



NO. A-930,893-AC

THOMAS M. WILKENS, and
LEO FOX, et. al.

Plaintiffs

KEENE CORPORATION, et. al.

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IN THE DISTRICT COURT

ORANGE COUNTY, TEXAS

128TH JUDICIAL DISTRICT

**FIRST SUPPLEMENTAL ANSWERS OF NORFOLK SOUTHERN
RAILWAY COMPANY TO PLAINTIFF'S INTERROGATORIES**

Defendant, Norfolk Southern Railway Company (NSRC) f/k/a Southern Railway Company (Southern), for its First Supplemental Answers to Plaintiff's Interrogatories, states as follows:

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.

SUPPLEMENTAL ANSWER:

See objections previously filed. Subject to and without waiving said objections and in addition to answer previously filed, NSRC hereby incorporates the testimony regarding smoking and tobacco usage to be given by the Plaintiff, Leo Fox, in his deposition scheduled for July 23, 1997 and the information contained in his Smoking Questionnaire.

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.

SUPPLEMENTAL ANSWER:

See objections previously filed. Subject to and without waiving said objections and in addition to the answer previously filed, Defendant answers that although Plaintiff alleges in his answers that he was employed by NSRC from 1965 to 1966, NSRC has been unable to locate a personnel file, medical file, or any written memorandum of any type which would support

Plaintiff's claim that he was an employee of NSRC. Plaintiff, in his answers to Master Discovery, stated that he worked in Mobile, Alabama performing road trainman tasks. Plaintiff is referred to his answers to discovery as well as to the testimony he may give at his deposition on July 23, 1997 about his job locations.

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.

SUPPLEMENTAL ANSWER:

In addition to answer previously filed, NSRC hereby incorporates all of the Plaintiff, Leo Fox's, allegations against the product manufacturers that he had alleged in his Petitions.

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 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.

SUPPLEMENTAL ANSWER:

See objections previously filed. Subject to said objections and without waiving same: see attached list.

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 identify 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.

SUPPLEMENTAL ANSWER:

See objections previously filed. Subject to said objections and without waiving same: see attached list.

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 locomotive(s) 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 railroad(s), 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 railroad(s), 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.

SUPPLEMENTAL ANSWER:

In addition to the answers previously made to this Interrogatory, it does not appear that any of the areas that Plaintiff may have worked during his employment with Norfolk Southern Railway Corporation was subject to an asbestos abatement program, because it does not appear that he worked around asbestos at all.

Respectfully submitted,

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By: _____

JAMES L. WALKER
State Bar No. 20708500
MICHELLE M. DEVOE
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ATTORNEYS FOR DEFENDANTS
NORFOLK SOUTHERN RAILWAY
COMPANY, NORFOLK SOUTHERN
CORPORATION, AND SOUTHERN
RAILWAY COMPANY

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing document was sent by U.S. certified mail, postage pre-paid, return receipt requested, to counsel for Plaintiffs, Kimberly A. Castles, BARON & BUDD, The Centrum, Suite 1100, 3102 Oak Lawn Avenue, Dallas, Texas 78219, on this the 30 day of July, 1997.

All defense counsel may request a copy of this document

JAMES L. WALKER

1601384

Interrogatory No. 9

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Kaiser Aluminum Refinery
Bay Minette, Alabama
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Joe Treadwell, Inc.
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Mobile, Alabama
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Lykes Corporation
Mobile, Alabama and New Orleans, Louisiana
Alford Johnson

Gulf & South America SS Co., Inc.
Mobile, Alabama and New Orleans, Louisiana
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Mobile, Alabama
Clarence Coleman
Arthur Scott
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Alabama State Docks
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Alvin Doss
Arthur Williams
Bobby Haggin
Jesse Patterson
Eddie Handy

Atlantic Land Corp.
ADDSCO Shipyard
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John D. McCampbell
Sam Nicholson
Frank Orr
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ABEX Corporation

A. P. Green

Allied-Signal, Inc.

