



NO. 95-11267-K

MERLYN W. ALLRED, ET AL.

Plaintiffs,

vs.

OWENS-CORNING FIBERGLAS
CORPORATION, ET AL.

Defendants.

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IN THE DISTRICT COURT OF

DALLAS COUNTY, TEXAS

192ND JUDICIAL DISTRICT

**DEFENDANT MISSOURI PACIFIC RAILROAD COMPANY d/b/a
UNION PACIFIC RAILROAD COMPANY'S SECOND SUPPLEMENTAL
OBJECTIONS AND RESPONSES TO PLAINTIFF'S INTERROGATORIES**

TO: Martin L. Frierson, Jr., Plaintiff, by and through his attorneys of record, Baron & Budd, The Centrum, 3102 Oak Lawn Avenue, Suite 1100, Dallas, Texas 75219-4281.

Pursuant to Rules 166b and 168 of the Texas Rules of Civil Procedure, Defendant Missouri Pacific Railroad Company d/b/a Union Pacific Railroad Company (named as successor to Texas and Pacific Railway), Defendant herein, hereby submits its Second Supplemental Objections and Responses to Plaintiff's Interrogatories.

General Objections

1. Defendant objects to the Interrogatories to the extent that they request information protected from disclosure by the attorney-client privilege and/or the attorney work-product doctrine. Any information subject to any such privilege inadvertently provided by Defendant in response to the Interrogatories shall not constitute or be deemed to constitute a waiver of any such privilege.

2. Defendant objects to the Interrogatories to the extent that they request information that is neither relevant nor likely to lead to the discovery of admissible evidence.

3. Defendant objects to the Interrogatories to the extent that they exceed the scope of permissible discovery under the Texas Rules of Civil Procedure.

4. Defendant objects to the Interrogatories to the extent that they purport to require Defendant to provide information that is available to Plaintiff where the burden of deriving or ascertaining such information is substantially the same as for Plaintiff as for Defendant.

5. Defendant objects to the Interrogatories to the extent that they purport to require Defendant to provide information pertaining to any time period other than the relevant time period which Plaintiff was allegedly employed by Defendant.

6. Defendant objects to the Interrogatories to the extent that they purport to allege Plaintiff was employed by Missouri Pacific Railroad Company as opposed to Union Pacific Railroad Company.

7. Defendant objects to the Interrogatories to the extent that they require in excess of thirty (30) responses.

8. Defendant reserves the right to supplement or amend its responses as appropriate.

INTERROGATORIES

INTERROGATORY NO. 1.: State the name, address, job title, length of time employed by Defendant, and a year-by-year list of all positions, titles, or jobs held while working for Defendant of each person who supplied any information used in answering these interrogatories.

ANSWER: Objection. This Interrogatory is overly broad, unduly burdensome and seeks information which is neither relevant nor likely to lead to the discovery of admissible evidence. Subject to and without waiver of the foregoing objections, Arlene Schroeder, Senior Claim Representative, Union Pacific Railroad Company, 1416 Dodge Street, Omaha, Nebraska 68179.

INTERROGATORY NO. 2.: State the full and proper business name and address of the Defendant. State whether or not you are a corporation. If so, state your corporate name, the state of your incorporation, the address of your principal place of business, the name and address of the person or entity authorized to accept service of process on your behalf, and whether or not you have ever held a Certificate of Authority to do business in the State of Texas, maintained a registered agent in Texas, engaged in business in Texas or recruited or hired employees in Texas.

ANSWER: Defendant Union Pacific Railroad Company is a Utah Corporation licensed to do business in the State of Texas. Defendant's home office is in Omaha, Nebraska. It does business in Texas, maintains a registered agent in Texas, Norma Davenport, 808 Travis, Suite 620 Houston, Texas 77002 is authorized to accept service. Defendant engages in business and has employees in Texas.

INTERROGATORY NO. 3.: With regard to each policy of liability insurance intended to provide coverage to Defendant, its agents and/or employees for the liability in connection with the allegations such as those delineated in Plaintiff's Original and Amended Petitions including, but not limited to, all primary and excess policies covering the Defendant for such liability, state the name and address of each carrier.

ANSWER: Objection. This Interrogatory is overly broad, unduly burdensome and seeks information which is neither relevant nor likely to lead to the discovery of admissible evidence. Subject to and without waiver of these objections, Defendant purchased numerous insurance policies during the years plaintiff contends he was employed by Defendant. These policies provided coverage above deductible or self-insured retained amounts of such size that for all practical purposes, Defendant has been self-insured. Further, Defendant's insurers have denied these policies provide coverage for the potential liability asserted in this suit. At the time these policies were purchased, Defendant had no reason to anticipate that these or similar claims would be later made.

INTERROGATORY NO. 4.: State whether you contend that the Plaintiff has done anything or failed to do anything that constitutes contributory negligence and/or a failure to mitigate damages. If so, please describe the basis of your contention and what evidence exists to support that contention.

ANSWER: Defendant anticipates that some of the Plaintiff's work and/or social habits and/or failure to follow physician directives may have contributed to his medical condition, including but not limited to Plaintiff's failure to utilize methods or take steps to cease smoking cigarettes or the use of other tobacco products generally known to be hazardous to human health.

INTERROGATORY NO. 5.: List each and every place of work and job assignment of the Plaintiff which he held during his employment with you and describe in detail the duties involved in each of the job assignments.

ANSWER: Objection. This Interrogatory is vague, ambiguous, overly broad, unduly burdensome and seeks information which is neither relevant nor likely to lead to the discovery of admissible evidence. Subject to and without waiver of the foregoing objections, Defendant has obtained Railroad Retirement Board records for Plaintiff which indicate employment with Texas & Pacific Railway Company in 1942, 1943, and 1946 produced as a one page attachment. Defendant has located no other records responsive to this request.

INTERROGATORY NO. 6: Describe in detail your knowledge of the nature of other work performed in your railroad or railroad shops during the period of Plaintiff's employment, where insulation and asbestos-containing products were installed, removed or used by railroad workers working in the vicinity of the Plaintiff.

ANSWER: Objection. This Interrogatory is vague, ambiguous, overly broad, unduly burdensome and seeks information which is neither relevant nor likely to lead to the discovery of admissible evidence. Subject to and without waiver of the foregoing objections, Defendant has located no records responsive to this request or which would indicate plaintiff was exposed to asbestos during his employment.

