



RICHARD DAVIS,	)	IN THE DISTRICT COURT
	)	
Plaintiffs,	)	
	)	
v.	)	JEFFERSON COUNTY, TEXAS
	)	
	)	
OWENS-CORNING FIBERGLAS	)	
CORPORATION, et al.	)	
	)	
Defendants.	)	58th JUDICIAL DISTRICT

**ANSWERS AND OBJECTIONS OF DEFENDANTS NORFOLK
SOUTHERN RAILWAY COMPANY AND NORFOLK SOUTHERN
CORPORATION TO SECOND INTERROGATORIES PROPOUNDED
BY PLAINTIFF, RICHARD DAVIS**

Defendants, Norfolk Southern Railway Company ("NSRC") f/k/a Southern Railway Company ("Southern") and Norfolk Southern Corporation ("NSC"), for their answers and objections to Second Interrogatories propounded by Plaintiff, Richard Davis, state as follows:

PRELIMINARY STATEMENT AND GENERAL OBJECTION

The following answers are being provided after diligent investigation and inquiry by defendant. However, because many of the events relating to the matters inquired about by plaintiff's interrogatories occurred more than fifty-five (55) years ago, the availability of persons involved and the existence of applicable documents has been limited.

As a result of the foregoing factors, many of the individuals who might have had personal knowledge of the matters to which plaintiff's interrogatories relate are deceased, retired, or are otherwise unavailable to NSRC, and investigations to date indicate that at least some documents which relate to matters inquired about by these interrogatories may have been destroyed in

keeping with normal corporate record retention policy. Accordingly, some answers are possibly incomplete. NSRC's investigation is continuing and should additional information surface, supplemental answers will be submitted. The following is a part of and is incorporated by reference in every answer provided hereinafter:

This answer is accurate as of the date of the Answers and Objections of Defendant Norfolk Southern Railway Company and Norfolk Southern Corporation to Plaintiff's Second Interrogatories. Norfolk Southern objects to answering this interrogatory in regard to any period of time other than the period during which it employed plaintiff and further objects to providing information about geographic locations and operating units within its system other than those at which and for whom plaintiff worked. The bases for such objections are that any answers would be irrelevant to the subject matter of the pending litigation, would not be reasonably calculated to lead to the discovery of admissible evidence, and would be burdensome and oppressive.

NSRC objects to the instructions and definitions supplied by plaintiff with regard to these interrogatories, on the bases that the definitions are overbroad, vague and often inconsistent with the normal usage and meaning of such words. The instructions are overbroad, burdensome and constitute an unreasonable expansion of the interrogatories themselves. NSRC therefore gives notice that it does not consider itself bound by the instructions and definitions propounded by plaintiff, and instead has answered these interrogatories in a manner consistent with the normal understanding of the language used in the interrogatory and to the extent necessary to fairly and fully answer the interrogatory.

Defendant Norfolk Southern Corporation objects to answering each and every Interrogatory in this Second Set of Interrogatories due to the fact that the plaintiff was never an employee of this defendant and it was not in existence at the time of plaintiff's alleged employment. Effective June 1, 1982, Southern Railway Company and Norfolk and Western

Railway Company became sister corporations and the stock of each became owned by the Northern Southern Corporation, a non-carrier holding company which has never operated a railroad. Each of the carriers continued to operate as separate legal entities, a practice which continues to date. Southern Railway Company subsequently changed its name to Norfolk Southern Railway Company, but never employed the plaintiff. Norfolk Southern Railway Company remains a separate and distinct entity.

The answers that follow, unless otherwise apparent from the context, are limited to the 1940s when plaintiff alleges he was employed by NSRC for four or five years in Bessemer, Alabama. NSRC has found no record of plaintiff's alleged employment in its corporate files.

ANSWERS AND OBJECTIONS TO 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:

See Preliminary Statement and General Objection. Defendants object to the form and substance of this request on the following grounds: the request is overly broad; the request is unlimited in terms of geographic scope; the request is vague; the request is ambiguous; the request seeks information which is not relevant and which is not reasonably calculated to lead to the discovery of admissible evidence; the overly broad nature of the request is such that it would be unduly burdensome and prohibitively expensive to gather the information necessary to respond to this

request; the request infringes on the attorney work product privilege; the request infringes on the investigative/party communication privilege; the request infringes on the attorney-client privilege; the request exceeds the scope of discovery permitted by Rule 166b of the Texas Rules of Civil Procedure; and, the request seeks information which is private, confidential and/or proprietary.

