



NO. 95-04-2062-C

RALPH ANTHONY NICKERSON et al.,

Plaintiffs,

vs.

MISSOURI PACIFIC RAILROAD
COMPANY, et al.

Defendants

§
§
§
§
§
§
§
§
§

IN THE DISTRICT COURT OF

CAMERON COUNTY, TEXAS

197TH JUDICIAL DISTRICT

**DEFENDANT MISSOURI PACIFIC RAILROAD COMPANY d/b/a
UNION PACIFIC RAILROAD COMPANY'S THIRD SUPPLEMENTAL
OBJECTIONS AND RESPONSES TO PLAINTIFF'S REQUEST FOR PRODUCTION**

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

Pursuant to Rules 166b and 167 of the Texas Rules of Civil Procedure, Defendant Union Pacific Railroad Company, Defendant herein, hereby submits its Third Supplemental Objections and Responses to Plaintiff's First Request for Production.

General Objections

1. Defendant objects to the Requests to the extent that they request information protected from disclosure by the attorney-client privilege and/or the attorney work-product doctrine. Any information subject to any such privilege inadvertently provided by Defendant in response to the Interrogatories shall not constitute or be deemed to constitute a waiver of any such privilege.
2. Defendant objects to the Requests to the extent that they request information that is neither relevant nor likely to lead to the discovery of admissible evidence.
3. Defendant objects to the Requests to the extent that they exceed the scope of permissible discovery under the Texas Rules of Civil Procedure.
4. Defendant objects to the Requests to the extent that they purport to require Defendant to provide information that is available to Plaintiff where the burden of deriving or ascertaining such information is substantially the same as for Plaintiff as for Defendant.

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

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

7. Defendant reserves the right to supplement or amend its responses as appropriate.; and

8. This request is duplicitous. All documents responsive to the following requests have been previously produced in the *Antons* case. To avoid unnecessary expense, copies of the actual documents produced in the *Antons* case are not included herewith however, reference to Bates numbers is provided.

REQUESTS FOR PRODUCTION

REQUEST FOR PRODUCTION NO. 21: Provide a copy of each policy of liability insurance intended to provide coverage to the Defendant, its agents and/or employees for liability on the date in question for allegations such as those delineated in Plaintiff Original Complaint (and all amended complaints thereafter) including, but not limited to, all primary and excess policies covering the Defendant on the date in question, indicating the name and address of each carrier.

RESPONSE:

Objection. This Request is vague, ambiguous, overly broad, unduly burdensome and seeks information which is neither relevant nor likely to lead to the discovery of admissible evidence. Subject to these objections, Defendant produces a document titled "Lloyd's Policy," dated September 18, 1941, attached hereto which Defendant purchased during the time plaintiff was employed by Defendant. Defendant has not located any insurance policy dated prior to September 18, 1941. The policy is a comprehensive general insurance policy intended to provide coverage for any and all matters which Defendant might be held liable, as is evidenced by the written document.

REQUEST FOR PRODUCTION NO. 24: Provide a copy of all photographs, diagrams, videotapes, slides and/or movie film of the railroad, railway car(s) and/or engine(s) and/or locomotives) owned or operated by Defendant including, but specifically not limited to the engine room, boiler room, common areas, living quarters, railroads, roundhouses.

RESPONSE:

Objection. This Request is overly broad, unduly burdensome and seeks information which is neither relevant nor likely to lead to the discovery of admissible evidence. Further, it is not limited to the time period in which Plaintiff was allegedly employed by Defendant nor limited to the jobsites and/or facilities on which Plaintiff was allegedly employed by Defendant. No documents responsive to this Request have been found for Plaintiff's alleged work site. Upon request and at a reasonable time, Defendant will make the Union Pacific Railroad museum in Omaha, Nebraska available to counsel for plaintiffs for inspection for any existing photographs of the plaintiff's alleged work site.

REQUEST FOR PRODUCTION NO. 30: Provide a copy of all reports, investigations, transcripts, memoranda, correspondence and/or documents of any type you received from, or sent to any city, county, state, or federal entity, including but not limited to the EPA, NIOSH, NIOSH or OSHA regarding either the potential health hazards or dangers associated with exposure to asbestos-containing products and/or machinery requiring the use of asbestos or asbestos-containing products and/or materials or airborne asbestos,

or regarding any surveys, testing or other actions taken to determine the presence of and concentration of airborne asbestos on such of Defendant's railroads, railway car(s) and/or engine(s) and/or locomotives upon which and in the vicinity of which Plaintiff worked.

RESPONSE:

Objection. This Request is vague, ambiguous, overly broad, unduly burdensome and seeks information which is neither relevant nor likely to lead to the discovery of admissible evidence. Further, it is not limited to the time period in which Plaintiff was allegedly employed by Defendant. Moreover, this Request seeks documents, if any exist, which are protected by the attorney-client privilege and the work product doctrine. Subject to but without waiver of these objections, Defendant has located no documents responsive to this Request for the years of plaintiff's alleged employment.