INTERROGATORY NO. 7: If you have alleged in your answer that someone else's conduct or some other condition or event was the "sole proximate cause" or was "contributing proximate cause" of the alleged injuries made the basis of this lawsuit, please describe in detail the identity of such other person, entity, corporation, event, or condition and identify all evidence upon which you base this contention.

ANSWER: Objection. This Interrogatory is premature. Defendant will not know the answer until discovery is completed and /or more information is obtained or furnished. Further, plaintiff's own allegations contend that products sold, manufactured, distributed or marketed by other defendants were the sole or contributing cause of plaintiff's alleged injuries, and that such defendants conspired to conceal the dangers of their products from the plaintiff and others. Defendant leaves the plaintiff to his proof for those allegations and relies on plaintiff's own identification of persons, entities, or corporations with such knowledge previously produced or to be produced in plaintiff's or any co-defendant's discovery responses. Defendant directs plaintiff to the Dallas County Standing Orders in Asbestos Litigation which automatically establish cross claims among all defendants.

INTERROGATORY NO. 8: If you have alleged in your answer that Plaintiff's injuries and/or damages were caused by some other injury, disease or condition, either pre-existing or unrelated to and arising after or in conjunction with the Plaintiff's exposure to asbestos-containing products, please describe in detail such pre-existing or subsequent disease, injury or condition. For each alleged other injury, disease or condition, identify all evidence upon which you base this contention.

ANSWER: Objection. This Interrogatory is premature. Defendant will not know the answer until discovery is completed and/or more information is obtained or furnished. See Interrogatory Answer 7 for information responsive to this request.

INTERROGATORY NO. 9: Please state the name, most recent address and present telephone number, along with the experience and qualifications, if applicable, of each and every person, known to Defendant or to Defendant's agents, having knowledge of facts relevant to this case involving, but not limited to:

- A. Identification of asbestos-containing products or type of products to which Plaintiff was exposed or facts disputing the identification of these products;
- B. Plaintiff's damages, injuries and/or facts disputing Plaintiff's alleged damages and/or injuries;
- C. The negligence of any person or entity other than Defendant which Defendant contends was a cause of Plaintiff's alleged injuries and/or damages;
- D. Please identify documents which will be used at time of trial, (Exhibit List, Deposition List), which are relevant to each of Defendant's enumerated defenses in Defendant's last filed Answer.

ANSWER: To the extent the requested information is available to Defendant, the following individuals can be named; however, this is not a representation that each person is knowledgeable as to each Interrogatory.

- 1. Martin Frierson
- 2. Ernest T. Rouse,
710 Hanley
St. Louis, MO 63105
- 3. Dennis Richling
1416 Dodge Street

- Omaha, Nebraska 68179.
4. Dr. L.C. Bevilacqua
Omaha, Nebraska
 5. Dr. R. D. Sellers
Council Bluffs, Iowa
 6. Dr. Tim McCormick
1416 Dodge Street
Omaha, Nebraska 68179
 7. Ed Leege
1416 Dodge Street
Omaha, Nebraska 68179

Objection. This Interrogatory is overly broad and unduly burdensome and seeks information which is neither relevant nor likely to lead to the discovery of admissible evidence. Further, this Interrogatory is outside the scope of knowledge of the persons identified. Defendant identifies all witnesses and exhibits designated by plaintiff or any co-defendant as responsive to this Interrogatory.

INTERROGATORY NO. 10: Identify the names and addresses of all individuals Defendant may call as an expert witness(es) at trial, and for each individual, please state:

- A. The subject matter in which the witness is expected to testify, the substance of the facts and opinions to which the witness intends to testify on the Defendant's behalf and, a summary of the grounds for each opinion;
- B. All factual observations, test results, supporting data, learned treatise (books, general articles, texts or other publications) and opinions which the witness has generated, been provided, intends to use, and/or may use to support his/her opinions and conclusions relative to the case whereupon which the witness has or will base his/her testimony in this matter. The identity and address of each consulting expert whose opinions or data have been referred to and/or relied upon by the expert witness, and the complete title and author of each learned treatise referred to and/or relied upon by the witness for information and/or corroborating his/her opinions regarding the subject matter of this lawsuit.

ANSWER:

- A. 1. Dr. Frank Weir, 8131 Wycomb Drive, Houston, Texas 77070, (281) 893-4003. Dr. Weir is an industrial hygienist and toxicologist. He is expected to testify regarding that Plaintiff's craft on the railroad would not have rendered him an asbestos worker and that any alleged exposure to asbestos on the railroad, would have been physiologically insignificant. Further, he is also expected to testify that there is no basis to conclude that Plaintiff's potential for exposure to asbestos ever exceeded the concurrently acceptable time weighted average values for this material. He is also expected to testify regarding the state of medical knowledge within the railroad industry and whether Defendant's efforts with regard to industrial hygiene were appropriate.
2. Larry Liukonen, CIH, CSP, Technical Health & Safety Consultant, Inc., 3605 W. Pioneer Pkwy, Suite D, Arlington, Texas 76013, (817) 483-4097. Mr. Liukonen is a certified industrial hygienist and may testify as to issues of causation, Defendant's compliance with any state, federal or local regulations or guidelines relating to permissible levels of exposure to asbestos at the time of the alleged exposure in the subject case. Mr. Liukonen is expected to quantify the level of asbestos exposure, if any, that Plaintiff received while in the employ of Defendant. In addition, Mr. Liukonen is expected to quantify the level of exposure to asbestos that Plaintiff received while in the employ of other employers. Mr. Liukonen will then compare the level of exposure, if any, that Plaintiff received while working for the defendant railroad with the level that Plaintiff received while working for other employers.

3. Horton Corwin Hinshaw, M.D. San Francisco, California

Dr. Hinshaw will be called to testify by video deposition In Re FELA Asbestos Litigation, 1984, as to the state-of-the-art as reflected in his review of the medical literature and from his own personal experience. Plaintiff's counsel was in attendance at this deposition and had an opportunity to cross examine Dr. Hinshaw. Dr. Hinshaw, is in sufficiently poor health that he is unavailable to testify at trial. For the complete substance of Dr. Hinshaw's testimony, please see his video deposition. Defendant believes that Plaintiff is in possession of this deposition transcript through his attorneys. However, if Plaintiff is not in possession of this transcript, Defendant will produce it upon further request.

