

CAUSE NO. 153-167812-97

THOMAS HOVELL, SR.	§	IN THE DISTRICT COURT OF
	§	
vs.	§	TARRANT COUNTY, TEXAS
	§	
OWENS-CORNING FIBERGLAS CORPORATION, ET AL.	§	153rd JUDICIAL DISTRICT

DEFENDANT'S RESPONSES TO PLAINTIFF'S REQUEST FOR ADMISSION

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

COMES NOW, The Burlington Northern Railway Company, Defendant in the above-entitled and numbered cause, pursuant to the TEXAS RULES OF CIVIL PROCEDURE, and makes and files these its Responses and Objections to Plaintiff's Requests for Admissions.

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

By: _____
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ATTORNEYS FOR DEFENDANT BURLINGTON NORTHERN RAILWAY COMPANY

CERTIFICATE OF SERVICE

I, J.D. Bashline, do hereby certify that a true and correct copy of the foregoing instrument has been forwarded to all counsel of record this 5 day of June, 1997, by certified U.S. Mail, return receipt requested, by facsimile and regular mail or by regular mail.

J.D. BASHLINE

DEFINITIONS

As used in these Requests for Admissions, the following terms mean:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

to asbestos dust and fibers.

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

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

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

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

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

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

20. "NIEHS" means National Institute of Environmental Health Sciences. This group, also an agency of Health, Education and Welfare, performs studies on chemical and physical agents emitted

into the environment which may have an impact on the population.

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

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

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

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

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

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

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

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

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

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

OBJECTIONS TO DEFINITIONS

1. Objection, to the definition of "Defendant" improperly attempts to extend the reach of these Requests for Admissions to parties or entities not before this Court. Further, even if such extension of reach were permissible, the relevance of responses from such entities, if any, would be far out-weighed by the unduly burdensome nature of attempting to assemble and verify such information. Accordingly, these Requests for Admissions are answered by the named corporate defendant.

2. Objection to the definition of the words "document," "documents," "written materials," or "printed matter" to the extent that the definition may be intended to seek discovery of or from documents protected by the attorney/client, party communication, or other privileges.

3. Objection to the definition of the words "Person" and "Persons" to the extent this definition may be construed to require this Defendant make answers on behalf of any such defined "Person" who is not an employee of Defendant.

24. Objection to the term "Identify," to the extent that complying with such instruction would reveal information protected by attorney/client, party communication, or other legally recognized privileges.

REQUESTS FOR ADMISSIONS

REQUEST FOR ADMISSION NO. 1:

Admit or deny that asbestos-containing products were in general use aboard Defendant's railroad during the time period Plaintiff was employed by Defendant.

RESPONSE:

Denied.

REQUEST FOR ADMISSION NO. 2:

Admit or deny that Defendant transported, ordered, purchased or otherwise acquired asbestos-containing products, asbestos-containing friction products, machinery requiring the use of asbestos or asbestos-containing products.

RESPONSE:

Objection; not reasonably limited to a time related to Plaintiff's employment. Denied.

REQUEST FOR ADMISSION NO. 3:

Admit or deny that Defendant used or implemented on Defendant's railroad, asbestos-containing products.

RESPONSE:

Objection; not reasonably limited to the time of Plaintiff's employment. Denied as phrased.

REQUEST FOR ADMISSION NO. 4:

Admit or deny that Defendant's cars, engines and/or locomotives which Plaintiff worked on or around were unreasonably dangerous and unfit because of the presence of and/or use of asbestos-containing products.

RESPONSE:

Defendant objects because the question assumes Plaintiff worked on or around cars or locomotives, a fact neither pleaded nor proved. Also, Defendant objects to this request as an improper request for admission as such are not intended to be used as

a demand on a Defendant to admit that he has no ground of defense. Sanders v. Harder, 227 S.W.2d 206, 208 (Tex. 1950); North River Ins. Co. of New Jersey v. Greene, 824 S.W.2d 697, 700 (Tex. App. - El Paso 1992, error denied). Defendant further objects to this request on the grounds that Rule 169 is not a trap to defeat the presentation of relevant evidence regarding ultimate, controlling material fact issues. Esparza v. Diaz, 802 S.W.2d 772, 775 (Tex. App. - Houston [14th Dist.] 1990, n.w.h.); North River Ins. Co. of New Jersey v. Greene, 824 S.W.2d 697, 700 (Tex. App. - El Paso 1992, error denied).

