



NO.95-11267-K

MERLYN W. ALLRED; MELVIN H.
LAMKEY; AND MARTIN LUKE
FRIERSON, JR.

Plaintiffs

VS.

OWENS-CORNING FIBERGLAS
CORPORATION

Defendants.

§
§
§
§
§
§
§
§
§

IN THE DISTRICT COURT OF

DALLAS COUNTY, TEXAS

192TH JUDICIAL DISTRICT

**DEFENDANT UNION PACIFIC RAILROAD COMPANY'S FIRST SUPPLEMENTAL
OBJECTIONS AND RESPONSES TO PLAINTIFF'S REQUEST FOR PRODUCTION**

TO: Mr. Martin Luke Frierson, 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 Missouri Pacific
Railroad Company d/b/a Union Pacific Railroad Company, Defendant herein, hereby submits its First
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 documents 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 Requests 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 documents that are 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 documents that are available to Plaintiff where the burden of deriving or ascertaining such information is substantially the same for Plaintiff as for Defendant.

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

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

7. 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. 1: Produce any and all documents, memoranda and/or other writings, including but not limited to books, pamphlets, or other written materials of any kind or character in your possession that would indicate that asbestos fibers, when inhaled, can be hazardous to the health of human beings.

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 because 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 and without waiver of the foregoing objections, please see attached Bates Nos. MPM 000052, MPM 000053, MPM 000072, MPM 000201 - 000204, MPM 001146 - 001197, MPM 001230 - 001427, MPM 001547, MPM 001636 - 001640, MPM 001781 - 001823, HO 000208 - HO 000383, HO 000820 - HO 001066, HO 001107 - HO 001130, HO 001199 - HO 001228, OM 013273 - OM 013274, OM 013275, OM 013276 - OM 013288, OM 013299 - OM 013318, OM 013361 - OM 013384, OM 013446 - OM 013449, OM 013463 - OM 013471, OM 013474 - OM 013475, OM 013967 - OM 013970, OM 014602, OM 014746 - OM 014748, OM 014750 - OM 014752, OM 014772 - OM 014773, OM 014815, OM 014957 - OM 014958, OM 015160 - OM 015162, OM 015164 - OM 015167, OM 015170, OM 015173, OM 015176, OM 015206, OM 015211, OM 015224 - OM 015246, OM 015275 - OM 015286, OM 015289, OM 014534 - OM 014537, HOP 000782 - HOP 000789, HOP 000836, HOP 000843, HOP 000848 - HOP 000862, HOP 000864 - HOP 000871, OM 002472 - OM 013269, OM 013270 - OM 013270A, OM 013315, OM 013316 - OM 013323, OM 013325 - OM 013326, OM 013327 - OM 013328, OM 013329 - OM 013332, and OM 013335 - OM 013336.

REQUEST FOR PRODUCTION NO. 2: Produce any and all documents, memoranda and/or other writings in your possession or organization that in any way related to the hazards of asbestos and/or airborne asbestos.

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 because 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 and without waiver of the foregoing objections, please see Response to Request for Production No. 1.

REQUEST FOR PRODUCTION NO. 3: Produce and all publications in your possession that were disseminated or published by any trade association or organization and that contain information relating to the hazards of asbestos and/or airborne asbestos.

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 because 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 and without waiver of the foregoing objection, please see Response to Request for Production No. 1, and Bates Nos. MPM 002517, HO 000384 - HO 000426, HO 001067 - HO 001077, HO 001229, OM 002147 - OM 002471, OM 013270 OM 013270A, OM 013316 - OM 013323, and OM 013333 - OM 013334.

REQUEST FOR PRODUCTION NO. 4: Produce any and all safety meeting minutes or other documents, memoranda and/or writings that refer to the dangers of asbestos and/or safety measures to be taken by crew members or workers or employees in the vicinity of asbestos-containing products and/or machinery requiring the use of asbestos or asbestos-containing products and/or materials on Defendant railroad, 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 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. Moreover, this Request seeks documents, if any exist, which are protected by the attorney-client privilege and the work product doctrine. Subject to and without waiver of the foregoing objections, please see Response to Request for Production No. 1 and Bates Nos. 3284, MPM 001198 - MPM 001214, MPM 001428 - MPM 001545, OM 000759 - OM 001099, OM 013337 - OM 013409, and OM 013430 - OM 013434.