REQUEST FOR PRODUCTION NO. 31: Provide a copy of all safety inspection or site inspection records referencing in any way asbestos or asbestos-containing products, friction products and/or machinery requiring the use of asbestos or asbestos-containing products and/or materials placed on or used on such of Defendant's railroads, railway car(s) and/or engine(s) upon which and in the vicinity of which Plaintiff worked.

RESPONSE:

Objection. This Request is vague, ambiguous, overly broad, unduly burdensome and seeks information which is neither relevant nor likely to lead to the discovery of admissible evidence. It is not limited to the time period in which Plaintiff was allegedly employed by Defendant. Subject to but without waiver of these objections, Defendant has located no documents responsive to this Request for the years of plaintiff's alleged employment.

REQUEST FOR PRODUCTION NO. 32: Provide a copy of all Defendant's safety inspection policies and procedures in effect during the time Plaintiff was employed by Defendant regarding the handling of, application, use or exposure to asbestos-containing products, friction products and/or machinery requiring the use of asbestos or asbestos-containing products and/or materials on board the Defendant's railway car(s) and/or engine(s) and/or locomotives.

RESPONSE:

Objection. This Request is vague, ambiguous, overly broad, unduly burdensome and seeks information which is neither relevant nor likely to lead to the discovery of admissible evidence. It is not limited to the time period in which Plaintiff was allegedly employed by Defendant. Subject to but without waiver of these objections, Defendant has located no documents responsive to this Request for the years of plaintiff's alleged employment to date. Investigation is continuing and supplement will be made consistent with Texas Rules of Civil Procedure.

REQUEST FOR PRODUCTION NO. 33: Provide a copy of any and all photographs or video recordings, sketches, drawings, or pictures in Defendant's custody or control or that of your attorney, or of any agent or representative of you or your attorney, whether made as part of the reports of experts or made by you, your attorney, or persons acting as your agents or representatives, and pertaining to any of Defendant's railroad, railway car(s) and/or engine(s), and/or locomotives, engine rooms, boiler rooms, railyards, roundhouses, shops and/or common areas, concerning any asbestos-containing products, friction products and/or machinery requiring the use of asbestos or asbestos-containing products and/or materials contained within those areas. Request is hereby made for one print of each photograph or video recording produced in response to this request.

RESPONSE:

Objection. This Request is overly broad, unduly burdensome and seeks information which is neither relevant nor likely to lead to the discovery of admissible evidence. It is not limited to the time period in which Plaintiff was allegedly employed by Defendant nor limited to the job sites and/or facilities on which Plaintiff was allegedly employed by Defendant. Moreover, this Request seeks documents, if any exist, which are protected by the attorney-client privilege and the work product doctrine. No documents responsive to this Request have been found for Plaintiff's alleged work site. Upon request and at a reasonable time, Defendant will make the Union Pacific Railroad museum in Omaha, Nebraska available to counsel for plaintiffs for inspection for any existing photographs of the plaintiff's alleged work site.

REQUEST FOR PRODUCTION NO. 37: Any models, visual aids, experiments, documents or other writings or any items of demonstrative evidence prepared or preserved by you, your attorney, your experts, or any other person acting on your behalf that will or may be used in the trial of this lawsuit.

RESPONSE:

Objection. This Request is vague, ambiguous, overly broad, unduly burdensome and seeks information which is neither relevant nor likely to lead to the discovery of admissible evidence. Moreover, this Request seeks documents, if any exist, which are protected by the attorney-client privilege and the work product doctrine. Defendant will produce such items consistent with the Texas Rules of Civil Procedure and any outstanding scheduling orders issued by the court.

REQUEST FOR PRODUCTION NO. 38: Please provide curriculum vitae for all expert witnesses that Defendant intends to consult or call as witnesses at the trial of this case.

RESPONSE:

Objection. This request is vague, ambiguous and impossible for Defendant to answer as to Defendant's intent. Defendant has provided the most recent CV's available in recent litigation with the law firm of Baron & Budd in the *Allred* case. Defendant will make those same documents available for inspection and copying at a reasonable time at the offices of counsel for Defendant.

REQUEST FOR PRODUCTION NO. 39: Copies of all depositions of any person previously employed by you specifically including, but not limited to Defendant or Defendant's employees, representatives, or agents, taken in connection with any alleged asbestos exposure aboard and/or in the vicinity of any of Defendant's railroad, railway car(s) and/or engine(s) and/or locomotives.

RESPONSE:

Objection. This Request is vague, ambiguous, overly broad, unduly burdensome and seeks information which is neither relevant nor likely to lead to the discovery of admissible evidence. To be supplemented under separate cover.

REQUEST FOR PRODUCTION NO. 44: Provide copies of any and all documentation evidencing Defendant's compliance with the Boiler Inspection Act, formerly U.S.C. §20701, during the last thirty-five (35) years.