Subject to and without waiving the foregoing objections, NSRC knows of none during the time of plaintiff's alleged employment. NSRC stopped using steam locomotives, the major user of asbestos-containing products, in 1953. NSRC has found no employment information relating to plaintiff's alleged employment and demands strict proof of same.

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:

Defendants object to the form and substance of this request on the following grounds: the request is overly broad; the request is unlimited in terms of geographic scope; the request is vague; the request is ambiguous; the request seeks information which is not relevant and which is not reasonably calculated to lead to the discovery of admissible evidence; the overly broad nature of the request is such that it would be unduly burdensome and prohibitively expensive to gather the information necessary to respond to this request; the request infringes on the attorney work product privilege; the request infringes on the investigative/party communication privilege; the request infringes on the attorney-client privilege; the request exceeds the scope of discovery permitted by Rule 166b of the Texas Rules of Civil Procedure; and, the request seeks information which is private, confidential and/or proprietary.

Subject to and without waiving the foregoing objections, please see answer to Interrogatory No. 1.

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:

See Preliminary Statement and General Objection. Defendants object to the form and substance of this request on the following grounds: the request is overly broad; the request is unlimited in terms of geographic scope; the request is vague; the request is ambiguous; the request seeks information which is not relevant and which is not reasonably calculated to lead to the discovery of admissible evidence; the overly broad nature of the request is such that it would be unduly burdensome and prohibitively expensive to gather the information necessary to respond to this request; the request infringes on the attorney work product privilege; the request infringes on the investigative/party communication privilege; the request infringes on the attorney-client privilege; the request exceeds the scope of discovery permitted by Rule 166b of the Texas Rules of Civil Procedure; and, the request seeks information which is private, confidential and/or proprietary.

Subject to and without waiving the foregoing objections, NSRC knows of none during the time of plaintiff's alleged employment and the exact date is unknown. In 1977 Southern received a letter from J. E. Martin, Vice President, Association of American Railroads, which attached a copy of a letter from Mr. Donald W. Bennett, Associated Administrator for Safety of the Department of Transportation, Federal Railroad Administration, which had originally been sent to Mr. John A. Risendahl, Executive Director, Safety and Special Services Division of the Association of American Railroads. Mr. Bennett's letter concerned a NIOSH survey of trade name products containing one or more carcinogens currently regulated by OSHA. Said letter pointed out that asbestos might pose a health hazard and that some railway employees might be exposed to a risk of exposure during certain rail welding processes. In 1978 Southern's AVP Safety and Claim Prevention F.M. Kaylor received a Superintendent's General Notice issued on the Rock Island Lines concerning asbestos composition brakeshoes and precautions to be taken in regard to the residue dust. Mr. Kaylor distributed the Notice to Southern's Medical Department and Research & Test Department who commented.

Dr. Max Rogers, Chief Surgeon of NSRC from 1966-1983, has testified that in medical school a course on general medicine discussed pulmonary diseases and asbestosis was mentioned along with other forms of pneumoconiosis. However, there were no claims of asbestos-related disease during Dr. Rogers' tenure as Chief Surgeon. Copies of all documents referred to have been previously produced to counsel for plaintiff.

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 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:

See Preliminary Statement and General Objection. Defendants object to the form and substance of this request on the following grounds: the request is overly broad; the request is unlimited in terms of geographic scope; the request is vague; the request is ambiguous; the request seeks information which is not relevant and which is not reasonably calculated to lead to the discovery of admissible evidence; the overly broad nature of the request is such that it would be unduly burdensome and prohibitively expensive to gather the information necessary to respond to this request; the request exceeds the scope of discovery permitted by Rule 166b of the Texas Rules of Civil Procedure; and, the request seeks information which is private, confidential and/or proprietary.

Subject to and without waiving the foregoing objections, NSRC chief medical officers (during the years of plaintiff's alleged employment) were as follows:

1. Milton B. Clayton, M.D. (deceased) -- Chief Surgeon, Southern Railway Company, Washington, D.C. (1942-1965).

Without waiver, NSRC states that its medical directors for the years subsequent to plaintiff's alleged employment were as follows:

2. Max P. Rogers, M.D. (retired)--Medical Director, Southern Railway Company, Washington, D.C. (1966-May, 1983).
3. Tom Howell, M.D. (retired)--Medical Director, Southern Railway Company, Atlanta, Ga. (June, 1983-December 31, 1985).
4. J. P. Salb, M.D. (retired)--Medical Director, Southern Railway Company and Norfolk Southern Corporation, Atlanta, Ga. (January, 1986-March 1, 1994).