REQUEST FOR PRODUCTION NO. 5: Produce any and all contracts, memoranda, and/or other writings that in any way reflect arrangements made for the removal of asbestos and/or the installation of asbestos-containing products, friction products and/or machinery requiring the use of asbestos or asbestos-containing products and/or materials on Defendant's railroad, 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 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. Moreover, this Request seeks documents, if any exist, which are protected by the attorney-client privilege and the work product doctrine. Subject to and without waiver of the foregoing objections, please see Bates Nos. HO 000427 - HO 000428, OM 001921 - OM 002146, MPM 000001 to 000051, MPM 000054 - 000071, MPM 000073 - 000168, MPM 000193 - 000200, MPM 000205 - 000562, MPM 000588 - 001145, MPM 001546 - 001635, MPM 001641 - 001780, MPM 001824 - 001913, MPM 001915 - 001978, MPM 001995 - 002083, MPM 002102 - 002310, MPM 002311 - 002381, MPM 002516 - 002623, MPM 002625 - 002830, MPM 002831 - 003283, MPM 003346 - 003408, HO 000733 - HO 000763, OM 015200, OM 015208 - OM 015209, OM 015269, OM 015290, OM 000001 - OM 000758, and MPM 003629 - MPM 004142.

REQUEST FOR PRODUCTION NO. 6: Produce any and all documents, memoranda, and/or other writings that in any way reflect a removal plan or organized written criteria or schedule for the removal of asbestos on Defendant railroads, railway car(s) and/or engine(s) and/or locomotives and/or roundhouses or shops upon which, in which and in the vicinity of which Plaintiff worked.

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 because 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 and without waiver of the foregoing objections, please see Response to Request for Production No. 5.

REQUEST FOR PRODUCTION NO. 7: Produce any and all documents, memoranda, and/or other writings that discuss or relate in any way to removal of asbestos from any Defendant railroads, railway car(s) and/or engine(s) and/or locomotive(s) and/or roundhouses or shops upon which, in which, or 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 and without waiver of the foregoing objections, please see Response to Request for Production No. 5.

REQUEST FOR PRODUCTION NO. 8: Please produce any and all documents related to the medical condition of Plaintiff at any time during his employment with Defendant. This request specifically includes any and all x-rays, x-ray reports, medical notes and/or medical records of any kind, including annual physical forms, etc.

RESPONSE:

None known.

REQUEST FOR PRODUCTION NO. 9: Produce any and all documents, memoranda and/or other writings that indicate and/or refer to in any way a decision related to ceasing the use of asbestos-containing products, friction products and/or machinery requiring the use of asbestos or asbestos-containing products and/or materials on 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 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. Moreover, this Request seeks documents, if any exist, which are protected by the attorney-client privilege and the work product doctrine. Subject to and without waiver of the foregoing objections, please see Response to Request for Production No. 5.

REQUEST FOR PRODUCTION NO. 10: Produce any and all specifications, blue prints, documents, memoranda and/or other writings that reflect and/or demonstrate in the form of a map and/or chart the location and dimensions of all car(s) and/or engine(s), locomotives, roundhouses and/or shops upon which and in the vicinity of which Plaintiff worked and specifically including, but not limited to, the location and/or placement, repair or installation of asbestos-containing products and/or materials at any time within the last thirty-five (35) years on those railroads, railway car(s) and/or engine(s) upon which and in the vicinity of which Plaintiff worked.

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 because 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 and without waiver of the foregoing objections, Defendant cannot answer this request because it has no knowledge of when and where Plaintiff worked for Defendant.

REQUEST FOR PRODUCTION NO. 11: Produce any photographs of asbestos products in place or asbestos products being fabricated and/or utilized on Defendant's railroads and/or engine(s) upon which and in the vicinity of which Plaintiff worked.

RESPONSE:

None known.