4. Elliott Hinkes, M.D., 301 North Prairie, Suite 311, Englewood, California 90301, (301) 674-0050.

Dr. Hinkes is an oncologist who may testify as to issues pertaining to the cause of Plaintiff's medical condition. Dr. Hinkes may also testify as to issues pertaining to the state-of-the-art of medical literature relating to the potential health hazards of asbestos at all relevant times and, in particular, as the state of the art pertains to railroad employees. Dr. Hinkes is expected to testify that the medical and scientific information available to the railroad industry from the 1930s through the early 1980s was not sufficient to place the railroad industry on notice that any railroad workers were at any increased risk for contracting asbestos related diseases. Additionally, Dr. Hinkes will render testimony regarding the statistical probabilities of contracting various asbestos related diseases and cancers based upon epidemiological studies. From this testimony, Dr. Hinkes will render his opinion regarding possible causes of Plaintiff's illness.

5. Douglas K. Phillips, Phillips Consulting, 1934 Baker Trail, Houston, Texas 77094, (713) 579-9600.

Mr. Phillips, an economist, is expected to testify regarding the present value of Plaintiff's economic loss. In addition, Mr. Phillips is expected to testify about the differences between his opinions, impressions, and conclusions and those of Plaintiff's witness, and the source or reason for the differences. In arriving at his opinions, Mr. Phillips will rely upon his experience, education, and background, part of which is reflected on his resume, as well as acceptable accounting principles. He will consider the Plaintiff's earning history, Plaintiff's income tax returns, Plaintiff's work-related expenses and income tax, and fringe benefits; Plaintiff's age, race, education, and date of injury and death. He will consider historical trends regarding wage growth and interest rates.

6. Dr. Robert Ross, Houston, TX

Dr. Ross, a pulmonologist, is expected to testify regarding the results of Plaintiff's independent medical evaluation. Dr. Ross will render his opinion regarding possible causes of Plaintiff's illness, including Plaintiff's smoking history.

7. Dr. Scott Donaldson, Richardson, TX

Dr. Donaldson, a pulmonologist, is expected to testify regarding the results of Plaintiff's independent medical evaluation. Dr. Donaldson will render his opinion regarding possible causes of Plaintiff's illness, including Plaintiff's smoking history.

8. Dr. Philip Cagle, Houston, Tx

Dr. Cagle, a pathologist, has reviewed Plaintiff's medical records and is expected to testify regarding the possible causes of Plaintiff's illness, including Plaintiff's smoking history.

- B. Objection. This Interrogatory is vague, ambiguous, overly broad, unduly burdensome and seeks information which is neither relevant nor likely to lead to the discovery of admissible evidence. Subject to and without waiver of the foregoing objection, the expert's opinions and basis of opinion will be included in their reports. If experts prepare reports, Defendant will produce them.

INTERROGATORY NO. 11.: Identify all persons, entities, agencies or others, whether governmental (state or federal) or private, who participated in any investigation of the claims made the basis of this lawsuit.

ANSWER: Objection. This Interrogatory is vague, ambiguous, overly broad, unduly burdensome and seeks information which is neither relevant nor likely to lead to the discovery of admissible evidence. Moreover, this Interrogatory seeks information, if any exists, which is protected by the attorney-client privilege and the work product doctrine. Further, Defendant's first notice of Plaintiff's claim was when he filed suit. Subject but without waiver of these objections, no investigation of this suit has been conducted outside of investigation by counsel.

INTERROGATORY NO. 12.: Before 1980, did Defendant or any predecessor or subsidiary company of Defendant receive notice that any individual or individuals claimed injury(ies) as a result of exposure to asbestos? If so, state:

- A. The name and address of each claimant;
- B. The date of notice of each claim;
- C. A description of the claim;
- D. The type of injuries allegedly sustained by each claimant;
- E. The name and address of each attorney who represented each individual making a claim;
- F. The style and court number of each claim;
- G. The disposition of each claim that has been settled or taken to judgment.
- H. The name, address and title of the person having custody of the records pertaining to each such claim.

ANSWER: Objection. This Interrogatory is overly broad, unduly burdensome and seeks information which is neither relevant nor likely to lead to the discovery of admissible evidence because it is not limited to the time period in which Plaintiff was allegedly employed by Defendant nor limited to the job site or facilities on which Plaintiff was allegedly employed by Defendant. Moreover, this Interrogatory seeks information, if any exists, which is protected by the attorney-client privilege and the work product doctrine. Subject to and without waiver of the foregoing objections, the first record Union Pacific Railroad Company has of any lawsuit alleging injury related to asbestos exposure is Walker v. Union Pacific Railroad Company, District Court of Douglas County, Nebraska, 77-0-384. The first record Missouri Pacific has of any lawsuit alleging exposure to asbestos is L.C. Nesbitt v. Missouri Pacific Railroad Co., United States District Court for the Eastern District of Texas, Civil Action no. M-83-197-Ca, filed December 13, 1983.

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: Objection. This Interrogatory is overly broad, unduly burdensome and seeks information which is neither relevant nor likely to lead to the discovery of admissible evidence because it is not limited to the time period in which Plaintiff was allegedly employed by Defendant nor limited to the job site or facilities on which Plaintiff was allegedly employed by Defendant. Defendant has located no records responsive to this Interrogatory. Defendant had no knowledge or reasonable basis to believe that railroad workers were at risk for asbestos disease during the years of Plaintiff's alleged employment. Defendant refers Plaintiff to allegations of conspiracy to conceal the dangers of asbestos by manufacturers of asbestos insulation products made in his Original Petition.

INTERROGATORY NO. 14: Did Defendant, its agents and/or employees, borrowed servants or any other entity or person at the direction of the Defendant install, repair, replace, use, prepare for use, assemble, store and/or apply, either as an original appurtenance of the railroad or placed in/on the railroad in conjunction with repairs, alterations or fabrications to the railroad, any asbestos-containing products or machinery requiring the use of asbestos or asbestos-containing products during the time Plaintiff worked for Defendant and on such of Defendant's railroad or railway car(s) and/or engine(s), as previously defined, upon which Plaintiff worked including but specifically not limited to the following types of products: boilers, asbestos cement, pipe, pipecovering, gaskets, flat and corrugated siding, millboard, cements and fillers, insulated paper, firebrick, insulating materials, spray on fireproofing compounds, clothing, thermal, electrical and acoustical insulating materials, flooring, motor casings, insulating tapes, friction products, brake shoes, brake linings, clutch linings, wire and cable? If so, identify:

- A. By name and number each of Defendant's railroad(s), whether operating or in railyards, upon which Plaintiff worked and upon which the asbestos-containing product(s), friction products and/or machinery requiring the use of asbestos or asbestos-containing products were installed, repaired, replaced, used, prepared for use, assembled, stored or applied during the time Plaintiff worked for Defendant;
- B. The particular type of asbestos-containing product(s), friction products and/or machinery requiring the use of asbestos or asbestos-containing products present on said railroads;
- C. The trade or brand name of each of the asbestos-containing products, friction products and/or machinery requiring the use of asbestos or asbestos-containing products installed, repaired, replaced or applied upon the railroad(s) and/or railway car(s) and/or engine(s) in question;
- D. The years during which each named asbestos product was applied, assembled, stored, used, prepared for use or installed either as an original appurtenance of the railroad or railway car(s) and/or engine(s) or placed on/in the railroad or railway car(s) and/or engine(s) in conjunction with repairs, alterations or fabrications to the railroad(s) and/or railway car(s) and/or engine(s); and
- E. The dates of any removal or abatement of such asbestos-containing products, friction products and/or machinery requiring the use of asbestos-containing products from the railroad(s) and/or railway car(s) and/or engine(s) in question.

ANSWER: Objection. This Interrogatory is vague, ambiguous, overly broad, unduly burdensome and seeks information which is neither relevant nor likely to lead to the discovery of admissible evidence. Subject to and without waiver of the foregoing objections, Defendant does not maintain purchasing records known to cover the course of Plaintiff's alleged employment. Purchase orders for non-stock items are retained for five years. For stock order materials, purchase orders are maintained for 3 years.

Based on information obtained in the course of other litigation, Defendant has the following information regarding the use of asbestos-containing products in the railroad industry:

- i. Asbestos-containing mittens - manufacturers include Sager Glove Company. These mittens were used for handling hot objects in the course of manufacture. Use of these products was discontinued in the early 1980s.
- ii. Asbestos tape - manufacturers include Amatex, Novatex, Jane's Brand 116, Anchor Rubber Company and Johns-Manville. This material was used to wrap steam and hot water pipes on steam locomotives and business cars. This material is not presently maintained in Defendant's store stock.
- iii. Ground asbestos - manufacturers include Johns-Manville, Product 7M-13. This was used for post curing process for glued Vortex and Allegheny insulated joints. This product was discontinued November 14, 1978.
- iv. Sealing and glazing compounds - The following sealing and glazing compounds were in use up until at least the mid 1980s and contained a small percentage of asbestos (usually less than 5%):

<u>Product</u>	<u>Manufacturer</u>
Duxseal Sealing Compound	Johns-Manville
Chalking Glazing Compound	Tremco Manufacturing Company
M242 Elastic Glazing Compound	Pecora Chemical Company
Mastic	Overall Paint Inc.
No. 1-723 Lt. Gray Anti-Skid	Matcote Company, Inc.
Dayco Wood Filler	Day, James B and Company
Wood Filler Paste	Lawrence-McFadden Co.
Black Plastic Cement	Johns-Manville
Medium Black Cement	No-Ko-Rode
Heavy Black Cement No. 169	Lucan

- v. Asbestos-containing barriers in dynamic brakeshoes - manufacturers include General Electric, General Motors and Moseback. These barriers were insulation in dynamic brake grids on locomotives. This product was first used in approximately 1937 by General Motors.
- vi. Firebox linings - manufacturers unknown. A product containing asbestos was used to line the bottom of fireboxes in steam locomotives. Steam locomotives have not been operated by Defendant since approximately 1955.
- vii. Gaskets - Defendant is aware that some gasket material contained a small percentage of asbestos - Manufacturers include Garlock, Chesterton and Johns-Manville Company. These were used in the stack and base gaskets for steam generators. This was also used on some diesel locomotives. The use of asbestos-containing gaskets in diesel locomotives was discontinued by General Motors (Electro Motive Division ("EMD") and General Electric in approximately 1984.
- vii. Asbestos heat shields - These were used in or around cabin stoves or cabooses and used in welding for heat protection. These were first used sometime before 1980. They were no longer placed in cabooses after 1984.
- ix. Composition brake shoes - Suppliers for composition brake shoes have included Railroad Friction Products, Westinghouse, Griffin, Abex (predecessor to ABC Rail), Anchor Brake Shoes (predecessor to Standard Car, Truck/Anchor and Cobra). Defendant was advised that Griffin discontinued including asbestos as a component in October 1981, Abex in January 1977, Railroad Friction Products in 1980, Anchor Brake Shoe in 1981 and Cobra in August 1978.
- x. Arc chutes and wire coverings - Manufacturers unknown. This material was used to contain contact of flashing when making or breaking contact on locomotives; provide protection covering for high voltage and high current wiring on locomotives. The material ceased to being used in locomotives sometime prior to 1983.
- xi. Flexible trainline insulation - Manufacturer is Gustin-Bacon. This was used for insulating steam lines on passenger cars. The defendant discontinued purchase of the material on April 18, 1973.

- xii. Lagging and Packing on steam locomotives - 85% Magnesia material was used as insulation on boilers on steam locomotives and for packing of steam joints. Possible supplies and manufacturers include Johns-Manville, Union Rubber and Asbestos, Fibreboard ("Pabco"), Owens Corning Fiberglass and Owens Illinois and Philip Carey and Garlock. Use of this material would have ceased when Defendant ceased operating steam locomotives in approximately 1955.
- In addition, defendant is aware that asbestos millboard was purchased from Insulating and Materials Company, 1020 Central Industrial Drive, St. Louis, Missouri 63110. Asbestos paper was purchased from General Gasket Company, 2322 South Seventh Street, St. Louis, Missouri 63104. Asbestos gloves were purchased from Midwest Safety Equipment, P.O. Box 277, St. Louis, Missouri 63301. Eighteen inch asbestos welding sleeves were purchased from Sager Glove Company, 4030 Nashville Avenue, Chicago, Illinois 60634

INTERROGATORY NO. 15: If the answer to the preceding interrogatory is in the affirmative or if any asbestos-containing products, friction products and/or machinery requiring the use of asbestos or asbestos-containing products are identified in response to such interrogatory, state the following as to each identified product:

- A. The name(s) of the company(ies), entity(ies) or other persons, whether crew members, builders, subcontractors, employees, borrowed servants or others installing, repairing, replacing, using, preparing for use, assembling or applying each asbestos-containing product, friction product and/or machinery requiring the use of asbestos or asbestos-containing products on such of Defendant's railroad(s) and/or railway car(s) and/or engine(s) upon which and in the vicinity of which Plaintiff worked;
- B. A description of the physical appearance of each of the named asbestos-containing products, friction products and/or machinery requiring the use of asbestos or asbestos-containing products identified;
- C. A detailed description of the intended uses of the named asbestos-containing products, friction products and/or machinery requiring the use of asbestos or asbestos-containing products identified;
- D. A detailed description of the location upon each of Defendant's railway car(s) and/or engine(s) in question where such asbestos-containing products and/or machinery requiring the use of asbestos or asbestos-containing products were installed, repaired, replaced or applied;

ANSWER: The extent of Defendant's knowledge in respect to this Interrogatory is set forth in Defendant's Objections and Response to Interrogatory No. 14.