5. C. Ray Prible, M.D.--Medical Director, Norfolk Southern Corporation, Norfolk, Va. (March 1, 1994 to present).

See also, answer to previous Interrogatories. NSRC did not have an industrial hygienist as an employee or available for its use during the time of plaintiff's alleged employment.

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 the form and substance of this request on the following grounds: the request is overly broad; the request is unlimited in terms of time; the request is vague; the request is ambiguous; the request seeks information which is not relevant and which is not reasonably calculated to lead to the discovery of admissible evidence; the overly broad nature of the request is such that it would be unduly burdensome and prohibitively expensive to gather the information necessary to respond to this request; the request infringes on the attorney work product privilege; the request infringes on the investigative/party communication privilege; the request infringes on the attorney-client privilege; the request exceeds the scope of discovery permitted by Rule 166b of the Texas Rules of Civil Procedure; and, the request seeks information which is private, confidential and/or proprietary.

Subject to and without waiving the foregoing objections, NSRC states that its counsel has obtained many such articles in connection with the defense of NSRC in asbestos-related FELA actions, and all such articles are equally available to plaintiff's counsel.

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 members;
- 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:

See Preliminary Statement and General Objection. Defendants object to the form and substance of this request on the following grounds: the request is overly broad; the request is unlimited in terms of time; the request is vague; the request is ambiguous; the request seeks information which is not relevant and which is not reasonably calculated to lead to the discovery of admissible evidence; the overly broad nature of the request is such that it would be unduly burdensome and prohibitively expensive to gather the information necessary to respond to this request; and, the request exceeds the scope of discovery permitted by Rule 166b of the Texas Rules of Civil Procedure.

Subject to and without waiving the foregoing objections, NSRC has been a member of industrial and trade associations over the years of its existence. However, during the time of plaintiff's alleged employment it has no record of any publications that were disseminated to it regarding the hazards of "airborne asbestos". NSRC is a member of the Association of American Railroads, Washington, D.C., which published a number of documents relating to potential hazards associated with asbestos. Copies of those documents are retained at the AAR by Mr. Marvin Pelon.

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:

Defendants object to the form and substance of this request on the following grounds: the request is overly broad; the request is vague; the request is ambiguous; the overly broad nature of the request is such that it would be unduly burdensome and prohibitively expensive to gather the information necessary to respond to this request; the request infringes on the attorney work product privilege; the request infringes on the investigative/party communication privilege; the request infringes on the attorney-client privilege; the request exceeds the scope of discovery permitted by Rule 166b of the Texas Rules of Civil Procedure; and, the request seeks information which is private, confidential and/or proprietary.

Subject to and without waiving the foregoing objections, Defendants answer unknown. See answers to preceding interrogatories for NSRC information on possible adverse health effects.

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:

Defendants object to the form and substance of this request on the following grounds: the request is overly broad; the request is vague; the request is ambiguous; the overly broad nature of the request is such that it would be unduly burdensome and prohibitively expensive to gather the information necessary to respond to this request; the request infringes on the attorney work product privilege; the request infringes on the investigative/party communication privilege; the request infringes on the attorney-client privilege; the request exceeds the scope of discovery permitted by Rule 166b of the Texas Rules of Civil Procedure; and, the request seeks information which is private, confidential and/or proprietary.

Defendants further object to this interrogatory on the grounds that the number of interrogatories submitted exceed the number permitted by Rule 168.

Subject to and without waiving the foregoing objections, Defendants answer: unknown. See answers to preceding interrogatories for NSRC information on possible adverse health effects.

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:

Defendants object to the form and substance of this request on the following grounds: the request is overly broad; the request is vague; the request is ambiguous; the overly broad nature of the request is such that it would be unduly burdensome and prohibitively expensive to gather the information necessary to respond to this request; the request infringes on the attorney work product privilege; the request infringes on the investigative/party communication privilege; the request infringes on the attorney-client privilege; the request exceeds the scope of discovery permitted by Rule 166b of the Texas Rules of Civil Procedure; and, the request seeks information which is private, confidential and/or proprietary.