REQUEST FOR PRODUCTION NO. 12: Produce any photographs of warning signs or other statements in place at any time in the vicinity of asbestos-containing products, friction products and/or machinery requiring the use of asbestos or asbestos-containing products and/or materials and/or asbestos in place at any time during the last thirty-five (35) years on your 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 because 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 and without waiver of the foregoing objections, please see Bates Nos. HO 000429 - HO 000729, HO 001078 - HO 001106, OM 001116 - OM 001918, OM 013271 - OM 013314, OM 013324, OM 013335 - OM 013336, and OM 013410 - OM 013429.

REQUEST FOR PRODUCTION NO. 13: Produce any documents indicate in any way that individuals claimed injury to their lungs as a result of exposure to asbestos on any of Defendant's railroads, railway car(s) and/or engine(s) and/or locomotives.

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 because 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. Subject to and without waiver of the foregoing objections, please see attached Bates Nos. HO 000764 - HO 000819 and MPM 000169 - MPM 000192.

REQUEST FOR PRODUCTION NO. 14: Produce any minutes or other notes or records from any meetings at which the hazards and/or potential hazards of asbestos were discussed by officers, agents, and/or employees of Defendant.

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 because 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 and without waiver of the foregoing objections, please also see Response to Request for Production No. 1.

REQUEST FOR PRODUCTION NO. 15: Produce any and all documents, including invoices, shipping receipts, bills of lading, purchase orders, or other documents of a similar nature related to the purchase of asbestos-containing products for use on Defendants' 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 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. Subject to and without waiver of the foregoing objections, please see Response to Request for Production No. 5.

REQUEST FOR PRODUCTION NO. 16: Produce any and all records, documents, memoranda or other writings reflecting in any way any inspections by labor inspectors, insurance company inspectors or anyone from your company or hired by your company where asbestos-containing products were being used or

installed and that included the taking or measure of "dust counts." This request specifically includes any and all of your railroads and railway car(s) and/or engine(s) and/or locomotives and/or roundhouse(s) or shops upon which and in the vicinity of which Plaintiff worked where asbestos-containing products were used and/or in place at any time in the last thirty-five (35) years.

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 because 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 and without waiver of the foregoing objections, please see Bates Nos. MPM 001198 - MPM 001214, MPM 001428 - MPM 001545, OM 000759 - OM 001099, OM 013337 - OM 013409, and OM 013430 - OM 013434.

REQUEST FOR PRODUCTION NO. 17: In the event that Defendant performed or had performed any dust level counts with respect to asbestos dust on any of its railroads, railway car(s) and/or engine(s) upon which and in the vicinity of which Plaintiff worked, produce any documents, memoranda, or other writings that in any way reflect the results of such studies or counts and actions taken as a result of such counts or studies.

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 because. It is not limited to the time period in which Plaintiff was allegedly employed by Defendant. We are unaware of where and when Plaintiff was 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 and without waiver of the foregoing objections, please see Response to Request for Production No. 16.

REQUEST FOR PRODUCTION NO. 18: Please provide all documents referred to in answering Plaintiff's interrogatories propounded to the Defendant, identifying with specificity which documents were used to answer which interrogatories.

RESPONSE:

All documents produced herewith are deemed to be responsive.

REQUEST FOR PRODUCTION NO. 19: (1) Please provide a curriculum vitae for each and every expert witnesses or expert or expert that the Defendant has retained or employs and cannot unequivocally state will not be a witness on its behalf at trial; and (2) with respect to any and all expert witness(es) identified in subpart (1), please provide any and all documents or tangible things including, but not limited to, all tangible reports, drawings, charts, exhibits, physical models, compilations of data, factual observations, tests, calculations, photographs, diagrams, sketches, movies, videotapes and tape recordings, opinions, supporting data and other documents and/or things reviewed and/or relied upon by him or her in formulating his or her opinions and conclusions on this case, including all learned treatises (texts, articles, studies, monographs, etc.) and consultant expert work product which forms the basis, in whole or in part, of the witness(es)' opinions or which he or she believes substantiates or corroborates his or her conclusions regarding this lawsuit.

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 because. It is not limited to the time period in which Plaintiff was allegedly employed by Defendant. We are unaware of where and when Plaintiff was 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 and without waiver of the foregoing objections, please see Response to Request for Production No. 16. See previously provided curriculum vitae for: Dr. Frank Weir, Dr. Horton Hinshaw, Mr. Larry Liukonen, Dr. Elliot Hinkes, and Mr. Douglas Phillips. Bates Nos. CV000001-000048.

