



NO. 96-05440-K

JESSE CHALMER SEATON and ANNIE LEE
SEATON, et al.

Plaintiffs,

v.

OWENS-CORNING FIBERGLAS
CORPORATION, et al.,

Defendants.

IN THE DISTRICT COURT

DALLAS COUNTY, TEXAS

192nd JUDICIAL DISTRICT

**SUPPLEMENTAL ANSWERS TO
SECOND SET OF INTERROGATORIES**

Defendants, Norfolk Southern Railway Company ("NSRC") f/k/a Southern Railway Company ("Southern") and Norfolk Southern Corporation ("NSC"), provide the following answers and objections to plaintiffs' second set of interrogatories. NSRC and NSC incorporate by reference the Preliminary Statement and General Objections contained in its initial response to plaintiffs' first interrogatories.

**SUPPLEMENTAL ANSWERS TO
SECOND SET OF INTERROGATORIES**

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.

PREVIOUS ANSWER:

OBJECTION. NSRC objects to this Interrogatory for the reason that it is vague, overbroad, burdensome and intended to harass NSRC. Without waiving its objection, 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.

SUPPLEMENTAL ANSWER:

NSRC is aware of no such documents in its possession during the years of plaintiff's alleged employment (i.e., 1956-1973).

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.

PREVIOUS ANSWER:

Unknown. See Answers to preceding interrogatories for NSRC information on possible adverse health effects.

SUPPLEMENTAL ANSWER:

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. 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.

PREVIOUS ANSWER: Unknown. See Answers to preceding interrogatories for NSRC information on possible adverse health effects.

SUPPLEMENTAL ANSWER: Unknown. See Supplemental Answer to Interrogatory No. 7 with regard to possible adverse health effects of asbestos exposure. NSRC also notes that plaintiff does not claim to have lung cancer, and that this interrogatory therefore seeks information which is irrelevant to this lawsuit.

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.

PREVIOUS ANSWER: Unknown. See Answers to preceding interrogatories for NSRC information on possible adverse health effects.

SUPPLEMENTAL ANSWER: Unknown. See Supplemental Answer to Interrogatory No. 7 with regard to possible adverse health effects of asbestos exposure. NSRC also notes that plaintiff does not claim to have mesothelioma, and this interrogatory therefore seeks information which is irrelevant to this lawsuit.

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.

PREVIOUS ANSWER: Unknown. See Answers to preceding interrogatories for NSRC information on possible adverse health effects.

SUPPLEMENTAL ANSWER: Unknown. See Supplemental Answer to Interrogatory No. 7 with regard to possible adverse health effects of asbestos exposure. NSRC also notes that plaintiff does not claim to

have gastro-intestinal cancer; pharyngeal cancer or lymphatic cancer, and this interrogatory therefore seeks information that is irrelevant to this lawsuit.

INTERROGATORY NO. 12: Does Defendant intend to call a company representative as a witnesses 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.

PREVIOUS ANSWER: See Preliminary Statement and General Objections as well as previously filed objections.

SUPPLEMENTAL ANSWER: NSRC will supplement to the extent required by the court's standing order for disclosing witnesses.

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.

PREVIOUS ANSWER:

See Preliminary Statement and General Objection. 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.

SUPPLEMENTAL ANSWER:

It is believed that Mr. Frank M. Kaylor, AVP - Safety served as the head of the safety department during some or all of the time period plaintiff was allegedly employed by NSRC (i.e., 1956-1973). Discovery and investigation continue concerning the identities of safety directors pre-dating Mr. Kaylor.

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 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.

PREVIOUS ANSWER:

See Preliminary Statement and General Objection. NSRC 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. Without waiver, it states: 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.

SUPPLEMENTAL ANSWER: Specific information concerning the provision of such "safety equipment" to plaintiff is unknown. The identities of plaintiff's supervisors are unknown.

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.

PREVIOUS ANSWER: See Preliminary Statement and General Objection. 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.

SUPPLEMENTAL ANSWER: It is unknown when the document identified in the previous interrogatory answer was received, nor who received it. This document was located in the Southern Railway Research & Test Department in the early 1980's, by defense counsel in the course of defending an asbestos-related claim.

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.

PREVIOUS ANSWER:

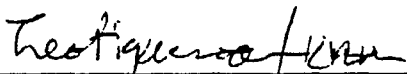
OBJECTION. See Preliminary Statement and General Objection. NSRC objects to this interrogatory on grounds that it is vague, ambiguous, overbroad and unduly burdensome and for the reason that if plaintiff was employed by NSRC, it is unknown whether or not Plaintiff was a shop employee.

SUPPLEMENTAL ANSWER:

Specific actions taken for the purpose of complying with the Boiler Inspection Act at plaintiff's alleged work locations during the years of plaintiff's alleged employment are unknown.

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By:


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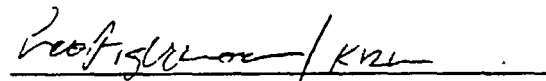
State Bar No. 06984100

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 hand-delivery to Kimberly Shauck, Baron & Budd, The Centrum, Suite 1100, 3102 Oak Lawn Avenue, Dallas, Texas 75219-4281, on this the 10th day of February, 1998.

All defense counsel may request a copy of this document.


LEO D. FIGUEROA

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 Supplemental Answers To Second Set of Interrogatories; 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 10th day of February, 1998.

Cheri L. Bradley
Notary Public
COMMISSIONED AS CHERI L. TATE

My Commission Expires:

9-30-98

1. WPD/02