Defendants further object to this interrogatory on the grounds that the number of interrogatories submitted exceed the number permitted by Rule 168.

Subject to and without waiving the foregoing objections, Defendants answer: unknown. See answers to preceding interrogatories for NSRC information on possible adverse health effects.

INTERROGATORY NO. 10: As to gastro-intestinal cancer, laryngeal cancer, pharyngeal cancer 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:

Defendants object to the form and substance of this request on the following grounds: the request is overly broad; the request is vague; the request is ambiguous; the overly broad nature of the request is such that it would be unduly burdensome and prohibitively expensive to gather the information necessary to respond to this request; the request infringes on the attorney work product privilege; the request infringes on the investigative/party communication privilege; the request infringes on the attorney-client privilege; the request exceeds the scope of discovery permitted by Rule 166b of the Texas Rules of Civil Procedure; and, the request seeks information which is private, confidential and/or proprietary.

Defendants further object to this interrogatory on the grounds that the number of interrogatories submitted exceed the number permitted by Rule 168.

Subject to and without waiving the foregoing objections, Defendants answer: unknown. See answers to preceding interrogatories for NSRC information on possible adverse health effects.

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:

See Preliminary Statement and General Objection. Defendants object to the form and substance of this request on the following grounds: the request is overly broad; the request is vague; the request is ambiguous; the overly broad nature of the request is such that it would be unduly burdensome and prohibitively expensive to gather the information necessary to respond to this request; the request infringes on the attorney work product privilege; the request infringes on the investigative/party communication privilege; the request infringes on the attorney-client privilege; the request exceeds the scope of discovery permitted by Rule 166b of the Texas Rules of Civil Procedure; and, the request seeks information which is private, confidential and/or proprietary.

Defendants further object to this interrogatory on the grounds that the number of interrogatories submitted exceed the number permitted by Rule 168.

Subject to and without waiving the foregoing objections, NSRC states that it has no board of directors minutes discussing such subjects.

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 Plaintiffs in that case.

ANSWER:

Defendants object to the form and substance of this request on the following grounds: the request is overly broad; the request is vague; the request is ambiguous; the request seeks information which is not relevant and which is not reasonably calculated to lead to the discovery of admissible evidence; the request infringes on the attorney work product privilege; the request infringes on the investigative/party communication privilege; the request infringes on the attorney-client privilege; the request exceeds the scope of discovery permitted by Rule 166b of the Texas Rules of Civil Procedure; and, the request seeks information which is private, confidential and/or proprietary.

Defendants further object to this interrogatory on the grounds that the number of interrogatories submitted exceed the number permitted by Rule 168.

Subject to and without waiving the foregoing objections, NSRC has not determined whom it may call as witnesses at the trial of this cause.

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:

Defendants object to the form and substance of this request on the following grounds: the request is overly broad; the request is unlimited in terms of time; the request is unlimited in terms of geographic scope; the request seeks information which is not relevant and which is not reasonably calculated to lead to the discovery of admissible evidence; the overly broad nature of the request is such that it would be unduly burdensome and prohibitively expensive to gather the information necessary to respond to this request; and, the request exceeds the scope of discovery permitted by Rule 166b of the Texas Rules of Civil Procedure.

Defendants further object to this interrogatory on the grounds that the number of interrogatories submitted exceed the number permitted by Rule 168.

Subject to and without waiving the foregoing objections, Defendants answer: Yes. NSRC has had a "medical department" since at least the late 1930's, and the same has, to the best of NSRC's knowledge, been in continuous operation since that time. The names of NSRC's Medical Directors/Chief Surgeons and their respective years of service, are as follows:

- 1. G. I. Jones, M.D. (deceased)--Chief Surgeon, Southern Railway Company, Washington, D.C. (late 1930's to 1942).
- 2. Milton B. Clayton, M.D. (deceased)--Chief Surgeon, Southern Railway Company, Washington, D.C. (1942-1966).

3. Max P. Rogers, M.D. (retired)--Medical Director, Southern Railway Company, Washington, D.C. (1966-May 31, 1983).
4. Tom Howell, M.D. (retired)--Medical Director, Southern Railway Company, Atlanta, Georgia (June 1, 1983 - December 31, 1985).
5. J. P. Salb, M.D. (retired)--Medical Director, Southern Railway Company and Norfolk Southern Corporation, Atlanta, Georgia (January 1, 1986 - March 1, 1994).
6. C. Ray Prible, M.D.--Medical Director, Norfolk Southern Corporation, Norfolk, Virginia (March 1, 1994 to present).