RESPONSE:

Objection. This Request is vague, ambiguous, overly broad, unduly burdensome and seeks information which is neither relevant nor likely to lead to the discovery of admissible evidence. Additionally, this request demands documents outside the time period during which plaintiff was allegedly employed by Defendant. Subject to but without waiver of these objections, Defendant has located no documents responsive to this Request for the years of plaintiff's alleged employment. In compliance with agreement with counsel for plaintiff and court order, Defendant is producing an example of the earliest maintenance log available that has been located in response to this Request under separate cover. Due to the records retention policy of Defendant, no records earlier than those produced herein have been located. These documents are indicative of the past and present maintenance records maintained by Defendant and its employees to ensure compliance with the BIA/LIA.

Respectfully submitted,

PHELPS DUNBAR

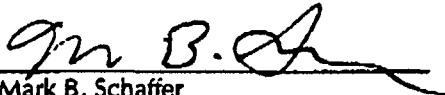
By 

Deborah Newman
Texas State Bar No. 01237257
Mark Schaffer
Texas State Bar No. 00792199
3040 Post Oak Boulevard
Suite 900
Houston, TX 77056
(713) 626-1386
(713) 626-1388 FAX

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

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing Defendant Missouri Pacific Railroad Company d/b/a Union Pacific Railroad Company's Third Supplemental Objections and Responses to Plaintiff's Requests for Production has been sent via First Class Mail to other parties of record on attached service list and via Certified Mail to Plaintiff's counsel of record, Baron & Budd, 3102 Oak Lawn Avenue, Suite 1100, Dallas, Texas 75219-4281, this 26 day of Feb, 1998.


Mark B. Schaffer

2160 - 10720 13-6

J(A)

Form approved by Lloyd's
Underwriters' Fire and
Non-Marine Association.



Any person not an Underwriting
Member of Lloyd's exhibiting this
Policy, or any person exhibiting the
same if so authorized, will be liable
to be prosecuted against Lloyd's
Law.

100%

Printed in Lloyd's London, England.
10-11-41

No. 98754

26.75

No Policy or other Contract dated on or after 1st Jan. 1934, will be recognized by the Committee of Lloyd's or
maintain the same in the event of the Funds and/or Guarantee lodged by the Underwriters of the Policy or
Contract as security for their liabilities unless it bears at least the seal of Lloyd's Policy Signatures Office.

LLOYD'S POLICY

(Subscribed only by Underwriting Members of Lloyd's who have complied in all respects
requirements of the Insurance Companies Act of 1920 as to security and otherwise)



Underwriters UNION PACIFIC RAILROAD COMPANY, ET AL

of Omaha, Nebraska

(hereinafter called "the Assured"), have paid U.S.\$50000.00

Premium or Consideration to Us, who have heretofore subscribed our Names to insure against Loss or
damage by fire, explosion, theft, and other causes, and/or EMPLOYERS' LIABILITY
and/or PROPERTY DAMAGE, as set forth in the wording
attached hereto which is to be taken and read as part
of this policy

during the period commencing with the
and ending with the

18th of September 1941
18th of September 1943, both days inclusive at noon
Local Standard Time

If the Assured shall make any claim knowing the same to be false or fraudulent, or regards amount or otherwise, this Policy
shall become void, and all claim thereunder shall be forfeited.

NOW KNOW YE, that We the Underwriters, members of the Syndicate(s) whose definitive Number(s) in the Schedule hereto
are set out in the Table overleaf, hereby bind Ourselves, each for his own part and not one for another, our Heirs, Executors, and
Administrators, and in respect of his due proportion only, to pay or make good to the Assured or to the Assured's Executors,
Administrators, and Assigns, all such Loss and/or Damage as aforesaid as may happen to the subject matter of this Insurance, or any
part thereof during the continuance of this Policy; not attending the sum of One hundred per cent of amounts
as per wording attached

such payment to be made within Seven Days after such Loss and/or Damage is proved, and so that the due proportion for which each of
Us the Underwriters is liable shall be ascertained by reference to his proportion as ascertained according to the said Schedule of the
Amount, Percentage or Proportion of the total sum assured which is in the said Table set opposite the definitive Number of the
Syndicate of which each Underwriter is a member.

IN WITNESS whereof the Manager of Lloyd's Policy Signatures Office has subscribed his
Name on behalf of each of Us.

LLOYD'S POLICY SIGNING OFFICE

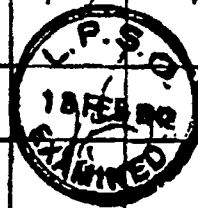
Dated in London, the 8th
Day of January
One Thousand Nine Hundred and Forty-two.