REQUEST FOR PRODUCTION NO. 20: As to all such potential legal entities who are not now a party to this lawsuit, but who may be responsible for the incident in question, please provide:

A. All documents tending to establish such liability; and,
B. A list of all tangible items or things that may be reviewed tending to establish such liability, along with their location and the identity of the person to contact to view such tangible things.

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. Finally, this Request seeks documents, if any exist, which are protected by the attorney-client privilege and the work product doctrine.

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.

REQUEST FOR PRODUCTION NO. 22: Provide a copy of all invoices, purchase orders, agreements, contracts, correspondences, telefaxes, telexes, and/or documents of any type passing between this Defendant and any other entity regarding the acquisition, ordering, purchasing, supplying, removal or distribution of asbestos-containing products by Defendant during the time period Plaintiff was employed by Defendant.

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. Subject to and without waiver of the foregoing objections, Defendant has no knowledge of when or where Plaintiff was employed by Defendant. Please see Response to Request for Production No. 5.

REQUEST FOR PRODUCTION NO. 23: Provide a copy of all documents from which your present net worth may be ascertained.

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.

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. Subject to and without waiving the foregoing objection, Defendant has no documents responsive to this Request for Plaintiff's employment period with the railroad.

REQUEST FOR PRODUCTION NO. 25: Provide a copy of all medical records obtained by the Defendant relating to the Plaintiff.

RESPONSE:

Objection. This Request seeks information that is available to Plaintiff where the burden of deriving or ascertaining such information is substantially the same for Plaintiff as for Defendant. Subject to and without waiver of the foregoing objections, Defendant will produce any documents in its possession pertaining to Plaintiff's medical condition under separate cover, if any.

REQUEST FOR PRODUCTION NO. 26: Provide a copy of all documents including but not limited to invoices, purchase orders, agreements and contracts created by Defendant as a result of the installation, repair, replacement, removal and applying of asbestos-containing products, friction products and/or machinery requiring the use of asbestos or asbestos-containing products and/or materials on the railroad, railway car(s) and/or engine(s) and/or locomotives owned or operated by Defendant on which and in the vicinity of which Plaintiff worked.

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 because it is not limited to the time period in which Plaintiff was allegedly employed by Defendant. Subject to and without waiver of the foregoing objections, please see Response to Request for Production No. 5.

REQUEST FOR PRODUCTION NO. 27: Provide a copy of all documents regarding safety, safety training and/or safety meetings provided to or for the benefit of Plaintiff and others working on the car(s) and/or engine(s) on which Plaintiff worked relating to asbestos or asbestos-containing products, friction products and/or machinery requiring the use of asbestos or asbestos-containing products, friction products and/or materials on the railroad, railway car(s) and/or engine(s) and/or locomotives. Include any documents given out at such safety meetings and copies of the minutes of all safety meetings held for the benefit of the employees or crew members that worked on the railroad, railway car(s) and/or engine(s) and/or locomotives in question.

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. Further, Defendant has no knowledge of when and where Plaintiff was employed by Defendant. Moreover, this Request seeks documents, if any exist, which are protected by the attorney-client privilege and the work product doctrine.

REQUEST FOR PRODUCTION NO. 28: Provide a copy of all Defendant's safety and policy manuals regarding the use of or exposure to asbestos-containing products, friction products and/or machinery requiring the use of asbestos or asbestos-containing products, friction products and/or materials from 1965 to the present.

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 in time. Further, Defendant has no knowledge of when and where Plaintiff was employed by Defendant.

REQUEST FOR PRODUCTION NO. 29: Provide a copy of all personnel files maintained by Defendant or any agent of Defendant concerning the Plaintiff including but not limited to all earnings files, administrative files, and in particular any files concerning any physical examination conducted by the Defendant or for the benefit of the Defendant regarding Plaintiff either for hiring purposes, screening purposes or otherwise.

RESPONSE:

None.

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, NIESH 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 time. Moreover, this Request seeks documents, if any exist, which are protected by the attorney-client privilege and the work product doctrine. Further, Defendant has no knowledge of when and where Plaintiff was employed by Defendant.

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. Further, Defendant has no knowledge of when and where Plaintiff was employed by Defendant.