INTERROGATORY NO. 16: Has Defendant its agents and/or employees or any other entity at the direction of Defendant, including any of its predecessor or subsidiary companies, engaged in or contracted with another entity for the acquisition, ordering, purchasing, supplying or distributing of asbestos-containing products, friction products and/or machinery requiring the use of asbestos or asbestos-containing products any time prior to or during the time Plaintiff was employed by Defendant for use on or in such of Defendant's railroad(s) and/or railway car(s) and/or engine(s) upon which Plaintiff worked including but specifically not limited to: boilers, asbestos cement pipe, pipecovering, gaskets, flat and corrugated siding, millboard, cements and fillers, insulated paper, firebrick, insulating materials, spray on fireproofing compounds, clothing, thermal, electrical and acoustical insulating materials, flooring, motor casings, insulating tapes, wire, cable, brake shoes, brake linings, and clutch linings? If so, identify:

- A. Each of Defendant's railway car(s) and/or engine(s) by name and number upon which Plaintiff worked for which the asbestos-containing products, friction products and/or machinery identified were ordered, purchased, supplied or distributed during the time Plaintiff was employed by Defendant;
- B. The particular type of asbestos-containing products, friction products and/or machinery requiring the use of asbestos or asbestos-containing products acquired;

- C. The trade or brand name of each of those asbestos-containing products, friction products and/or machinery requiring the use of asbestos or asbestos-containing products ordered, purchased, supplied or distributed;
- D. The years such asbestos-containing products were acquired, ordered, purchased, supplied or distributed by Defendant;
- E. The dates of any removal or abatement of such asbestos-containing products, friction products and/or machinery requiring the use of asbestos or asbestos-containing products from the railway car(s) and/or engine(s) and/or locomotives in question.

ANSWER: Objection. This Interrogatory is vague, ambiguous, overly broad and unduly burdensome and seeks information which is neither relevant nor likely to lead to the discovery of admissible evidence. The extent of Defendant's knowledge in respect to this Interrogatory is set forth in Defendant's Objections and Response to Interrogatory No. 14. Asbestos abatement was not conducted during plaintiff's alleged employment. Additionally, the plaintiff has not been deposed or made discovery responses which might provide information enabling Defendant to respond to this Interrogatory.

INTERROGATORY NO. 17.: If your answer to the preceding interrogatory is in the affirmative, or if any asbestos-containing products, friction products and/or machinery requiring the use of asbestos or asbestos-containing products are identified in response to such interrogatory, state the following as to each product so identified for each of the railway car(s) and/or engine(s) and/or locomotives identified:

- A. The name(s) of the company(ies), entity(ies), manufacturers from which the asbestos-containing products, friction products and/or machinery requiring the use of asbestos or asbestos-containing products were acquired, ordered, purchased, supplied or distributed;
- B. The date(s) each asbestos-containing product, friction products and/or machinery requiring the use of asbestos or asbestos-containing products was ordered, purchased, supplied or distributed;
- C. A description of the physical appearance of each of the named asbestos-containing products, friction products and/or machinery requiring the use of asbestos or asbestos-containing products;
- D. A detailed description of the intended uses of the named asbestos-containing products, friction products and/or machinery requiring the use of asbestos or asbestos-containing products;
- E. Identify the last year that Defendant ordered, purchased, supplied or distributed each asbestos-containing product, friction products and/or machinery requiring the use of asbestos or asbestos-containing products.

ANSWER: The extent of Defendant's knowledge in respect to this Interrogatory is set forth in Defendant's Objections and Response to Interrogatory No. 14.

INTERROGATORY NO. 18.: State whether you or any of your predecessors and/or subsidiaries maintain, from 1960 through the present or for any portion thereof, copies of invoices, shipping receipts, bills of lading, purchase orders, or other documents of a similar nature relating to the purchase or acquisition of asbestos-containing products, friction products and/or machinery requiring the use of asbestos-containing products. If so, state:

- A. The location of such documents;
- B. The name and address of the custodian of the documents;
- C. The format in which the documents are kept, i.e., hard copy, microfilm, microfiche, etc.;
- D. In what form the documents can be accessed, i.e., by railway car and/or engine name and/or locomotive name, by railroad track line, by product type, etc.

ANSWER: Objection. This Interrogatory makes inquiry for years during which the plaintiff was not employed by Defendant. The extent of Defendant's knowledge in respect to this Interrogatory is set forth in Defendant's Objections and Response to Interrogatory No. 14.

INTERROGATORY NO. 19.: Identify all persons, including name, address and telephone number, who provided and/or conducted or were responsible for conducting any type of safety training, during the time

Plaintiff was employed by Defendant, to Plaintiff and the crew, employees or borrowed servants working upon Defendant's railroad, railway car(s) and/or engine(s) and/or locomotive(s).

ANSWER: Objection. This Interrogatory is vague, ambiguous, overly broad, unduly burdensome and seeks information which is neither relevant nor likely to lead to the discovery of admissible evidence. Defendant has located no records responsive to this Interrogatory to date.

INTERROGATORY NO. 20.: At any time prior to 1980 did Defendant or any of its agents, employees or anyone at the direction of Defendant, Defendant's agent or employees ever 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 aboard such of Defendant's railway car(s) and/or engine(s) and/or locomotive(s) upon which Plaintiff worked? If so, please identify with particularity the entity conducting such investigation(s), survey(s) or test(s), the dates conducted and the results of the same.

ANSWER: Defendant is aware of current permissible exposure limits for exposure to asbestos fibers and its predecessors promulgated by the OSHA. Investigation with regard to TLVs and the date upon which Defendant first became aware of this "concept" has not been established.