Subject to the foregoing objections and without waiving same, Defendant's cars, engines, and/or locomotives would not be unfit merely because of the presence of asbestos-containing products, if any, but rather, would only be unfit if employees who worked on or around these railway cars, engines, and/or locomotives were exposed to respirable asbestos that exceeded the concentrations in excess of applicable threshold limit values. This request is therefore denied.

REQUEST FOR ADMISSION NO. 5:

Admit or deny that Plaintiff was a railroad worker, as that term is generally understood, during his employment with Defendant.

RESPONSE:

After investigation based upon information now available, including responses from the Railroad Retirement Board. Defendant is unable to admit or deny because of absence of any indication as to whether Plaintiff worked at all for this Defendant, and even if so, the periods of time involved.

REQUEST FOR ADMISSION NO. 6:

Admit or deny that Plaintiff in the course and scope of his work as a railroad worker and/or employee of Defendant, worked on and/or around Defendant's railroad, railway cars, engines and/or locomotives, shops, roundhouses, and transfer sheds where asbestos, and asbestos containing products were present.

RESPONSE:

Denied.

REQUEST FOR ADMISSION NO.7:

Admit or deny that Defendant was aware during the periods of time Plaintiff worked for Defendant that airborne asbestos dust created a potential health hazard to those

who breathed such dust.

RESPONSE:

Defendant objects to this request as an improper request for admission as such are not intended to be used as a demand on a Defendant to admit that he has no ground of defense. Sanders v. Harder, 227 S.W.2d 206, 208 (Tex. 1950); North River Ins. Co. of New Jersey v. Greene, 824 S.W.2d 697, 700 (Tex. App. - El Paso 1992, error denied).

Defendant objects to this request on the grounds that Rule 169 is not a trap to defeat the presentation of relevant evidence regarding ultimate, controlling material fact issues. Esparza v. Diaz, 802 S.W.2d 772, 775 (Tex. App. - Houston [14th Dist.] 1990, n.w.h.); North River Ins. Co. of New Jersey v. Greene, 824 S.W.2d 697, 700 (Tex. App. - El Paso 1992, error denied).

Defendant objects to this request as it is impossible to state when it as a corporate entity attained knowledge in its several parts to the point of awareness at the corporate level.

Defendant objects to this request on the grounds that Rule 169 is not a trap to defeat the presentation of relevant evidence regarding ultimate, controlling material fact issues. Esparza v. Diaz, 802 S.W.2d 772, 775 (Tex. App. - Houston [14th Dist.] 1990, n.w.h.); North River Ins. Co. of New Jersey v. Greene, 824 S.W.2d 697, 700 (Tex. App. - El Paso 1992, error denied).

Subject to the foregoing objections and without waiving same, whether airborne dust created a potential health hazard to those who breathed such dust would depend on the nature and amount of such airborne dust. This request is therefore denied.

REQUEST FOR ADMISSION NO. 8:

Admit or deny that Plaintiff was employed by Defendant or by a predecessor-in-interest of Defendant.

RESPONSE:

After investigation based upon information now available, including replies from the Railroad Retirement Board. Defendant is unable to admit or deny because of absence of any indication as to whether Plaintiff worked at all for this Defendant, and even if so, the periods of time involved.

REQUEST FOR ADMISSION NO. 9:

Admit or deny that Plaintiff worked on and/or around Defendant's railroad in areas where asbestos-containing products were installed, used, prepared for use, replaced or repaired, stored or loaded, unloaded or transported.

RESPONSE:

After investigation based upon information now available, Defendant is unable to admit or deny because of absence of any indication as to whether Plaintiff worked at all for this Defendant, and even if so, the periods of time involved, and the craft in which Plaintiff was employed.

REQUEST FOR ADMISSION NO. 10:

Admit or deny that Defendant did not distribute any literature or warnings of any kind to its employees during the period of time Plaintiff worked for Defendant regarding the potential health hazards to those who breathe airborne asbestos dust.

RESPONSE:

Defendant objects to this request on the grounds that Rule 169 is not a trap to defeat the presentation of relevant evidence regarding ultimate, controlling material fact issues. Esparza v. Diaz, 802 S.W.2d 772, 775 (Tex. App. - Houston [14th Dist.] 1990, n.w.h.); North River Ins. Co. of New Jersey v. Greene, 824 S.W.2d 697, 700 (Tex. App. - El Paso 1992, error denied).

Subject to the foregoing objections and without waiving same, Defendant responds as follows: Denied.