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. Further, Defendant has no knowledge of when and where Plaintiff was employed by Defendant.

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. Subject to and without waiving the foregoing objection, Defendant has no documents responsive to this Request for Plaintiff's employment period with the railroad.

REQUEST FOR PRODUCTION NO. 34: Produce a copy of any reports prepared by any person you plan to call as an expert witness at the time of trial which pertain to the incident made the basis of this suit, specifically including all factual observations and opinions of consulting experts, if such consulting expert's opinion forms the basis of any opinions, theories, or conclusions reached by any testifying experts, and any accompanying photographs, drawings, charts, models, video recordings or other visual aids to such reports. If any expert has not prepared a written report, or if the information mentioned above has not been compiled into report form, then request is hereby made that each expert make a written report containing all said information and that each report be produced for inspection and copying.

RESPONSE:

Defendant will forward reports prepared by any persons that Defendant plans to use an expert witness when, and if, said reports are prepared.

REQUEST FOR PRODUCTION NO. 35: Any and all documents prepared by, delivered to, or in the possession of any person you plan to call as an expert witness at the time of the trial, or who won't be called as a witness but whose work product forms a basis in whole or in part of an expert who will be called to testify, which related to any fact or matter that is the subject of or related to the subject of this suit.

RESPONSE:

There are no documents at this time responsive to this request.

REQUEST FOR PRODUCTION NO. 36: All witness statements or other documents generated or obtained in any investigations into the asbestos exposure made the basis of this lawsuit whether signed or unsigned. If you contend any such document is privileged, please identify specifically each document withheld, along with the specific privilege asserted.

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.

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.

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:

See Objection & Response to Request for Production No. 19.

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.

REQUEST FOR PRODUCTION NO. 40: Provide a copy of each and every document (including all reports, memos, photographs, statements and any material collected or acquired of any investigation, and all

correspondence between yourself and your insurer, and any reports, notes or any other documents regarding testing, examinations, inspections, or opinions related in any way to asbestos or any other communication from any individual or entity to yourself, your insurer or any agent or representative of yourself or your insurer concerning this incident or any injuries or disabilities allegedly resulting therefrom) in your possession or control, or that of your insurer, health insurer, disability insurer, liability insurer, or other insurer, relating to your claim or the investigation of this incident by yourself, your insurer, or any individual or entity engaged for such a purpose.

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.

REQUEST FOR PRODUCTION NO. 41: Provide a copy of all accident, injury or illness reports concerning the Plaintiff prepared by and/or for Plaintiff's employer(s) and/or agents in the general course of business.

RESPONSE:

Objection. No documents are known to exist in response to this request. Subject to and without waiving the foregoing objections, Defendant will supplement this production request when such documents are located, if any such documents exist.

REQUEST FOR PRODUCTION NO. 42: Provide copies of any and all safety standards, regulations, rules or codes pertaining in any way to asbestos or inhalation of toxic fumes or substances, whether promulgated by government or private industry, or Plaintiff's employer from 1965 to the present.

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 during which Plaintiff was allegedly employed by Defendant.

REQUEST FOR PRODUCTION NO. 43: Provide a copy of any and all contracts and/or agreements of any kind (if oral, reduce the agreement to writing) made by Defendant to supply masks and/or other safety equipment to the Plaintiff or any other employees or crew members.

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.

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 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. Moreover, this Request requires Defendant to make a legal conclusion in order to respond to it. Finally, this Request seeks documents, if any exist, which are protected by the attorney-client privilege and the work product doctrine.

Respectfully submitted,

PHELPS DUNBAR

By Deborah A. Newman
Deborah A. Newman
Texas State Bar No. 01237257
3040 Post Oak Blvd., Suite 900
Houston, Texas 77056
Telephone: (713) 626-1386
Facsimile: (713) 626-1388

Attorney for Defendant 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's First Supplemental Objections and Responses to Plaintiff's Request for Production has been sent via federal express to Kimberly Schauck, Baron & Budd, 3102 Oak Lawn Avenue, Suite 1100, Dallas, Texas 75219-4281, this 25 day of August 1997. Copies to all other parties are being sent via United States mail on the 26 of August, 1997. 0

Deborah A. Newman
Deborah A. Newman