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 of Defendant's railway car(s) and/or engine(s) and/or locomotive(s) in question 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: Objection. This Interrogatory is overly broad, unduly burdensome and seeks information which is neither relevant nor likely to lead to the discovery of admissible evidence because it is not limited to the time period in which Plaintiff was allegedly employed by Defendant nor is it limited to the job site or facilities on which Plaintiff was allegedly employed by Defendant. Moreover, this Interrogatory seeks information, if any exists, which is protected by the attorney-client privilege and the work product doctrine. Subject to and without waiver of these objections, Defendant has located no records responsive to this Interrogatory to date.

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 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: Objection. This Interrogatory is vague, ambiguous, overly broad, unduly burdensome and seeks information which is neither relevant nor likely to lead to the discovery of admissible evidence because it is not limited to the time period in which Plaintiff was allegedly employed by Defendant and does not reference any condition of which Plaintiff allegedly suffered. Moreover, this Interrogatory seeks information, if any exists, which is protected by the attorney-client privilege and the work product doctrine. Subject to and without waiving the foregoing objections, Union Pacific Railroad Company has located no records responsive to this request and responds as follows:

Defendant is now aware of reports from the 1930s, 1940s, and 1950s which report injury from asbestos which was associated with continuous exposure to high levels of asbestos dust in asbestos mines, in processing/manufacturing of asbestos, and in the asbestos textile industry. As a result of the passage of time, this Defendant is aware of no living witnesses and possesses no documents of relevance to this Defendant's actual knowledge in the time period. However, the existing medical literature indicates that during these years there was a continuing general belief within the industrial medical community that low-level exposure to chrysotile the form of asbestos mineral (which was

used in products used in the railroad industry) did not represent a hazard to workers. The existing medical literature also demonstrates that there was no general recognition within the industrial medical community that the use of asbestos-containing products as used by this Defendant would result in asbestosis or other injury.

For example, in 1938, the U.S. Public Health Service published Public Health Bulletin 241 which was prepared at the direction of the Surgeon General and was based upon an investigation of the textile industry. That study concluded that even in that industry there was no reason to expect injury, if dust containing asbestos fibers could be maintained at levels not exceeding 5 million particles in each cubic foot of factory air. As a result of that study, the American Conference of Government Industrial Hygienists (ACGIH) in 1946, adopted a threshold limit value of 5 million particles per cubic foot as an acceptable industrial air level. According to the ACGIH, it was considered that workers may be exposed, day after day, to this level of asbestos dust without their health being adversely affected. Also, in 1946, the Fleischer-Drinker study, published with the permission of the U.S. Navy, reported that a group of intensely exposed insulation workers constructing Navy vessels in shipyards were not generally at any increased risk of injury. Thus, physicians and individuals responsible for safety within the railroad industry would have reasonably concluded that asbestos exposures large enough to pose a health risk could only be achieved in asbestos textile mills and that the downstream use of products, such as those in the railroad industry which contain only small percentages of chrysotile-type asbestos, was safe based upon the medical and scientific literature available at that time.

In addition, Defendant has never mined, manufactured, or sold asbestos containing products. To the extent Defendant may have been a consumer of certain chrysotile containing products, Defendant never received any warnings from any manufacturer concerning any adverse health effects associated with exposure to chrysotile (or any other asbestos fiber) containing product. Indeed, based upon discovery in other asbestos litigation, Union Pacific Railroad Company is aware of allegations that asbestos manufacturers covered up information relating to the suspected dangers of asbestos-containing products and prevented the information from reaching purchasers of their asbestos-containing products such as school districts, hospitals, railroads, and other consumers.

INTERROGATORY NO. 23.: 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 screenings 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: Objection. This Interrogatory is overly broad, unduly burdensome and seeks information which is neither relevant nor likely to lead to the discovery of admissible evidence because it is not limited to the time period during which Plaintiff was allegedly employed by Defendant.
Subject to and without waiver of the foregoing objections, Defendant has located no documents responsive to this Interrogatory for the years Plaintiff was allegedly employed by Defendant.

INTERROGATORY NO. 24.: 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: Objection. This Interrogatory is overly broad, unduly burdensome and seeks information which is neither relevant nor likely to lead to the discovery of admissible evidence because it is not limited to the time period in which Plaintiff was allegedly employed by Defendant. Moreover, this Interrogatory seeks information, if any exists, which is protected by the attorney-client privilege and the work product doctrine.

INTERROGATORY NO. 25: Has Defendant or any of its subsidiary or predecessor companies 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 or any of its subsidiaries or predecessors were members;
- C. The names and dates of any publications, minutes, or reports published, written, or disseminated by any of the named associations or organizations related in any way to the hazards of asbestos;
- 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: Objection. This Interrogatory is overly broad, unduly burdensome and seeks information which is neither relevant nor likely to lead to the discovery of admissible evidence because it is not limited to the time period in which Plaintiff was allegedly employed by Defendant. Subject to and without waiver of the foregoing objections, although Defendant has been a member of the Association of American Railroads in recent years, Defendant is unable to locate any internal records documenting when it initially became a member in the Association of American Railroads.

INTERROGATORY NO. 26: As to the disease asbestosis, state:

- A. The date on which Defendant or its subsidiary or predecessor 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: Objection. This Interrogatory is vague, ambiguous, overly broad, unduly burdensome and seeks information which is neither relevant nor likely to lead to the discovery of admissible evidence because it is not limited to the time period in which Plaintiff was allegedly employed by Defendant and does not reference any condition of which Plaintiff allegedly suffered. Moreover, this Interrogatory seeks information, if any exists, which is protected by the attorney-client privilege and the work product doctrine. Subject to and without waiving the foregoing objections, Union Pacific Railroad Company has located no records responsive to this request and responds as follows:

Defendant is now aware of reports from the 1930s, 1940s, and 1950s which report injury from asbestos which was associated with continuous exposure to high levels of asbestos dust in asbestos mines, in processing/manufacturing of asbestos, and in the asbestos

textile industry. As a result of the passage of time, this Defendant is aware of no living witnesses and possesses no documents of relevance to this Defendant's actual knowledge in the time period. However, the existing medical literature indicates that during these years there was a continuing general belief within the industrial medical community that low-level exposure to chrysotile the form of asbestos mineral (which was used in products used in the railroad industry) did not represent a hazard to workers. The existing medical literature also demonstrates that there was no general recognition within the industrial medical community that the use of asbestos-containing products as used by this Defendant would result in asbestosis or other injury.