1-4-42
141

RECEIVED TIME FEB. 26. 5:07PM

Percentage

Definitive Numbers of Syndicates and Amount, Percentage or Proportion of the Total Amount assured shared between the Members of these Syndicates.								
Amount, Percentage or Proportion.	Syndicate No.	Underwriters' Estimates.	Amount, Percentage or Proportion.	Syndicate No.	Underwriters' Estimates.	Amount, Percentage or Proportion.	Syndicate No.	Underwriters' Estimates.
17 ⁸ / ₁₀	90	T.P.	1.4	677	11/10/41			
10.2	507	TP	1.4	484	8/13/41			
6.8	130	19-9-41	1.4	867	T.P.			
8.5	993		1.4	490	8/5/41			
5.1	109	19-9-41	1.7	242	T.P.			
6.8	870	n/e	2	975	23/9/41			
3.6	515		.7	661	USA P-23/9/41			
3.6	515	22/9	1.3	556	1/10			
3	517		.7	259	1/10			
6.8	10	14	.7	752	TPF 1/15/41			
5.1	773	TP/0/25	.7	56	TP 1/10/41			
3.4	347		.7	896	4/1/10			
2.7	198	30/9/41	1.3	947	1/10/41			
.7	970	1/10/41						
.7	845	T.P.						
.3	971							
.3	846							



564

UPA 53

FORM J(A)

No. 96754

26.5-

LLOYD'S



LONDON

UNION PACIFIC RAILROAD COMPANY.
ET AL

100% ☒ U.S. \$30,000.00

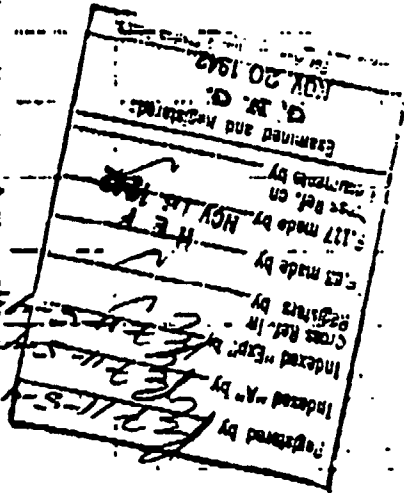
Policy and Stamp .25

30,000.25

Date of Expiry-- 18th September 1943
Noon - L.S.T.

The Assured is requested to read this Policy, and, if incorrect, return it immediately for alteration.

In the event of any occurrence likely to result in a claim under this Policy, immediate notice should be given to:—



RECEIVED TIME FEB. 26. 5:07PM

ENDORSEMENT.

Attaching to Policy No. 96754 of LLOYD'S UNDERWRITERS
issued to UNION PACIFIC RAILROAD.

MEMO:-

It is agreed that the words -

"Any and all expenses paid or incurred"

appearing on Line 13 of Condition A are cancelled and replaced by the following:-

"Subject to all limitation expressed in this policy any sums paid or expenses incurred"

All other terms and conditions to remain unchanged.

RH

SEDGWICK, COLLINS & CO., LIMITED.
7, Gracechurch Street.
F.S. LONDON, E.C. 3.

AUG 13 1942 Dated 15th June, 194 2.

ENDORSEMENT.

Attaching to Policy No. 96754 of LLOYD'S UNDERWRITE
ed to UNION PACIFIC RAILROAD COMPANY ET AL.

MEMO:- It is understood and agreed that the premium for this insurance
of \$30,000 is payable as follows:-

\$25,000 as at 18th September 1941.

\$5,000 as at 18th September 1943.

In view of a deposit premium of \$30,000 being shown as due at
inception, there is a return premium due of \$5,000 to reduce
this amount to \$25,000.

All other terms and conditions remain unchanged.

SEDGWICK, COLLINS & CO., LIMITED.

7, Gresham Street

P.S.

LONDON, E.C.4

Dated 20th February, 1942

U. P. R. R. CO
Agreement
Amended 5/30/33

UNDERWRITERS at Lloyd's London (hereinafter called "Underwriters") hereby agree with

1. Union Pacific Railroad Company
2. Oregon Short Line Railroad Company
3. Oregon-Washington Railroad & Navigation Company
4. Los Angeles & Salt Lake Railroad Company
5. The St. Joseph and Grand Island Railway Company
6. Des Moines Railroad Company
7. Laramie, North Park & Western Railroad Company
8. Saratoga & Encampment Valley Railroad Company
9. Teton Valley Transportation Company
10. Interstate Transit Lines
11. Interstate Transit Lines, Inc.
12. Union Pacific Stages, Incorporated
13. Union Pacific Stage Company
14. Utah Parks Company
15. Utah Parks Company of Arizona
16. Motor Coach Terminal, Inc.
17. The Union Pacific Coal Company
18. Washington Union Coal Company
19. Southern Wyoming Utilities Company
20. Union Pacific Water Company
21. The Kansas City Industrial Land Company
22. Las Vegas Land and Water Company
23. The Union Land Company
24. Overland Terminal Warehouse Company, and
25. Portland Terminal Investment Company

severally and jointly, hereinafter called the "Insured", and the first fifteen above named being sometimes hereinafter for convenience referred to as "Carrier Insured" and the remaining above named being sometimes hereinafter referred to as "Non-carrier Insured".

