/or engines" "railroad component(s)" and/or "railyard(s)", refer and relate to any and all railroad track lines, roundhouses, shops, railyards, and freight, passenger, refrigerator or other railroad cars, engines, and/or locomotives, as well as the brakes and boilers used in the operation of such freight, passenger, refrigerator or other railroad cars, engines and/or locomotives, and/or in operation of the roundhouses and/or shops and including those containing boilers owned, either as owner or owner pro hac vice, rented, leased, chartered, operated, or otherwise utilized by Defendant in Defendant's regular course of business or over which Defendant had the right to direct, control, repair, or place in railway operation.

16. The terms "railroad worker" "employee" includes any operator, laborer, or maintenance and/or repair workers, persons who have been hired by or contacted at the direction of Defendant to include, maintain or operate cars and/or engines or railroad track lines, or who are connected with the railroad as such and in some capacity to assist in its conduct, maintenance, or service, including all those whose labor contributes to the operation of the railroad in any capacity. The term includes anyone who, in the course of his work about a railroad, exposes himself to risk traditionally associated with railroad duties of a member of a railroad's crew. As such, a "railroad worker" is an employee whose duties contribute to the function of the "railroad" on which he works or the accomplishment of its mission.

17. The term "agreement" includes any contract either oral or written entered into between Defendant and any other party either voluntarily or as the result of any sale, purchase, negotiation, collective bargaining or course of dealing.

18. "EPA" means Environmental Protection Agency. This agency is charged with the promulgation and enforcement of emissions from manufacturing sources into the air and water. It is charged with maintaining and/or improving the quality of the environment. Several other agencies have groups which work on asbestos diseases, including the National Institutes of Health, the National Cancer Institute, and several interagency committees.

19. "NIOSH" means National Institute for Occupational Safety and Health. This group, part of Health, Education and Welfare, is responsible for providing data on the toxicity and safe exposure limits for chemical and physical agents found in the workplace.

20. "NIEHS" means National Institute of Environmental Health Sciences. This group, also an

agency of Health, Education and Welfare, performs studies on chemical and physical agents emitted into the environment which may have an impact on the population.

21. "OSHA" means Occupational Safety and Health Administration. This group is responsible for promulgating and enforcing exposure of workers in the workplace. It is part of the Department of Labor.

22. "Friction product" includes any product used to absorb, alleviate, disperse or distribute friction or the effects of friction and includes, but is specifically not limited to, brake shoes and linings and clutch linings.

23. "Each" shall mean each and every; "All" shall mean any and all.

24. "Identify" or "Identity" when used in reference to documents shall be understood as an instruction to identify the document completely. The identification shall include, but not be limited to, the documents date, title, authors, addresses and other recipients, type (e.g. letter, notes, memoranda, diary, etc.), subject matter, present location, present custodian, and the purposes for which the document was created or prepared.

25. Relating to" and "regarding" shall mean embodying, pertaining to, concerning, constituting, comprising, reflecting, discussing, referring to, or having any logical or factual connection whatsoever with the subject matter in question.

26. "Relationship" means any connection, affiliation or association of any nature or kind whatsoever, currently or previously in existence.

27. The words "releasing products to the public" means selling, distributing, marketing, or otherwise causing the products to be available to the general public and/or retail and wholesale outlets for further distribution or sale.

28. The words "marketed," and "market" mean and include all efforts to aid or assist in the distribution and/or sale of products, including offers on the part of the manufacturer or distributor to sell products and the advertising of products and sales solicitation efforts.

29. The word "manufacture," or "manufactured" means to fabricate, to construct, to assemble, to prepare for fabrication, construction or assembly, and any other action taken prior to completion of the product or material before the time of its shipment.

30. The word "use" means to install, repair, replace, fabricate, implement, prepare for use, stock or store.

31. "Plaintiff" shall refer to Decedent in all cases in which the railroad worker or railroad employee, is deceased.

INTERROGATORIES

INTERROGATORY NO. 1:

At any time prior to 1980 did Defendant or anyone at the direction of Defendant conduct an investigation, survey or other process to identify the primary emission sources of airborne asbestos fibers and/or to assess and/or sample for the detection of, the quantity of, or threshold limit value of airborne asbestos fibers in relation to Defendant's railroad? If so, please identify with particularity the entity and/or persons conducting such investigation(s), survey(s) or test(s), the dates conducted and the results.