REQUEST FOR ADMISSION NO. 11:

Admit or deny that asbestos-containing products were placed on or used in the conduct of Defendant's railroad during the time period Plaintiff was employed by Defendant including the following asbestos-containing products:

a. any asbestos-containing product and/or machinery requiring the use of asbestos or asbestos-containing products and/or materials
b. asbestos tiles
c. asbestos millboard
d. asbestos friction products
e. asbestos pipe covering
h. asbestos cement
i. asbestos block
j. asbestos packing
k. boilers
l. brake shoes
m. brake linings
n. clutch linings
o. firebrick
p. refractories/castables

f. asbestos gaskets
g. asbestos join compound
q. turbines

RESPONSE:

Due to the time elapsed since the period of Plaintiff's alleged railroad service, Plaintiff's personnel record file, if any, has been destroyed. Since discovery is in its infancy, Defendant presently does not know exactly when and where Plaintiff worked while or if he was employed by this Defendant. Therefore, Defendant responds as follows:

a. Denied.
b. Denied.
c. Denied.
d. Denied.
e. Denied.
f. Denied.
g. Denied.
h. Denied.
i. Denied.
j. Denied.
k. Denied.
l. Denied.
m. Denied.
n. Denied.
o. Denied.
p. Denied.
q. Denied.

REQUEST FOR ADMISSION NO. 12:

Admit or deny that Defendant engaged in no abatement programs for the removal of asbestos at any time since 1965.

RESPONSE:

Denied.

REQUEST FOR ADMISSION NO. 13:

Admit or deny that Defendant was aware of the presence of and/or use of asbestos-containing products at the Railroad during the time period Plaintiff was employed by Defendant.

RESPONSE:

Defendant admits that it was aware of the presence of asbestos-containing products in certain of its operations, but Defendant is unable to admit or deny without further investigation that Plaintiff worked in the vicinity of such equipment or operations.

REQUEST FOR ADMISSION NO. 14:

Admit or deny that Defendant became aware of the potential health hazards of airborne asbestos during the time periods in which Plaintiff was employed by Defendant.

RESPONSE:

After investigation based upon information now available, Defendant is unable to admit or deny because of absence of any indication as to whether Plaintiff worked at all for this Defendant, and even if so, the periods of time involved. Moreover, if Plaintiff was employed by this Defendant or a predecessor in interest prior to the adoption of the Railroad Retirement Act, denied.

REQUEST FOR ADMISSION NO. 15:

Admit or deny that Defendant did not continuously provide face masks to railroad employees working with or around asbestos from 1945 to the present for the purpose of protecting these employees from inhaling asbestos.

RESPONSE:

Objection: Rule 169 is not to be used as a trap to defeat presentation of relevant evidence; Esparza v. Diaz, 802 S.W.2d 772, 775; North River Ins. Co. of New Jersey v. Greene, 824 S.W.2d 697, 700 (Tex.App.-El Paso 1992, error denied). Defendant was only obligated to provide face masks to crew members working with or around asbestos if such crew members worked around asbestos dust in amounts that exceeded the applicable maximum threshold limits for occupational exposure to the asbestos-containing dust.

REQUEST FOR ADMISSION NO. 16:

Admit or deny that during the time Plaintiff was employed by Defendant, it was foreseeable that asbestos-containing products on Defendant's railroad would or could be removed, stripped, replaced or repaired at some time after installation.

RESPONSE:

Defendant objects to this request as improper in that it seeks this party to admit a legal conclusion, such being improper under Rule 169. Esparza v. Diaz, 802 S.W.2d 772, 775 (Tex. App. - Houston [14th Dist.] 1990, n.w.h.).

Defendant further objects to this request on the grounds that Rule 169 is not a trap to defeat the presentation of relevant evidence regarding ultimate, controlling material fact issues. Esparza v. Diaz, 802 S.W.2d 772, 775 (Tex. App. - Houston [14th Dist.] 1990, n.w.h.); North River Ins. Co. of New Jersey v. Greene, 824 S.W.2d 697, 700 (Tex. App. - El Paso 1992, error denied).

Subject to the foregoing objections, and without waiver, denied.

REQUEST FOR ADMISSION NO. 17:

Admit or deny that during the time Plaintiff was employed by Defendant, Defendant failed to comply with the requirements of the Boiler Inspection Act, formerly 45 U.S.C. § 23; and restated at 49 U.S.C.§20701 et seq.

RESPONSE:

Defendant objects to this request as improper in that it seeks this party to admit a legal conclusion, such being improper under Rule 169. Esparza v. Diaz, 802 S.W.2d 772, 775 (Tex. App. - Houston [14th Dist.] 1990, n.w.h.).