IN CONSIDERATION of the premium and subject to the agreements, conditions, limits and terms set forth herein, the Underwriters agree

1. (a) TO pay on behalf of the Carrier Insured all sums which the Carrier Insured shall become obligated to pay by reason of liability imposed upon it by law for damages or compensation, including damages or compensation for care and loss of service, because of bodily injury, sickness or disease, including death at any time resulting therefrom, sustained by any person or persons within the United States of America and for damages because of accidental injury to or destruction of property, including the loss of use thereof, within the United States of America by reason of occurrences or hazards named in paragraphs (1) and (2) of this subdivision (a); and to pay on behalf of the Non-carrier Insured all sums which the Non-carrier Insured shall become obligated to pay by reason of liability imposed upon it by law for damages or compensation, including damages or compensation for care and loss of services, because of bodily injury, sickness or disease, including death at any time resulting therefrom, sustained by any employee or employees of the Non-carrier Insured within the United States of America by reason of the occurrences or hazards named in paragraphs numbered (1) and (2) of this subdivision (a).

THE occurrences and hazards hereinabove referred to are

(1) OCCURRENCES or hazards on the premises of the insured hereinafter defined, or upon any sidewalk or other ways immediately adjacent to the same used by the insured's employees or the public, or elsewhere if occurring because of the act of any employee in the course of his employment by the insured in connection with the business of the insured conducted on said premises; and

(2) OCCURRENCES or hazards resulting from or incident to or arising in connection with the business operations of the insured as hereinafter defined.

IT IS EXPRESSLY AGREED that the Underwriters hereon shall be liable only for the excess of loss over \$25,000.00 ultimate net loss in respect of any one person and \$50,000.00 ultimate net loss in respect of any one occurrence or accident as regards bodily injury, sickness or disease, including death at any time resulting therefrom; and over \$25,000.00 ultimate net loss in respect of any claim or series of claims arising out of one accident as regards damage to property (said named amount in excess of which coverage is afforded by this policy; being hereafter referred to as the "retention of the insured"); and then only up to \$250,000 of excess in respect of each and every occurrence or accident. It is understood, however, that there is no limit to the number of occurrences or accidents for which claims may be made hereunder provided such occurrences or accidents occur during the currency of this policy.

(b) WHERE the loss is likely to exceed the retention of the insured, to investigate occurrences and accidents involving bodily injury, sickness, disease, death or injury to or destruction of property, to negotiate settlement of all claims made as may be deemed expedient by the Underwriters and to defend in the name and on behalf of the insured suits for damages, even if groundless, brought on account of such bodily injuries, sickness, disease, death or injury to or destruction of property unless or until the Underwriters shall elect to effect settlement thereof; and

(c) WHEN the loss exceeds the retention of the insured, to pay in proportion to the Underwriters' proportion of the loss (1) all costs taxed against the insured in any legal proceeding defended by the Underwriters according to the foregoing paragraph (b) and interest accruing on verdict or after judgment up to the date of payment or tender to judgment creditor, or his attorney of record, by the Underwriters, (2) all premium charges on attachment or appeal bonds required in such legal proceedings, and (3) all expenses incurred by the Underwriters for investigation, negotiation and defense.

2. DEFINITIONS.

PREMISES. The premises of the non-carrier insured within the coverage of this policy, and the premises of the Carrier Insured within the coverage of this policy in so far as such coverage in the latter case pertains to liability because of bodily injury, sickness or disease, including death at any time resulting therefrom, sustained by any employee or employees of the Carrier Insured, are all the premises at any time during the life of this policy owned, leased or occupied by the Non-carrier Insured or the Carrier Insured, as the case may be, or in any degree in the possession, care, conduct or control of the Non-carrier Insured or the Carrier Insured, as the case may be, with the exception of any elevators, escalators and hoisting devices designed for the purpose of lifting or lowering passengers or freight from one floor level to another. The

premises of the Carrier Insured within the coverage of this policy in so far as such coverage pertains to all other liability of the Carrier Insured covered by this policy are all the premises at any time during the life of this policy owned, leased or occupied by the Carrier Insured or in any degree in the possession, care, conduct or control of the Carrier Insured as follows:

(a) RAILROAD and railway roadbed and all buildings and structures thereon or immediately adjacent thereto directly connected with, and exclusively used for, the movement of train cars, locomotives and motor cars and the construction and maintenance of tracks and roadway, industrial districts, railroad and railway yards, railroad and railway shops and facilities, and railway passenger and freight stations but not including the Union Passenger Station at Omaha, Nebraska, the hotel portion of any station, hotels, club houses and recreational centers, wire houses and other storage buildings on the right of way of the Carrier Insured and not including any restaurants or dispensaries of the Carrier Insured serving foods and beverages and located on the right of way of the Carrier Insured or elsewhere, and not including any elevators, escalators, hoists, man lifts, and lifts or hoisting devices of whatever kind or nature located in or on premises owned, leased or occupied by or in any degree in the possession, care, custody or control of the Carrier Insured.