ANSWER:

Defendant objects to this Interrogatory for the reason that it is overly broad, unduly burdensome, and not limited in any way as to the time period during which Plaintiff was employed, if at all, by this Defendant. Moreover, this Interrogatory is not relevant because Defendant has no records of Plaintiff's employment. Defendant also objects to this Interrogatory to the extent that it seeks information exempted from discovery by the attorney work product, party communications, attorney/client, consulting expert, and investigative privileges. Subject to the foregoing objections and without waiving same, Defendant presently is attempting to determine whether any documents exist which are responsive and non-privileged.

INTERROGATORY NO. 2:

Did Defendant ever arrange for any labor agency, insurance company, government agency, inspectors or anyone from your company to go into any of Defendant's railway car(s) and/or engine(s) and/or locomotive(s) and/or roundhouses and/or shops to take dust level counts related to asbestos dust? If so, identify with particularity the party(ies) conducting such procedure(s), the dates conducted, the purpose of such procedure(s), and all results of such procedure(s).

ANSWER:

Defendant objects to this Interrogatory for the reason that it is overly broad, unduly burdensome, and not limited to the time period during which Plaintiff was employed, if at all, by this Defendant or to the areas in which Plaintiff worked. Moreover, this Interrogatory is not relevant because Defendant has no records of Plaintiff's employment. Defendant also objects to this Interrogatory to the extent that it seeks information exempted from discovery by the attorney work product, attorney/client, party communications, consulting expert, and investigative privileges. After appropriate responses from Plaintiff regarding his employment, if any, with Defendant, non-privileged responsive documents, if any, will be

produced.

INTERROGATORY NO. 3:

Did Defendant obtain facts, knowledge or information from any industry, insurance company, governmental agency, union, and/or any 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:

Yes. However, it is not possible to specifically identify, or for that matter to generally identify sources of information or dates received.

INTERROGATORY NO. 4:

List each person who has acted in a medical advisory capacity to your company at any time during the past 40 years, including, but not limited to, physicians (including those physicians who would have been responsible for conducting physicals, evaluations or screening of Defendant's employees and industrial hygienists, and the current address, telephone number and job title of each of those individuals who has had or may have had any knowledge regarding the hazards of airborne asbestos dust.

ANSWER:

Chief Medical Officers

Great Northern (Prior to 1970) Abbott Skinner
BNI (1970-1982) Abbott Skinner
BNRR (1982-1995) Thomas V. Nears

Safety & Rules

Great Northern (Prior to 1970) R.L. Grinde
BNI (1971-1980) R.L. Grinde
BNRR (1981-82) J.G. Edwards
BNRR (1983-86) J.J. Button
BNRR (1989-95) Thomas V. Mears

INTERROGATORY NO. 5:

Does Defendant have in its possession any books, pamphlets, memoranda, or written

materials of any kind or character that would indicate that asbestos fibers, when inhaled, can be hazardous to the health of human beings? If so, state:

A. The name of each such publication;
B. The date of publication and the names of the author and publisher (if any);
C. The date received by Defendant;
D. The name, job title, and address of each person who currently has possession of each publication and its present location.

ANSWER:

Defendant objects to this Interrogatory because it is unduly burdensome, oppressive, and harassing. This company does not maintain any centralized listing of books, pamphlets, or memoranda which may be held by any subordinate department, division, office, or individual. Moreover, this Interrogatory is not relevant because Defendant has no records of Plaintiff's employment. Without waiver of this objection, it is true that the company's medical, industrial hygiene, and safety staff members in various locations have one or more documents referring to potential harm from inhalation of asbestos fibers above specified concentrations.

INTERROGATORY NO. 6:

Has Defendant at any time been a member of any trade organization or association that published or disseminated any documents or information relating to the hazards of airborne asbestos? If so, state:

A. The name and address of each such association or organization;
B. The dates during which Defendant member;
C. The names and dates of any publications, minutes, or reports published, written, or disseminated by any of the named associations or organizations;
D. Whether any of those publications are still in your possession, and if so:

    1. A description of the publications, including the date;
    2. The current location of such publications;
    3. The custodian of such publications;
    4. The method or manner in which such publications are maintained.