For example, in 1938, the U.S. Public Health Service published Public Health Bulletin 241 which was prepared at the direction of the Surgeon General and was based upon an investigation of the textile industry. That study concluded that even in that industry there was no reason to expect injury, if dust containing asbestos fibers could be maintained at levels not exceeding 5 million particles in each cubic foot of factory air. As a result of that study, the American Conference of Government Industrial Hygienists (ACGIH) in 1946, adopted a threshold limit value of 5 million particles per cubic foot as an acceptable industrial air level. According to the ACGIH, it was considered that workers may be exposed, day after day, to this level of asbestos dust without their health being adversely affected. Also, in 1946, the Fleischer-Drinker study, published with the permission of the U.S. Navy, reported that a group of intensely exposed insulation workers constructing Navy vessels in shipyards were not generally at any increased risk of injury. Thus, physicians and individuals responsible for safety within the railroad industry would have reasonably concluded that asbestos exposures large enough to pose a health risk could only be achieved in asbestos textile mills and that the downstream use of products, such as those in the railroad industry which contain only small percentages of chrysotile-type asbestos, was safe based upon the medical and scientific literature available at that time.

In addition, Defendant has never mined, manufactured, or sold asbestos containing products. To the extent Defendant may have been a consumer of certain chrysotile containing products, Defendant never received any warnings from any manufacturer concerning any adverse health effects associated with exposure to chrysotile (or any other asbestos-fiber) containing product. Indeed, based upon discovery in other asbestos litigation, Union Pacific Railroad Company is aware of allegations that asbestos manufacturers covered up information relating to the suspected dangers of asbestos-containing products and prevented the information from reaching purchasers of their asbestos-containing products such as school districts, hospitals, railroads, and other consumers.

Union Pacific Railroad Company has determined that it did not have any claim by a railroad worker for disease associated with exposure to asbestos-containing products until approximately the late 1970s. Indeed, Defendant is not aware of any doctor, scientist, or other individual who published a report of asbestosis in any railroad worker in this country until the 1980s.

INTERROGATORY NO. 27: As to the disease lung cancer, state:

- A. The date on which Defendant or its subsidiary or predecessor 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: See Defendant's Objections and Response to Interrogatory No. 26.

INTERROGATORY NO. 28.: As to the disease mesothelioma, state:

- A. The date on which Defendant or its subsidiary or predecessor 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: See Defendant's Objections and Response to Interrogatory No. 26.

INTERROGATORY NO. 29.: As to gastrointestinal cancer, laryngeal cancer, pharyngeal cancer or lymphatic cancer, state:

- A. The type of cancer and the date on which Defendant or its subsidiary or predecessor first learned that such diseases were caused by inhalation of asbestos fibers by humans;
- B. What cancers has the Defendant or its subsidiary or predecessor 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: Objection. This Interrogatory is vague, ambiguous, overly broad, unduly burdensome and seeks information which is neither relevant nor likely to lead to the discovery of admissible evidence because it is not limited to the time period in which Plaintiff was allegedly employed by Defendant and does not reference any condition of which Plaintiff allegedly suffered. Moreover, this Interrogatory seeks information, if any exists, which is protected by the attorney-client privilege and the work product doctrine. Subject to and without waiving the foregoing objections, Union Pacific Railroad Company is unaware of any causal relationship between the inhalation of asbestos fibers and gastrointestinal cancer, laryngeal cancer, pharyngeal cancer or lymphatic cancer.

INTERROGATORY NO. 30.: Did Defendant or any of its subsidiaries or predecessors 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: Objection. This Interrogatory is vague, ambiguous, overly broad, unduly burdensome and seeks information which is neither relevant nor likely to lead to the discovery of admissible evidence because it is not limited to the time period in which Plaintiff was allegedly employed by Defendant. Moreover, this Interrogatory seeks information, if any exists, which is protected by the attorney-client privilege and the work product doctrine. Subject to and without waiver of the foregoing objections, Defendant has not located any information responsive to this Interrogatory.

INTERROGATORY NO. 31.: Does Defendant intend to call a company representative as a witnesses at the trial of any 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 Plaintiffs in that case.

ANSWER: Objection. This Interrogatory is overly broad, unduly burdensome and seeks information which is neither relevant nor likely to lead to the discovery of admissible evidence. Moreover, this Interrogatory seeks information, if any exists, which is protected by the attorney-client privilege and the work product doctrine. Subject to and without waiver of the foregoing objections, Defendant intends to call a company representative as a witness at the trial of this matter whose identity will be provided consistent with the Texas Rules of Civil Procedure.

INTERROGATORY NO. 32.: Does your company have, or has it ever had, or have your predecessors or subsidiaries ever had, a Medical Department? If so, state:

- A. The year such Medical Department was established;
- B. Whether or not such Medical Department has operated continuously since being established;
- C. The name of each director, chief, or head of your Medical Department year by year, beginning with the first year you had a Medical Director or Medical Department, and the last known address and phone number of each;
- D. State the duties and responsibilities of such Medical Department.

ANSWER: Objection. This Interrogatory is overly broad, unduly burdensome and seeks information which is neither relevant nor likely to lead to the discovery of admissible evidence because it is not limited to the time period in which Plaintiff was allegedly employed by Defendant. Subject to and without waiver of the foregoing objections, see Defendant's response to Interrogatory No. 23.

INTERROGATORY NO. 33.: Please state whether written warnings were placed at any locations adjacent to or near asbestos in place on railroads, railway car(s) and/or engine(s) and/or locomotives owned or operated by Defendant at anytime from 1965 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: Objection. This Interrogatory is overly broad, unduly burdensome and seeks information which is neither relevant nor likely to lead to the discovery of admissible evidence because it asks for information outside of the time frame during which plaintiff claims employment with Defendant.

INTERROGATORY NO. 34.: Does your company have, or has it ever had, or have your predecessor(s) or subsidiaries 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: Objection. This Interrogatory is vague, ambiguous, overly broad, unduly burdensome and seeks information which is neither relevant nor likely to lead to the discovery of admissible evidence. Subject to but without waiver of the foregoing objections, no documents responsive to this Interrogatory have been located for the years Plaintiff was allegedly employed by Defendant.

INTERROGATORY NO. 35.: 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: Objection. This Interrogatory is vague, ambiguous, overly broad, unduly burdensome and seeks information which is neither relevant nor likely to lead to the discovery of admissible evidence. This Interrogatory seeks information which is protected by the attorney-client privilege and the work product doctrine. Subject to and without waiver of the foregoing objections, Defendant has not located any information which would indicate that medical monitoring and/or surveillance was conducted by Defendant on Plaintiff.