NSRC's Medical Director is responsible for maintaining the physical and mental health of its employees, and for arranging for medical and surgical services in the case of employees who are injured during the course of their work. The duties of the other members of the Medical Department are to assist the Medical Director in carrying out his duties.

INTERROGATORY NO. 14: Please state whether written warnings were placed at any locations adjacent to or near asbestos in place on 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:

Defendants object to the form and substance of this request on the following grounds: the request is overly broad; the request is unlimited in terms of geographic scope; the request seeks information which is not relevant and which is not reasonably calculated to lead to the discovery of admissible evidence; the overly broad nature of the request is such that it would be unduly burdensome and prohibitively expensive to gather the information necessary to respond to this request; and, the request exceeds the scope of discovery permitted by Rule 166b of the Texas Rules of Civil Procedure. Defendants further objects to this interrogatory for the reason that it is unknown if plaintiff was employed by NSRC, and, if he was, whether or not he was a shop employee.

Defendants further object to this interrogatory on the grounds that the number of interrogatories submitted exceed the number permitted by Rule 168.

Subject to and without waiving the foregoing objections, Defendants answer: none during the time of plaintiff's alleged employment. Prior to 1983 NSRC did not specifically inform employees regarding potential hazards of asbestos and/or diseases potentially associated with asbestos exposure, because it had no reason to believe that its employees were at risk.

INTERROGATORY NO. 15: Does Defendant 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:

See Preliminary Statement and General Objection. Defendants object to the form and substance of this request on the following grounds: the request is overly broad; the request is unlimited in terms of geographic scope; the request seeks information which is not relevant and which is not reasonably calculated to lead to the discovery of admissible evidence; the overly broad nature of the request is such that it would be unduly burdensome and prohibitively expensive to gather the information necessary to respond to this request; and, the request exceeds the scope of discovery permitted by Rule 166b of the Texas Rules of Civil Procedure.

Defendants further object to this interrogatory on the grounds that the number of interrogatories submitted exceed the number permitted by Rule 168.

Subject to and without waiving the foregoing objections, NSRC has had a Safety Department for many years and during the time of plaintiff's alleged employment. It is unknown exactly when the Safety Department was established. The current Safety Department directs planning and implementation of programs to reduce employee personal injury accidents, grade crossing accidents, hazardous material incidents and others with subsequent impact on and reduction of overall costs; establishes and maintains liaison with industry, shippers, Federal, State and others in safety, hazardous materials, property loss prevention and related activities.

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:

See Preliminary Statement and General Objection. Defendants object to the form and substance of this request on the following grounds: the request is overly broad; the request is unlimited in terms of geographic scope; the request seeks information which is not relevant and which is not reasonably calculated to lead to the discovery of admissible evidence; the overly broad nature of the request is such that it would be unduly burdensome and prohibitively expensive to gather the information necessary to respond to this request; and, the request exceeds the scope of discovery permitted by Rule 166b of the Texas Rules of Civil Procedure.

Defendants further object to this interrogatory on the grounds that the number of interrogatories submitted exceed the number permitted by Rule 168.

Subject to and without waiving the foregoing objections, Defendants answer: no "medical monitoring" program, per se, existed at the time of plaintiff's alleged employment. During that time employees were subject to physical examinations to qualify for employment, as well as periodic physical examinations, and examinations to qualify for return to employment after illness or injury.

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:

See Preliminary Statement and General Objection. Defendants object to the form and substance of this request on the following grounds: the request is overly broad; the request is unlimited in terms of geographic scope; the request is vague; the request is ambiguous; the request seeks information which is not relevant and which is not reasonably calculated to lead to the discovery of admissible evidence; the overly broad nature of the request is such that it would be unduly burdensome and prohibitively expensive to gather the information necessary to respond to this request; and, the request exceeds the scope of discovery permitted by Rule 166b of the Texas Rules of Civil Procedure. Defendants further object to this interrogatory for the reason that it is unknown if plaintiff was employed by NSRC, and, if he was, whether or not he was a shop employee.

Defendants further object to this interrogatory on the grounds that the number of interrogatories submitted exceed the number permitted by Rule 168.