ANSWER:

Defendant objects to this Interrogatory for the reason that it is overly broad, unduly burdensome, vague, ambiguous, and is not limited in any way as to the time period during which Plaintiff worked, if at all, for this Defendant. Moreover, this Interrogatory is not relevant because Defendant has no records of Plaintiff's employment. Subject to the

foregoing objections and without waiving same, investigation will continue during the discovery of this matter and our answer will be supplemented as required.

INTERROGATORY NO. 7:

As to the disease asbestosis, state:

A. The date on which Defendant first learned that such disease was caused by inhalation of asbestos fibers;
B. How Defendant became aware of the existence of the disease;
C. Who within the company first discovered, recognized or understood the adverse consequences or effects of the disease;
D. What information was disseminated within Defendant's company or its subsidiary or predecessor regarding such adverse consequences or effects;
E. Whether any such information is still maintained by Defendant or its subsidiary or predecessor in any written form;
F. Who is the custodian of such information;
G. The date on which you first received knowledge or information that asbestosis was caused by inhalation of asbestos fibers alone or in conjunction with second hand smoke.

ANSWER:

It is no more possible to provide precise answers to the sub-parts of this question, and than it would be to determine when this nation became aware of such hazards. There is no indication that the company's knowledge of these facts occurred, with respect to any sub-part of this question, on a single day, month, or year. Such records as are now available suggest that during the decade of the 1970's, the company became aware of the major emphasis placed upon asbestos containing materials by agencies of the United States government such NIOSH and OSHA, including concerns by such agencies that the levels of exposure to asbestos fibers previously considered safe might need to be re-examined. Moreover, this Interrogatory is not relevant because Defendant has no records of Plaintiff's employment

INTERROGATORY NO. 8:

As to the disease lung cancer, state:

A. The date on which Defendant first learned that such disease was caused by inhalation of asbestos fibers;
B. How Defendant or its subsidiary or predecessor became aware of the disease and its relationship to asbestos exposure;
C. Who within the company or its subsidiary or predecessor first discovered or recognized the adverse consequences or effects of asbestos exposure;

D. What information was disseminated within Defendant's company or its subsidiary or predecessor regarding such adverse consequences or effects;
E. Whether any such information is still maintained by Defendants or its subsidiaries or predecessors in a written form;
F. Who is the custodian of such information;
G. The date on which you first received knowledge or information that lung cancer was caused by inhalation of asbestos dust and fibers.

ANSWER:

It is no more possible to provide precise answers to the sub-parts of this question, and than it would be to determine when this nation became aware of such hazards. There is no indication that the company's knowledge of these facts occurred, with respect to any sub-part of this question, on a single day, month, or year. Such records as are now available suggest that during the decade of the 1970's, the company became aware of the major emphasis placed upon asbestos containing materials by agencies of the United States government such NIOSH and OSHA, including concerns by such agencies that the levels of exposure to asbestos fibers previously considered safe might need to be re-examined. Moreover, this Interrogatory is not relevant because Defendant has no records of Plaintiff's employment

INTERROGATORY NO. 9:

As to the disease mesothelioma, state:

A. The date on which Defendant first learned such disease was caused by inhalation of asbestos fibers;
B. The date on which Defendant first suspected that mesothelioma was caused by inhalation of asbestos dust and fibers;
C. How Defendant or its subsidiary or predecessor became aware of the disease and that it was caused by exposure to asbestos;
D. Who within the company or its subsidiary or predecessor first discovered or recognized the adverse consequences or effects of asbestos exposure;
E. What information was disseminated within Defendant's company or its subsidiary or predecessor regarding such adverse consequences or effects;
F. Whether any such information is still maintained by Defendants or its subsidiary or predecessor in a written form;
G. Who is the custodian of such information;
H. Whether Defendant agrees that there is no known medical cure for mesothelioma.