Allis Chalmers

Amchem

American Steel & Wire Company

Anaconda

Anchor Packing Company

A. P. Green Industries, Inc.

Armstrong Contracting and Supply

Armstrong World Industries, Inc.

Asten-Hill

Atlas Asbestos

A. W. Chesterton Company

Babcock & Wilcox

Baltimore Land Ennis

Barrett Roofing

Belmont Packing Company

-Benjamin Foster Company

Berkheimer

Bird & Son

Borg-Warner Corporation

Calsilite

Calcrete

Capco Pip Company, Inc.

C. E. Thurston & Sons, Inc.

Celotex Corporation

Certainteed

Chevron U.S.A., Inc.

Chrysler Corporation

Cleaver Brooks

Colonial Sugar Refineries

Combustion Engineering

Cooper Industries

Crane

Crown Cork & Seal Company

Damit

Dana Corporation

Dossert

Eagle-Picher Industries, Inc,

Excelsior

Fibreboard Corporation

Flexitallic Gasket Company

Flintkote

Ford Motor Co.

Forty-Eight Insulations

Foster Wheeler

GAF-Ruberoid

Garlock, Inc.

General Electric Company

General Motors

General Refractories Company

Georgia Pacific Corporation

Gold Bond

Grant Wilson, Inc.

Guard-Line, Inc.

Harbison-Walker Refractories Company

Hatfield

Haveg Pipe Co.

H. K. Porter Company

Hercules

Indresco Inc.

I.U. North America, Inc.

John Crane

Johns-Manville

K-Fac

Kaiser Aluminum & Chemical Corporation

Kaiser Gypsum Company, Inc.

Kaylo

Keene Corporation

Kelly-Moore Paint Company

Kewaner

Limpet

Koppers

Kurfees

McCord

The Maremont Corporation

Martin Marietta Co.

M. H. Detrick Company

Minnesota Mining & Manufacturing Company

Mobil

Mundet

National Gypsum Company

Nicolet

North American Philips Company

North American Refractories Company

National Service Ind., Inc.

NOSROC Corporation

Nuturn Corporation

Okonite

Owens-Corning Fiberglas Corporation

Owens-Illinois, Inc.

Pabco

Parsons

Pfizer, Inc.

Phelps Dodge

Pittsburgh Corning Corporation

Pneumo Abex Corporation

Proko Industries, Inc.

Quigley Company, Inc.

Rapid American Corporation

Raybestos-Manhattan

Raymark

Riley Stoker Corporation

Rockbestos Product Corporation

Rock Wool Manufacturing Company

Rutland

Sepco Corporation

Shook & Fletcher Insulation

Steel Grip

Synkoloid

Thermo Electric, Inc.

T & N, plc

Unarco Industries

Union Carbide Corporation

Uniroyal Holding, Inc.

U. S. Gypsum Company

U. S. Mineral

U. S. Steel Corporation

Victor

Wagner Electric Corporation

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All witnesses listed by Plaintiffs and Co-Defendants.

All witnesses listed in Plaintiff's Answers to Interrogatories.

All witnesses listed in Plaintiff's Standard list of Deposition Testimony.

All witnesses deposed in this case.

All witnesses listed by plaintiff in deposition.

Defendant reserves the right to call as a witness all doctors who have examined Plaintiff, reviewed Plaintiff's medical records, and/or have been designated as witnesses by any other parties to this action.

Interrogatory No. 10

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Drs. Ross, Donaldson, Wilson and Jenkins can testify concerning the following areas:

- a. Anatomy and function of the respiratory and circulatory systems;
- b. The nature of asbestos;
- c. The symptomatology, disease process and diagnosis of asbestos and cancer association with respiratory system, peritoneum and peritoneal cavity;
- d. The nature and extent of medical and scientific knowledge regarding any association of obstructive pulmonary disease with asbestos fiber exposure;
- e. The effect of exposure to substances other than asbestos on the development and manifestation of obstructive and restrictive conditions and diseases of the respiratory system;
- f. Methods of diagnosis of various diseases particularly means of establishing the differential diagnosis of alleged asbestos-related diseases with other non-asbestos-related diseases;
- g. Incidents of lung cancer among individuals with asbestosis, compared with non-asbestotic asbestos workers and with the general populations;
- h. Cigarette smoking and its effect on the lung;
- i. The relationship of cigarette smoking to cancer of the lung and cancers of other sites with reference to epidemiological studies and physiologic effect;
- j. Difference between impairment and disability;
- k. Effect of asbestosis on disability and life expectancy;
- l. The lack of a relationship between presence of pleural plaques and a later development of any form of cancer.