Subject to and without waiving the foregoing objections, Defendants answer: it is known that NSRC purchased respirators and dust masks which were stocked and made available to employees. It is unknown when this practice started. It is unknown as to specific instructions pertaining to maintenance and/or use of equipment which are normally supplied in instructions provided by the manufacturer with each item. An employee's supervisor would have made respirators and masks available and instructed employees if any questions arose as to their use. Prior to 1983 NSRC did not specifically inform employees regarding potential hazards of asbestos and/or diseases potentially associated with asbestos exposure, because it had no reason to believe that employees were at risk. In 1983 a warning to current and former employees was issued (see previous answers) and on March 1, 1984, NSRC instituted an Asbestos Safety Program and Asbestos Respirator Program.

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 Preliminary Statement and General Objection. Defendants object to the form and substance of this request on the following grounds: the request is overly broad; the request is vague; and, the request is ambiguous.

Defendants further object to this interrogatory on the grounds that the number of interrogatories submitted exceed the number permitted by Rule 168.

Subject to and without waiving the foregoing objections, Defendants answer: not to NSRC's knowledge.

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:

See Preliminary Statement and General Objection. Defendants object to the form and substance of this request on the following grounds: the request is overly broad; the request is unlimited in terms of time; the request is unlimited in terms of geographic scope; the request is vague; the request is ambiguous; the request seeks information which is not relevant and which is not reasonably calculated to lead to the discovery of admissible evidence; the overly broad nature of the request is such that it would be unduly burdensome and prohibitively expensive to gather the information necessary to respond to this request; and, the request exceeds the scope of discovery permitted by Rule 166b of the Texas Rules of Civil Procedure.

Defendants further object to this interrogatory on the grounds that the number of interrogatories submitted exceed the number permitted by Rule 168.

Subject to and without waiving the foregoing objections, NSRC states as follows: To NSRC's knowledge, no federal regulations existed concerning "airborne asbestos" during the time period of plaintiff's alleged employment. It is unknown whether any state laws existed concerning airborne asbestos during the time period of plaintiff's alleged employment.

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:

See Preliminary Statement and General Objection. Defendants object to the form and substance of this request on the following grounds: the request is overly broad; the request is unlimited in terms of time; the request is unlimited in terms of geographic scope; the request is vague; the request is ambiguous; the request seeks information which is not relevant and which is not reasonably calculated to lead to the discovery of admissible evidence; the overly broad nature of the request is such that it would be unduly burdensome and prohibitively expensive to gather the information necessary to respond to this request; and, the request exceeds the scope of discovery permitted by Rule 166b of the Texas Rules of Civil Procedure. Defendants further object to this interrogatory for the reason that it requests information about a time period subsequent to Plaintiff's alleged employment

Defendants further object to this interrogatory on the grounds that the number of interrogatories submitted exceed the number permitted by Rule 168.

Subject to and without waiving the foregoing objections, Defendants answer: it is unknown whether any such inspections may have been made during the time of Plaintiff's alleged employment at the location of his alleged employment. To NSRC's knowledge there are no records of any such inspections which gave rise to negative reports.

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 railroad(s).

- 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:

See Preliminary Statement and General Objection. Defendants object to the form and substance of this request on the following grounds: the request is overly broad; the request is unlimited in terms of time; the request is unlimited in terms of geographic scope; the request is vague; the request is ambiguous; the request seeks information which is not relevant and which is not reasonably calculated to lead to the discovery of admissible evidence; the overly broad nature of the request is such that it would be unduly burdensome and prohibitively expensive to gather the information necessary to respond to this request; the request infringes on the attorney work product privilege; the request infringes on the investigative/party communication privilege; the request infringes on the attorney-client privilege; the request exceeds the scope of discovery permitted by Rule 166b of the Texas Rules of Civil Procedure; and, the request seeks information which is private, confidential and/or proprietary.

Defendants further object to this interrogatory on the grounds that the number of interrogatories submitted exceed the number permitted by Rule 168.

Subject to and without waiving the foregoing objections, Defendants answer: none during the time of plaintiff's alleged 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:

See Preliminary Statement and General Objection. Defendants object to the form and substance of this request on the following grounds: the request is overly broad; the request is vague; the request is ambiguous; the request seeks information which is not relevant and which is not reasonably calculated to lead to the discovery of admissible evidence; the overly broad nature of the request is such that it would be unduly burdensome and prohibitively expensive to gather the information necessary to respond to this request; the request infringes on the attorney work product privilege; the request infringes on the investigative/party communication privilege; the request infringes on the attorney-client privilege; and, the request exceeds the scope of discovery permitted by Rule 166b of the Texas Rules of Civil Procedure.