(b) BUS garages, except the bus garage of the Insured at Twenty-second and Leavenworth Streets, Omaha, Nebraska.

3. EMPLOYMENT OPERATIONS. The operations of the non-carrier Insured within the coverage of this policy, and the operations of the Carrier Insured within the coverage of this policy in so far as such coverage in the latter case pertains to liability because of bodily injury, sickness or disease, including death at any time resulting therefrom, sustained by any employee or employees of the Carrier Insured, shall be all operations anywhere conducted by the non-carrier Insured or the Carrier Insured, as the case may be, within the United States of America at any time during the life of this policy, including work undertaken by independent contractors, and all operations permitted by the non-carrier Insured or the Carrier Insured, as the case may be, on the premises in this policy defined. The operations of the Carrier Insured within the coverage of this policy in so far as such coverage pertains to all other liability of the Carrier Insured covered by this policy shall be all operations anywhere conducted by the Carrier Insured within the United States of America at any time during the life of this policy, including work undertaken by independent contractors, and all operations permitted by the Carrier Insured on the premises in this policy defined in relation to coverage pertaining to such other liability, as follows:

(a) All operations involving or connected with the existence, handling or movement of trains, cars, locomotives, motor cars, hand cars and other equipment operated on the Carrier Insured wherever the same may be operated, including the construction or repair thereof, but not including the operation of work trains in connection with work undertaken by independent contractors and not including the loading, unloading, handling and use of butane gas on any premises hereinabove defined under the caption EXCLUSIONS; this exclusion not to apply, however, to the handling and use of butane gas on trains, cars, locomotives, motor cars, motor coaches, or trucks or other equipment, either as fuel or as lading.

(b) RAILROAD maintenance and construction operations, including grade separation work.

(a) OPERATIONS involving or connected with the maintenance, handling or movement of motor coaches and trucks carrying, or incidental to the carrying of, passengers and/or freight for hire, not including, however, the operation of equipment and vehicles used and operated in or incidental to or in connection with the conduct and operation of the Sun Valley recreational resort of the Carrier Insured in the State of Idaho, other than the operation of motor coaches or other automotive equipment when used in the transportation of passengers destined to Sun Valley between a station on lines operated by Union Pacific Railroad Company and Sun Valley or in the transportation of passengers departing from Sun Valley between that place and a station on the lines operated by said Railroad Company.

4. EXCLUSIONS. This policy does not cover:

(1) the liability of the Insured arising out of accidents caused by the ownership, operation or maintenance by the Insured of any aircraft or vessels;

(2) injury to and destruction of property owned, leased, occupied or used by or in the custody of the Insured; provided, however, that this policy covers any equity or beneficial interest of others in real property owned by the Insured but sold to such others under time sales contracts;

(3) bodily injury to or death of any employee of the Insured under any Workmen's Compensation Act.

5. ULTIMATE NET LOSS. The term "ultimate net loss" shall be understood to mean the sum actually paid by the Insured in settlement of losses or liability after making deductions for all recoveries, salvages and all claims or other insurance, whether recovered or not, and shall not include such expenses as may be incurred and paid by the Insured in investigation, adjusting and litigation.

6. "INSURED", "CARRIER-INSURED" and "NON-CARRIER-INSURED". The words "Insured", "Carrier Insured" and "Non-carrier Insured" shall include as well as the Insured named in this policy any executive officer or director thereof with respect to occurrence or accidents covered by this policy caused while acting within the scope of his duties as such.

7. REPRESENTATIVES OF UNDERWRITERS. For the purpose of all provisions of this policy it is hereby specified and agreed that representatives of the Underwriters are and shall be WILLIAM A. ADJUSTING COMPANY, No. 621 South Hope Street, Los Angeles, California, and No. 100 Sansome Street, San Francisco, California.

WHenever consent of Underwriters is referred to herein after in this policy it shall be deemed sufficient to obtain such consent in writing, by letter or telegram, from the representatives of the Underwriters as specified above.