Larry Liukonen
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Larry Liukonen is an industrial hygienist who can testify about the practices and procedures of the railroad, its bridges, buildings and other structures and locations as they relate to asbestos exposure, if any, on engines, cabooses, rail cars and its shops. He can also testify about the state-of-the-art insofar as the railroad is concerned.

Horton C. Hinshaw, M.D.
Deceased

Dr. Hinshaw was an Emeritus Professor of Medicine at the University of California School of Medicine. Dr. Hinshaw has testified by deposition regarding the state of the scientific and medical knowledge concerning asbestos. Included in his testimony is a discussion of the respiratory system asbestos disease and the effect of other substances on the respiratory system.

Dr. Elliot Hinkes
301 N. Prairie Avenue, Suite 311
Inglewood, California

Dr. Hinkes is a board certified oncologist and hematologist. He will testify concerning the relationship of asbestos and smoking to the development of cancer. Dr. Hinkes will also testify concerning the incidence of lung cancer among individuals with asbestosis or exposure to asbestos-containing insulation products. He will also testify regarding the connection between the decedent's condition and his alleged asbestos exposure, as well

as the treatment for the decedent's condition. He may also be called to testify as to the state-of-the-art of the railroad industry's knowledge of the alleged hazards of asbestos exposure and as to his review of the medical/scientific literature concerning the knowledge or lack thereof.

Frances W. Weir, Ph.D.
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(713-893-4003)

The topics of Dr. Weir's expected testimony include the fields of pharmacology, toxicology and industrial hygiene, generally and particularly as they relate to asbestos fiber exposure in various work places. He is expected to testify concerning the types and characteristics of asbestos, as well as the recognized pathogenic potential from exposure to fibers of these substances. If asked, his testimony will include a discussion of the way asbestos containing materials were used, in general with the railroad industry, and specifically within the shops and other facilities of the Norfolk Southern Railway Company at various times of interest in this matter. He will also be prepared to discuss

laws and regulations and relevant standards relating to asbestos exposure, the characteristics and epidemiology of asbestos-related or associated diseases and relevant medical and scientific literature on these subjects. Additionally, he is expected to discuss the evolution on the role of health concerns within the industry. Dr Weir may also discuss and describe the effects of chemicals, especially those contained in cigarettes, on human physiology.

It is expected that Dr. Weir will offer the opinion that, based on the various descriptions of work activities of concern in this matter, and assuming those descriptions are correct, that there is no scientific basis or affirmative evidence to conclude that plaintiff's exposures ever regularly exceeded the concurrently acceptable time weighted average values for this material. He will assert that essentially, there was no concurrent basis to conclude that the practices and operation of the railway shops at the times of interest in this matter would have been considered to represent a hazard to the health of workers from the railroad's use of asbestos containing materials.

Dr. Weir may also testify regarding the knowledge of the toxicology and appreciation for the hazards related to the use of asbestos containing materials at various intervals throughout the twentieth century.

Dr. Weir's opinions will be based upon his education, experience and professional training, his review of the relevant medical, epidemiological, scientific and technical literature and, his review and analysis of the case specific materials provided to him concerning this matter.

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All experts listed by Plaintiffs and Co-Defendants.

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All experts listed in Plaintiff's Standard list of Deposition Testimony.

All experts deposed in this case.

All experts listed by plaintiff in deposition.

Defendant reserves the right to call as an expert all doctors who have examined Plaintiff, reviewed Plaintiff's medical records, and/or have been designated as experts by any other parties to this action.