ANSWER:

It is no more possible to provide precise answers to the sub-parts of this question, and than

it would be to determine when this nation became aware of such hazards. There is no indication that the company's knowledge of these facts occurred, with respect to any sub-part of this question, on a single day, month, or year. Such records as are now available suggest that during the decade of the 1970's, the company became aware of the major emphasis placed upon asbestos containing materials by agencies of the United States government such NIOSH and OSHA, including concerns by such agencies that the levels of exposure to asbestos fibers previously considered safe might need to be re-examined. Moreover, this Interrogatory is not relevant because Defendant has no records of Plaintiff's employment

INTERROGATORY NO. 10:

As to gastrointestinal cancer, laryngeal cancer, pharyngeal cancer and/or lymphatic cancer, state:

A. The type of cancer and the date on which Defendant first learned that such diseases were caused by inhalation of asbestos fibers by humans;
B. What cancers has the Defendant become aware can be caused by exposure to asbestos fibers;
C. The date on which Defendant first suspected other cancers were caused by asbestos inhalation;
D. Who within the company or its subsidiary or predecessor first discovered the adverse consequences or effects of asbestos exposure;
E. What information was disseminated with Defendant's company or its subsidiary or predecessor regarding such adverse consequences or effects;
F. Whether any such information is still maintained by Defendant or its subsidiary or predecessor in a written form;
G. Who is the custodian of such information.

ANSWER:

Defendant objects to this Interrogatory because it is not relevant because the company is not aware that medical literature has firmly established any connection between asbestos fiber exposures and the diseases inquired about in this interrogatory. Moreover, this Interrogatory is not relevant because Defendant has no records of Plaintiff's employment

INTERROGATORY NO. 11:

Did Defendant maintain written minutes of corporate meetings, either board of directors, departmental, or otherwise, which reflect discussions pertaining to any subject matter related to asbestos, asbestos health hazards or asbestos products? If so, for each such set of minutes, state:

A. The dates of each such meeting;

B. The general subject matter discussed at each meeting;
C. Who was in attendance at each meeting;
D. Where and by whom the written minutes are presently maintained;
E. By whom the minutes were taken and put into final format;
F. Whether the minutes were abstracted and reports disseminated to other individuals, and if so, the names and job titles of those individuals.

ANSWER:

Defendant objects to this Interrogatory to the extent that it seeks information exempted from discovery by the attorney/client, attorney work product, and party communications privilege. Defendant further objects to this Interrogatory for the reason that it is overly broad, unduly burdensome, vague, ambiguous, and not limited to the time period during which Plaintiff worked, if at all, for this Defendant. Moreover, this Interrogatory is not relevant because Defendant has no records of Plaintiff's employment.

INTERROGATORY NO. 12:

Does Defendant intend to call a company representative as a witness at the trial of this case? If so, list:

A. The name, address, and job title of each company representative who may be called;
B. A summary of the testimony expected to be given by each such witness;
C. List any and all previous times that the named witnesses have either given deposition or trial testimony in an asbestos-related case, including the jurisdiction, style of the case, case number, date of testimony, and the name of the attorney taking the deposition for the Plaintiff(s) in that case.

ANSWER:

Defendant objects to this Interrogatory for the reason that it requires Defendant to divulge its trial strategy by revealing the identity of those persons who will actually be called to testify at trial. See *Employers Mut. Liability Ins. Co. v. Butler*, 511 S.W.2d 323 (Tex. App.-Texarkana 1974; writ ref'd n.r.e.).

INTERROGATORY NO. 13:

Does Defendant have, or has it ever had, a Medical Department or Medical Section? If so, state:

A. The year such Medical Department or Section was established;
B. Whether or not such Medical Department or Section has operated

continuously since being established;

C. The name of each director, chief, or head of your Medical Department or Section year by year, beginning with the first year of its existence and the last known address and phone number of each;

D. State the duties and responsibilities of such Medical Department or Section.

ANSWER:

Defendant objects to this Interrogatory because it is not limited to the time period when Plaintiff worked, if at all, for Defendant. Moreover, this Interrogatory is not relevant because Defendant has no records of Plaintiff's employment. Subject to the foregoing objections and without waiver of same, please refer to Answer to Interrogatory No. 4. Further, Defendant may supplement this answer.

INTERROGATORY NO. 14:

Please state whether written warnings were placed at any locations adjacent to or near asbestos in place on Defendant's railroad(s), at anytime from 1930 to the present. If so, please describe with specificity such signs, including size, color, wording, etc. Additionally, please state the number of such signs that were installed and indicate the specific location of each such sign and the dates such sign was at that location.