8. CONDITIONS. In the event of an occurrence or accident causing any claim or group of claims likely to exceed the retention of the Insured, it is the intent of this policy that the Insured shall act in all ways as if uninsured and, except as in this endorsement otherwise provided, the General Claim Agent of the Union Pacific Railroad Company, for said Railroad Company and all others coming within the designation "Insured" herein, assume liability, investigate, handle and settle all claims, including law suits and all other proceedings, arrange

for legal representation wherever necessary in connection with such claims, law suits or other proceedings and for the defense of such law suits or other proceedings and may incur expenses in connection therewith. Any and all expenses paid or incurred by said General Claim Agent for such purposes shall be repaid or paid, as the case may be, by the Underwriters including all costs, interest, premium charges and expenses which would have been paid under Section 1 of this policy if the legal proceedings had been defended by the Underwriters; PROVIDED, however, that the amount so to be paid or repaid in any case by the Underwriters shall be only in the proportion that their share of the loss as finally settled bears to the total loss payable. Notice to the Insured shall be considered as notice to the Underwriters. The Representatives of the Underwriters and the Insured will co-operate in every way in the settlement, adjustment and litigation of all such claims or losses in which the interests of the Underwriters are or may be involved.

The above under this sub-heading "Conditions" is subject to the following qualifications and to such further qualifications as to the representatives of the Underwriters may seem reasonable and which may be specified in writing by them and which qualifications shall be as binding on the Underwriters as though incorporated herein and Underwriters hereby authorize their representatives to issue any and all such qualifications:

(a) UPON settlement of any claim said General Claim Agent shall promptly advise in writing the representatives of the Underwriters.

(b) IN the event of a loss arising to which the Underwriters herein may be liable to contribute the said General Claim Agent shall as soon as practicable give written notice of the occurrence or accident to the representatives of the Underwriters and in the case of very severe accidents or catastrophes shall immediately after ascertainment of the salient facts give notice by telegram to such representatives. The Insured shall furnish all reports requested by representatives of the Underwriters pertaining to any of said occurrences or accidents and shall also furnish such representative copies of summons, complaints, answers and other pleadings in the event of litigation involving a loss to which the Underwriters may be liable to contribute.

(c) IN the event of a loss arising to which the Underwriters herein may be liable to contribute and legal action be commenced by a claimant or claimants no legal costs arising from such litigation shall be incurred on behalf of the Underwriters without their representatives' consent being first obtained but such consent shall be given promptly by letter or telegram to the General Claim Agent or Union Pacific Railroad Company, or, if withheld, advice shall promptly be similarly communicated to said General Claim Agent as to the maximum settlement which he is authorized by said representatives to make.

(d) IN the event that the Insured elects not to appeal against a judgment in excess of the retention of the Insured, the Underwriters may elect to conduct such appeal at their own cost and expense and shall be liable for the taxable cost and interest incidental thereto but in no event shall the total liability of the Underwriters for loss exceed their maximum liability for loss heretofore specified.

- B. ASSAULT AND BATTERY. Assault and battery shall be deemed an accident unless committed by or at the direction of an officer of the Insured, provided, however, that special agent or special police officers of the Insured shall not be considered officers of the Insured within the meaning of this provision.
- C. BANKRUPTCY. It is expressly agreed that in the event of bankruptcy or insolvency of the Insured the Underwriters are not be relieved of the payment of such indemnity as would have been payable but for such bankruptcy or insolvency.
- D. OTHER INSURANCE. If the Insured carries a policy of another insurer or reinsurer in excess of the same limits covering concurrently a claim covered by this policy, the Insured shall not recover from the Underwriters a larger proportion of such claim than the sum hereby insured bears to the total sum of such valid and collectible concurrent insurance or reinsurance.
- E. SELECTION OF COURT OF SUIT (U.S.A.). It is agreed that the event of the failure of Underwriters' action to pay any claim claimed to be due hereunder, Underwriters' herein at the request of the Insured will submit to the jurisdiction of any court of competent jurisdiction within the United States and will comply with all requirements necessary to give such court jurisdiction and service of process in such suit may be made upon Surplus Line Adjusting Company, No. 621 South Hope Street, Los Angeles, California, or No. 100 Sansome Street, San Francisco, California, and that in any suit instituted against any one of them upon this Policy, Underwriters will abide by the final decision of such court or any appellate Court in the event of an appeal.

Surplus Line Adjusting Company, No. 621 South Hope Street, Los Angeles, California, or No. 100 Sansome Street, San Francisco, California, is authorized and directed to accept service of process on behalf of Underwriters in any such suit and/or upon the Insured's request to give a written undertaking to the Insured that it will enter a general appearance upon Underwriters' behalf in the event such a suit shall be instituted.

Attached to and forming part of this Policy No. 96754.

CANCELLATION CLAUSE.

This Policy shall be cancelled at any time, at the request of the Assured, or by the Underwriters by giving thirty days notice of such cancellation.

If this Policy shall be cancelled as hereinbefore provided, or become void or cease, the premium having been actually paid, the unearned portion shall be returned on surrender of this Policy, the Underwriters retaining the customary short rate, except when this Policy is cancelled by the Underwriters giving notice they shall retain only pro rata premium.

RECEIVED TIME FEB. 26. 5:07PM

NO. 95-04-2062-C

RALPH ANTHONY NICKERSON et al.,

Plaintiffs,

vs.