Defendants further object to this interrogatory on the grounds that the number of interrogatories submitted exceed the number permitted by Rule 168.

Subject to and without waiving the foregoing objections, Defendant answer: NSRC currently has documents concerning OSHA's permissible exposure limit for airborne contaminants, as well as earlier OSHA documents on TLV. NSRC trial counsel have also assembled historical documents on TLV issues. The earliest TLV document located to date in NSRC's files dates from 1969.

INTERROGATORY NO. 23: Please state whether and when Defendant received a copy of the Fleischer/Drinker Report published in 1945/1946.

ANSWER:

Defendants object to the form and substance of this request on the ground the request exceeds the scope of discovery permitted by Rule 166b of the Texas Rules of Civil Procedure.

Defendants further object to this interrogatory on the grounds that the number of interrogatories submitted exceed the number permitted by Rule 168.

Subject to and without waiving the foregoing objections, Defendants answer: it is unknown if NSRC ever received a copy of the Fleischer/Drinker report. NSRC states that its counsel has obtained articles, including Fleischer and Drinker's report, in connection with the defense of NSRC in asbestos-related FELA actions. All such articles are equally available to plaintiff's counsel.

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:

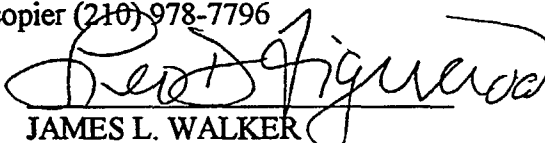
See Preliminary Statement and General Objection. Defendants object to the form and substance of this request on the following grounds: the request is overly broad; the request is unlimited in terms of geographic scope; the request is vague; the request is ambiguous; the request seeks information which is not relevant and which is not reasonably calculated to lead to the discovery of admissible evidence; the overly broad nature of the request is such that it would be unduly burdensome and prohibitively expensive to gather the information necessary to respond to this request; and, the request exceeds the scope of discovery permitted by Rule 166b of the Texas Rules of Civil Procedure.

Defendants further object to this interrogatory on the grounds that the number of interrogatories submitted exceed the number permitted by Rule 168.

Respectfully submitted,

JACKSON WALKER L.L.P.
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By:

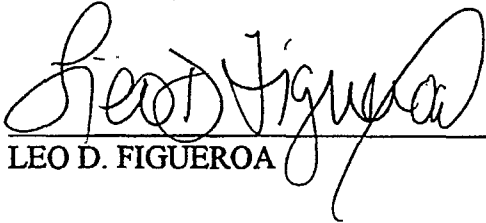

JAMES L. WALKER
State Bar No. 20708500
LEO D. FIGUEROA
State Bar No. 06984100

ATTORNEYS FOR DEFENDANTS NORFOLK
SOUTHERN RAILWAY COMPANY AND NORFOLK
SOUTHERN CORPORATION

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the above and foregoing was served by certified mail, return receipt requested, to Mary Skelnick/Kimberly Shauck, Baron & Budd, The Centrum, Suite 1100, 3102 Oak Lawn Avenue, Dallas, Texas 75219-4281, on this the 23rd day of January, 1998.

All defense counsel may request a copy of this document.



LEO D. FIGUEROA

1691101

NORFOLK SOUTHERN RAILWAY COMPANY

By: T. M. Brady
T. M. Brady
Manager Occupational Claims
Norfolk Southern Corporation

COMMONWEALTH OF VIRGINIA)
)
CITY OF NORFOLK)

T. M. Brady, being first duly sworn upon his oath, says that he has read the above and foregoing Answers and Objections of Defendants Norfolk Southern Railway Company and Norfolk Southern Corporation to First Interrogatories Propounded by Plaintiff Richard Davis; that he does not have personal knowledge regarding the answers thereto but that the matters set forth therein are true, according to his best information and belief; and that he is authorized to execute these answers on behalf of the Norfolk Southern Railway Company.

T. M. Brady
T. M. Brady
Manager Occupational Claims
Norfolk Southern Corporation

Subscribed and sworn to before me this 23rd day of January, 1998.

Cheri L. Bradley
Notary Public

My Commission Expires:

9-30-98

COMMISSIONED AS CHERI L. TATE