INTERROGATORY NO. 36.: Please state whether Defendant has at any time provided safety equipment to the Plaintiff and/or the crew members or employees of Defendant present at any time on the railroad, railway car(s) and/or engine(s) and/or locomotives in question during the time Plaintiff was employed 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 provided, and the name, address and telephone number of the person most knowledgeable concerning such provision.

ANSWER: Objection. This Interrogatory is overly broad, unduly burdensome and seeks information which is neither relevant nor likely to lead to the discovery of admissible evidence because it is not limited to the job site and facilities on which Plaintiff was allegedly employed by Defendant. Subject to and without waiver of the foregoing objections, respiratory protection has been available to Defendant's employees for a number of years.

INTERROGATORY NO. 37.: 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 dust, asbestos products, friction products and/or machinery calling for the use of asbestos or asbestos containing 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: Objection. This Interrogatory is overly broad, unduly burdensome and seeks information which is neither relevant nor likely to lead to the discovery of admissible evidence because it is not limited to the time period in which Plaintiff was allegedly employed by Defendant nor limited to the job site or facilities on which Plaintiff was allegedly employed by Defendant. Subject to and without waiver of the foregoing objections, Defendant has not located any information which would indicate that Defendant entered into such an agreement during the years of Plaintiff's employment with Defendant.

INTERROGATORY NO. 38.: 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 aboard your railroad, railway car(s) and/or engine(s) and/or locomotives during the past thirty years.

ANSWER: Objection. This Interrogatory is overly broad, unduly burdensome and seeks information which is neither relevant nor likely to lead to the discovery of admissible evidence because it is not limited to the time period during which Plaintiff was allegedly employed by Defendant. Further, the information requested is public record and equally available to Plaintiff and Defendant.

INTERROGATORY NO. 39.: Please describe each and every occasion during the past thirty years when any regulatory agency or other governing body inspected Defendant's railroad, railway car(s) and/or engine(s) and/or locomotives in question for the purpose of ascertaining 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: Objection. This Interrogatory is overly broad, unduly burdensome and seeks information which is neither relevant nor likely to lead to the discovery of admissible evidence because it is not limited to the time period during which Plaintiff was allegedly employed by Defendant nor is it limited to the job site or facilities on which Plaintiff was allegedly employed by Defendant.

INTERROGATORY NO. 40.: Please state whether any asbestos-containing products in place or in use on the railroad, railway car(s) and/or engine(s) and/or locomotives owned or operated by Defendant 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, railway car(s) and/or engine(s) and/or locomotive(s).
- C. State whether any "removal plan" or organized written criteria or other document related to asbestos removal on the railroads, railway car(s) and/or engine(s) and/or locomotive(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 such car, railroad and/or engine and/or locomotive.

ANSWER: Objection. This Interrogatory is overly broad, unduly burdensome and seeks information which is neither relevant nor likely to lead to the discovery of admissible evidence because it does not reference any time period during which Plaintiff was allegedly employed by Defendant. Moreover, this Interrogatory seeks information, if any exists, which is protected by the attorney-client privilege and the work product doctrine. Subject to and without waiver of the foregoing objections, Defendant has been involved in the abatement of asbestos in use on the railroad.

INTERROGATORY NO. 41.: 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 or any predecessor(s) or subsidiaries were 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: Objection. This Interrogatory is overly broad, unduly burdensome and seeks information which is neither relevant nor likely to lead to the discovery of admissible evidence. Moreover, this Interrogatory seeks information which is protected by the attorney-client

privilege and the work product doctrine. Subject to and without waiver of the foregoing objections, Defendant is aware of current permissible exposure limits for exposure to asbestos fibers and its predecessors promulgated by the OSHA. Investigation with regard to TLVs and the date upon which Defendant first became aware of this "concept" has not located any documents which address this issue. Additionally, investigation continues on this issue, and this answer will be supplemented as appropriate.

INTERROGATORY NO. 42.: Please state whether and when Defendant received a copy of the Fleischer/Drinker Report published in 1945/1946.

ANSWER: Objection. This Interrogatory is overly broad, unduly burdensome and seeks information which is neither relevant nor likely to lead to the discovery of admissible evidence because it is not limited to the time period during which Plaintiff was allegedly employed by Defendant and purportedly published after Plaintiff's alleged employment with the railroad had ceased. Subject to and without waiver of the foregoing objections, counsel for Defendant has obtained this document through the course of other asbestos litigation.

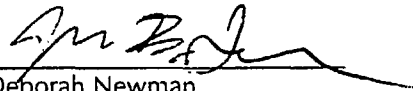
INTERROGATORY NO. 43.: Please describe all actions taken by Defendant to comply with the Boiler Inspection Act, previously 45 U.S.C. §23 during the past thirty-five (35) years, now designated at 49 U.S.C. §20701 et seq.

ANSWER: Objection. This Interrogatory is overly broad, unduly burdensome and seeks information which is neither relevant nor likely to lead to the discovery of admissible evidence because it is not limited to the time period during which Plaintiff was allegedly employed by Defendant nor is it limited to the job site or facilities on which Plaintiff was allegedly employed by Defendant. Moreover, this Interrogatory seeks information, if any exists, which is protected by the attorney-client privilege and the work product doctrine. Finally, this Interrogatory requires Defendant to make a legal conclusion in order to respond.

Respectfully submitted,

PHELPS DUNBAR

By



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Attorneys for Defendant Missouri Pacific Railroad
Company d/b/a Union Pacific Railroad Company

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing Defendant Missouri Pacific Railroad Company d/b/a Union Pacific Railroad Company's Second Supplemental Objections and Responses to Plaintiff's Interrogatories has been sent via First Class Mail to other parties of record on attached service list and via Facsimile and Certified Mail to Plaintiff's counsel of record, Baron & Budd, 3102 Oak Lawn Avenue, Suite 1100, Dallas, Texas 75219-4281, this 10 day of February, 1998.


Mark B. Schaffer



UNITED STATES OF AMERICA
RAILROAD RETIREMENT BOARD
OFFICE OF PROGRAMS
DIVISION OF COMPENSATION AND CERTIFICATION
844 N. RUSH STREET
CHICAGO, ILLINOIS 60611-2092

M. Frison, Jr.
704-01-5542

Texas and Pacific Railway Company

<u>Year</u>	<u>Service Months</u>
1942	5 (July through November)
1943	6 (February through July)
1946	2 (May and June)