ANSWER:

Defendant objects to this Interrogatory because it assumes matters not in evidence; specifically, that some form of warning was either necessary, required, or advisable near or around asbestos containing materials without regard to consideration of whether any such hypothetical materials could or did produce the release of asbestos fiber. Defendant further objects to this Interrogatory for the reason that it is overly broad, unduly burdensome, vague, ambiguous, and not limited as to the time period during which Plaintiff worked, if at all, for this Defendant or to the areas in which Plaintiff worked. Moreover, this Interrogatory is not relevant because Defendant has no records of Plaintiff's employment. Subject to the foregoing objections and without waiving same, it is believed that Defendant did post warning posters, concerning the hazards of asbestos, in the shops in which the railroad workers were employed. Investigation will continue during the discovery of this matter and our answer will be supplemented as required.

INTERROGATORY NO. 15:

Does your company have, or has it ever had, a Safety Department? If so, state:

A. The year such Safety Department was established;

B. Whether or not such Safety Department has operated continuously since

being established;

C. The name of each director, chief, or head of your Safety Department year by year, beginning with the first year you had a Safety Director or Safety Department, and the last known address and phone number of each;

D. State the duties and responsibilities of such Safety Department.

ANSWER:

Defendant objects to this Interrogatory because it is not limited to the time period when Plaintiff worked, if at all, for this Defendant. Moreover, this Interrogatory is not relevant because Defendant has no records of Plaintiff's employment. Subject to the foregoing objections and without waiver of same, all employees have a responsibility for administering and enforcing safety policies and procedures. Please refer to Answer to Interrogatory No. 4 and an investigation will continue during discovery of this matter and our answer will be supplemented as required.

INTERROGATORY NO. 16:

Please state whether a medical monitoring program, medical examination program or other medical surveillance was provided to your employees and specifically to Plaintiff. If so, please indicate what records of such program, examination or surveillance concerning Plaintiff exist at this time, including but not limited to reports, x-rays and medical notes.

ANSWER:

Unknown, an investigation will continue during discovery of this matter and our answer will be supplemented as required. Employees were required to undergo periodic physical examinations. The company has no records of this Plaintiff having been employed by the company.

INTERROGATORY NO. 17:

Please state whether Defendant has at any time provided safety equipment to the Plaintiff and/or the railroad workers of Defendant present at any time during Plaintiff s employment by Defendant for protection against the inhalation of airborne asbestos dust, including but not limited to masks, respirators, other breathing devices, protective clothing, protective gloves, etc. For each such item of equipment, please indicate when such item was first provided, under what circumstances, and the name, address and telephone number of the person most knowledgeable concerning such provision.

ANSWER:

Defendant objects to this Interrogatory for the reason that it assumes that Plaintiff worked around asbestos dust in amounts that exceeded the maximum threshold limits for occupational exposure to the asbestos-containing dust. Moreover, this Interrogatory is not relevant because Defendant has no records of Plaintiff's employment.

INTERROGATORY NO. 18:

Please state whether Defendant ever agreed by contract, agreement, negotiation, collective bargaining or otherwise, to provide masks to Plaintiff and other crew members and/or employees of Defendant working with or around asbestos products. If so, please state verbatim the specific agreement or contract and/or other document by which Defendant agreed to provide such masks. Include the date the agreement was entered into, the period of time covered by the agreement and the parties to the agreement.

ANSWER:

See Defendant's Answer to Interrogatory No. 17.

INTERROGATORY NO. 19:

Please state the precise State and/or Federal regulations, laws, statutes, or other authority pertaining to industrial hygiene or worker safety and health that governed, regulated controlled and/or were applicable to airborne asbestos exposure in your operations and/or in relation to Defendant's railroad.

ANSWER:

Defendant objects to this Interrogatory because it is unduly broad and burdensome in scope. Moreover, this Interrogatory is not relevant because Defendant has no records of Plaintiff's employment. Without knowing when and where the Plaintiff was employed, if at all, by the Defendant, it is not possible for Defendant to determine an answer to this question.

INTERROGATORY NO. 20:

Please describe each and every occasion during the past thirty years when any regulatory agency or other governing body inspected Defendant's railroad to ascertain whether health and safety regulations were being followed or adhered to, including the date of such inspection and/or meeting, the results, and whether a written report was produced.

ANSWER:

Defendant objects to this Interrogatory because it is unduly burdensome, oppressive, and harassing. Moreover, irrelevant as to any such inspections which were not concerned with or directed at the presence of respirable levels of asbestos, or other respirable particulates in any work place. Moreover, this Interrogatory is not relevant because Defendant has no records of Plaintiff's employment. Subject to this objection, and without waiver, Defendant is attempting to determine whether any such inspections as those inquired about, with regard to asbestos or other particulates was conducted.