MISSOURI PACIFIC RAILROAD
COMPANY, et al.

Defendants

§
§
§
§
§
§
§
§
§

IN THE DISTRICT COURT OF

CAMERON COUNTY, TEXAS

197TH JUDICIAL DISTRICT

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

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

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

General Objections

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

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

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

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

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

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

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

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

INTERROGATORIES

INTERROGATORY NO. 33: Please state whether written warnings were placed at any locations adjacent to or near asbestos in place on railroads, railway car(s) and/or engine(s) and/or locomotives owned or operated by Defendant at anytime from 1965 to the present. If so, please describe with specificity such signs, including size, color, wording, etc. Additionally, please state the number of such signs that were installed and indicate the specific location of each such sign and the dates such sign was at that location.

ANSWER: Objection. This Interrogatory is overly broad, unduly burdensome and seeks information which is neither relevant nor likely to lead to the discovery of admissible evidence because it asks for information outside of the time frame during which plaintiff claims employment with Defendant. Subject to but without waiver of these objections, Defendant has located no information or documents responsive to this Interrogatory for the years Plaintiff was employed by Defendant.

INTERROGATORY NO. 37: Please state whether Defendant ever agreed by contract, agreement, negotiation, collective bargaining or otherwise, to provide masks to Plaintiff and other crew members and/or employees of Defendant working with or around asbestos dust, asbestos products, friction products and/or machinery calling for the use of asbestos or asbestos containing products. If so, please state verbatim the specific agreement or contract and/or other document by which Defendant agreed to provide such masks. Include the date the agreement was entered into, the period of time covered by the agreement and the parties to the agreement.

ANSWER: Objection. This Interrogatory is overly broad, unduly burdensome and seeks information which is neither relevant nor likely to lead to the discovery of admissible evidence because it is not limited to the time period in which Plaintiff was allegedly employed by Defendant nor limited to the job site or facilities on which Plaintiff was allegedly employed by Defendant. Subject to and without waiver of the foregoing objections, Defendant has not located any information which would indicate that Defendant entered into such an agreement during the years of Plaintiff's employment with Defendant or at any time in the 1940s.

INTERROGATORY NO. 38: Please state the precise State and/or Federal regulations, laws, statutes, or other authority pertaining to industrial hygiene or worker safety and health that governed, regulated controlled and/or were applicable to airborne asbestos exposure in your operations and/or aboard your railroad, railway car(s) and/or engine(s) and/or locomotives during the past thirty years.

ANSWER: Objection. This Interrogatory is overly broad, unduly burdensome and seeks information which is neither relevant nor likely to lead to the discovery of admissible evidence because it

is not limited to the time period during which Plaintiff was allegedly employed by Defendant. Further, the information requested is public record and equally available to Plaintiff and Defendant. Defendant states that it is and has been subject to various laws governing and regulating the railroad industry enacted and implemented by the United States government for many years, including the time period during which Plaintiff was allegedly employed by Defendant.

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

ANSWER: Objection. This Interrogatory is overly broad, unduly burdensome and seeks information which is neither relevant nor likely to lead to the discovery of admissible evidence because it is not limited to the time period during which Plaintiff was allegedly employed by Defendant nor is it limited to the job site or facilities on which Plaintiff was allegedly employed by Defendant. Moreover, this Interrogatory seeks information, if any exists, which is protected by the attorney-client privilege and the work product doctrine. Finally, this Interrogatory requires Defendant to make a legal conclusion in order to respond. Subject to but without waiver of these objections, Defendant has located no documents responsive to this Interrogatory for the years of Plaintiff's employment by Defendant. Defendant produces sample maintenance records as an example of the records maintained by Defendant and its employees to ensure compliance with the BIA/LIA in response to Request for Production 44. Due to the records retention policy of Defendant, no records earlier than those produced therein have been located. Additionally, Defendant states that it is and has been subject to various laws governing and regulating the railroad industry enacted and implemented by the United States government for many years, including the time period during which Plaintiff was allegedly employed by Defendant. These laws and/or regulations have required regular maintenance be performed on locomotives and are a matter of public record of equal access to Plaintiff and Defendant.

Respectfully submitted,

PHELPS DUNBAR

By 

Deborah Newman

Texas State Bar No. 01237257

Mark Schaffer

Texas State Bar No. 00792199

3040 Post Oak Boulevard

Suite 900

Houston, TX 77056

(713) 626-1386

(713) 626-1388 FAX

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

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing Defendant Missouri Pacific Railroad Company d/b/a Union Pacific Railroad Company's Third Supplemental Objections and Responses to Plaintiff's Interrogatories has been sent via First Class Mail to other parties of record on attached service list and via Facsimile and Certified Mail to Plaintiff's counsel of record, Baron & Budd, 3102 Oak Lawn Avenue, Suite 1100, Dallas, Texas 75219-4281, this 26 day of February, 1998.


Mark B. Schaffer