Defendant further objects to this request on the grounds that Rule 169 is not a trap to defeat the presentation of relevant evidence regarding ultimate, controlling material fact issues. Esparza v. Diaz, 802 S.W.2d 772, 775 (Tex. App. - Houston [14th Dist.] 1990, n.w.h.); North River Ins. Co. of New Jersey v. Greene, 824 S.W.2d 697, 700 (Tex. App. - El Paso 1992, error denied).

Additionally, Defendant objects to this request as an improper request for admission as such are not intended to be used as a demand on a Defendant to admit that he has no ground of defense. Sanders v. Harder, 227 S.W.2d 206, 208 (Tex. 1950); North River Ins. Co. of New Jersey v. Greene, 824 S.W.2d 697, 700 (Tex. App. - El Paso 1992, error denied).

Subject to the foregoing objections and without waiving same, Defendant responds as follows: Denied.

REQUEST FOR ADMISSION NO. 18:

Admit or deny that Plaintiff filed suit against Defendant within three (3) years of the date of discovering his asbestos-related condition or the existence of any asbestos-related causes of action.

RESPONSE:

Defendant objects to this request as improper in that it seeks this party to admit a legal conclusion, such being improper under Rule 169. Esparza v. Diaz, 802 S.W.2d 772, 775 (Tex. App. - Houston [14th Dist.] 1990, n.w.h.).

Defendant objects to this request as it seeks admissions of another's state of mind and so seeks to elicit inadmissable opinions which cannot be deemed admitted. Boyter v. MCR Const. Co., 673 S.W.2d 938, 941 (Tex. App. - 5th Dist. 1984, writ ref'd n.r.e.).

Subject to the foregoing objections and without waiving same, Defendant responds as follows: Denied.

REQUEST FOR ADMISSION NO. 19:

Admit or deny that Defendant is liable for Plaintiff s asbestos related illness.

RESPONSE:

Defendant objects to this request as improper in that it seeks this party to admit a legal conclusion, such being improper under Rule 169. Esparza v. Diaz, 802 S.W.2d 772, 775 (Tex. App. - Houston [14th Dist.] 1990, n.w.h.).

Defendant objects to this request as it seeks admissions of another's state of mind and so seeks to elicit inadmissable opinions which cannot be deemed admitted. Boyter v. MCR Const. Co., 673 S.W.2d 938, 941 (Tex. App. - 5th Dist. 1984, writ ref'd n.r.e.).

Subject to the foregoing objections and without waiving same, Defendant responds as follows: Denied.

REQUEST FOR ADMISSION NO. 20:

Admit or deny that Defendant knew or had reason to know that the asbestos was in use on its railroad since the 1930's.

RESPONSE:

Defendant admits that it was aware of the presence of asbestos-containing products in certain of its operations, but Defendant is unable to admit or deny without further investigation that Plaintiff worked in the vicinity of such equipment or operations.

REQUEST FOR ADMISSION NO. 21:

Admit or deny that Defendant consciously decided not to warn its employees of the dangers of asbestos.

RESPONSE:

Objection; the request is misleading in that it improperly assumes there was a danger which required a warning at any particular time. Defendant objects to this request as improper in that it seeks this party to admit a legal conclusion, such being improper under Rule 169. Esparza v. Diaz, 802 S.W.2d 772, 775 (Tex. App. - Houston [14th Dist.] 1990, n.w.h.).

Defendant objects to this request as it seeks admissions of another's state of mind and so seeks to elicit inadmissable opinions which cannot be deemed admitted. Boyter v. MCR Const. Co., 673 S.W.2d 938, 941 (Tex. App. - 5th Dist. 1984, writ ref'd n.r.e.).

Subject to the foregoing objections and without waiving same, Defendant responds as follows: Denied.

REQUEST FOR ADMISSION NO. 22:

Admit or deny that asbestos is still in use and/or in place on Defendants railroad.

RESPONSE:

Denied.

REQUEST FOR ADMISSION NO. 23:

Admit or deny that Defendant no longer uses asbestos on its railroad.

RESPONSE:

Denied.

REQUEST FOR ADMISSION NO. 24:

Admit or deny that Defendant acquired knowledge, during the 1930's of the Alton Railroads responses to the Illinois Occupational Diseases Act.

RESPONSE:

Defendant objects to this request as it is impossible to state when it as a corporate entity attained knowledge in its several parts to the point of knowledge at the corporate level. Subject to the objection and without waiving the same, Defendant's response is as follows: denied.

REQUEST FOR ADMISSION NO. 25:

Admit or deny that Defendant was a member of the National Claims Registry which reported information regarding injury claims of railroad workers.

RESPONSE:

Defendant cannot admit or deny this request and will investigate to properly supplement this request.