INTERROGATORY NO. 21:

Please state whether any asbestos-containing products in place or in use on Defendant's railroad, has been removed or abated at any time from 1965 to the present. If so, please answer the following:

A. List each and every abatement company or other contractor involved with the removal of asbestos, including address and telephone number, dates of such removal, and whether a contract for such removal exists;
B. Indicate the total amount in dollars spent by Defendant to abate or remove asbestos from the railroads.
C. State whether any "removal plan" or organized written criteria or other document related to asbestos removal on the railroad(s) was ever prepared by Defendant;
D. State whether corporate documents discussing or relating generally to the removal of asbestos are in existence and, if so, where they are maintained;
E. State precise dates and locations when and where such removal or abatement took place for each railroad.

ANSWER:

Defendant objects to this Interrogatory for the reason that it is overly broad, unduly burdensome, harassing, immaterial, irrelevant, and not reasonably calculated to lead to the discovery of admissible evidence. Defendant further objects to this Interrogatory for the reason that it is not limited to the time period during which Plaintiff worked, if at all, for this Defendant or to the areas in which Plaintiff worked. Moreover, this Interrogatory is not relevant because Defendant has no records of Plaintiff's employment.

INTERROGATORY NO. 22:

As to either the threshold limit values or maximum allowable concentrations of both asbestos dust and total dust provided by the American Conference of Governmental Industrial Hygienists, state:

A. The year in which Defendant was first advised of such limits or concentrations;
B. The name of the employee or official of the company receiving such advice;
C. How Defendant received notice of such limits or concentrations.

ANSWER:

Defendant objects to this Interrogatory for the reason that it is overly broad, unduly burdensome, harassing, irrelevant, immaterial, and not reasonably calculated to lead to the discovery of admissible evidence. Defendant further objects to this Interrogatory for the reason that there is no evidence that the Plaintiff herein was at any time exposed to asbestos in concentrations in excess of acceptable threshold limit values. Moreover, this Interrogatory is not relevant because Defendant has no records of Plaintiff's employment.

INTERROGATORY NO. 23:

Please state whether and when Defendant received a copy of the Fleischer/Drinker Report published in 1945/1946.

ANSWER:

Unknown, an investigation will continue during the discovery of this matter and our answer will be supplemented as required.

INTERROGATORY NO. 24:

Please describe all actions taken by Defendant to comply with the Boiler Inspection Act, previously 45 U.S.C. §23 during the past thirty-five (35) years, now designated at 49 U.S.C. §20701 et seq.

ANSWER:

Defendant objects to this Interrogatory because it is unduly burdensome and harassing, since as phrased the interrogatory would require Defendant to attempt to determine the dates, and the actions taken, without regard to each and every scheduled or unscheduled inspection, maintenance action, or repair on railroad equipment governed by the act. Moreover, irrelevant, absent any showing that this Plaintiff's period of employment, if any, with the railroad was one in which he was engaged in engine service, or in maintenance upon items of equipment (engines and tenders) subject to the Boiler Inspection Act. Also, this Interrogatory is not relevant because Defendant has no records of Plaintiff's employment.

VERIFICATION

STATE OF TEXAS §
§
COUNTY OF TARRANT §

Before me, the undersigned authority, on this day personally appeared ROBERT T ATTRIDGE, known to me to be the person whose name is subscribed to this Affidavit and having been duly sworn, upon his oath deposes and says:

> "My name is ROBERT T. ATTRIDGE. I am over eighteen (18) years of age and am fully competent to make this Affidavit. I am the DIRECTOR OF OCCUPATIONAL CLAIMS for The Burlington Northern and Santa Fe Railway Company. While there is no one person who has knowledge of each and every fact herein, however, these answers were compiled through a concerted effort of employees, counsel, and records. I do hereby swear, that they are true and correct."

Further, Affiant sayeth not.

ROBERT T. ATTRIDGE
AFFIANT

Subscribed and sworn to before me on this the 22nd day of August, 1997, to certify which witness my hand and seal of office.

Rosann Reynolds
Notary Public in and for the
State of Texas

My Notary Seal Expires: 12/11/99

ROSANN REYNOLDS
Notary Public
STATE OF TEXAS
My Comm. Exp. 12/11/99