



No. B151305

MILTON ORION WEST, et al,
Plaintiffs,

V.

OWENS-CORNING FIBERGLAS
CORPORATION, et al,
Defendants.

§
§
§
§
§
§
§

IN THE DISTRICT COURT OF

JEFFERSON COUNTY, TEXAS

60TH JUDICIAL DISTRICT

**DEFENDANT UNION PACIFIC RAILROAD COMPANY'S SECOND SUPPLEMENTAL
OBJECTIONS AND RESPONSES TO PLAINTIFF'S INTERROGATORIES**

TO: Levia Moultrie, Plaintiff, by and through his attorneys of record, Kimberly Schauck, 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, Union Pacific Railroad Company as successor-in-interest to Texas & Pacific Railway (Improperly named as Missouri Pacific Railroad Company d/b/a Union Pacific Railroad Company, successor-in-interest to Texas & Pacific Railway) , Defendant herein, hereby submits its Second Supplemental Objections and Responses to Plaintiff's Interrogatories.

INTERROGATORIES

INTERROGATORY NO. 5: List each and every place of work and job assignment of the Plaintiff which he held during his employment with you and describe in detail the duties involved in each of the job assignments.

ANSWER: Objection. This Interrogatory 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 and without waiver of the foregoing objections, Subject to and without waiving the foregoing objection, see Plaintiff's Personnel file produced in Defendant's Objection. & Response to Request for Production No. 29.

INTERROGATORY NO. 6: Describe in detail your knowledge of the nature of other work performed in your railroad or railroad shops during the period of Plaintiff's employment, where insulation and asbestos-containing products were installed, removed or used by railroad workers working in the vicinity of the Plaintiff.

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

INTERROGATORY NO. 7: If you have alleged in your answer that someone else's conduct or some other condition or event was the "sole proximate cause" or was "contributing proximate cause" of the alleged injuries made the basis of this lawsuit, please describe in detail the identity of such other person, entity, corporation, event, or condition and identify all evidence upon which you base this contention.

ANSWER: Based on the information provided by Plaintiff, he was allegedly exposed to various asbestos products while employed by non-railroad employers, including co-defendants he is suing in this case.

INTERROGATORY NO. 8: If you have alleged in your answer that Plaintiff's injuries and/or damages were caused by some other injury, disease or condition, either pre-existing or unrelated to and arising after or in conjunction with the Plaintiff's exposure to asbestos-containing products, please describe in detail such pre-existing or subsequent disease, injury or condition. For each alleged other injury, disease or condition, identify all evidence upon which you base this contention.

ANSWER: Plaintiff Moultrie's extensive smoking history caused his alleged illness.

INTERROGATORY NO. 10: Identify the names and addresses of all individuals Defendant may call as an expert witness(es) at trial, and for each individual, please state:

A. The subject matter in which the witness is expected to testify, the substance of the facts and opinions to which the witness intends to testify on the Defendant's behalf and, a summary of the grounds for each opinion;

B. All factual observations, test results, supporting data, learned treatise (books, general articles, texts or other publications) and opinions which the witness has generated, been provided, intends to use, and/or may use to support his/her opinions and conclusions relative to the case whereupon which the witness has or will base his/her testimony in this matter. The identity and address of each consulting expert whose opinions or data have been referred to and/or relied upon by the expert witness, and the complete title and author of each learned treatise referred to and/or relied upon by the witness for information and/or corroborating his/her opinions regarding the subject matter of this lawsuit.

ANSWER:

1. Dr. Frank Weir, 8131 Wycomb Drive, Houston, Texas 77070, (281) 893-4003.

A. Dr. Weir is an industrial hygienist and toxicologist. He is expected to testify regarding whether Plaintiff's exposure to asbestos was in excess of acceptable levels in the railroad industry at the time of Plaintiff's employment. He is also expected to testify regarding the state of medical knowledge within the railroad industry and whether Defendant's efforts with regard to industrial hygiene were appropriate. A copy of Dr. Weir's curriculum vitae has been produced to Plaintiff. Pursuant to Plaintiff's request, a written report has been requested and will be produced to Plaintiff once it is complete and received by Defendant.

2. Larry Luikonen, CIH, CSP, Technical Health & Safety Consultant, Inc., 3605 W. Pioneer Pkwy, Suite D, Arlington, Texas 76013, (817) 483-4097.

A. Mr. Luikonen is a certified industrial hygienist and may testify as to issues of causation, Defendant's compliance with any state, federal or local regulations or guidelines relating to permissible levels of exposure to asbestos at the time of the alleged exposure in the subject case. Mr. Luikonen has not yet rendered his final opinion regarding the issues upon which he will testify in this case. However, Mr. Luikonen is expected to quantify the level of asbestos exposure, if any, that Plaintiff received while in the employ of Defendant. In addition, Mr. Luikonen is expected to quantify the level of exposure to asbestos that Plaintiff received while in the employ of other employers. Mr. Luikonen will then compare the level of exposure, if any, that Plaintiff received while working for defendant railroad with the level that Plaintiff received while working for other employers. Mr. Luikonen's curriculum vitae has been previously produced to Plaintiff. Pursuant to Plaintiff's request, a written report has been requested and will be produced to Plaintiff once it is complete and received by Defendant.

3. Horton Corwin Hinshaw, M.D. San Francisco, California

A. Dr. Hinshaw will be called to testify by video deposition In Re FELA as to the asbestos litigation, 1984, as to the state-of-the-art as reflected in his review of the medical literature and from his own personal experience. Plaintiff's counsel was in attendance at this deposition and had an opportunity to cross examine Dr. Hinshaw.

Dr. Hinshaw, is in sufficiently poor health that he is unavailable to testify at trial. Dr. Hinshaw's curriculum vitae has been produced to Plaintiff.

For the complete substance of Dr. Hinshaw's testimony, please see his video deposition. Defendant believes that Plaintiff is in possession of this deposition transcript through his attorneys. However, if Plaintiff is not in possession of this transcript, Defendant will produce it upon further request.

4. **Elliott Hinkes, M.D.**, 301 North Prairie, Suite 311, Englewood, California 90301, (301) 674-0050.

A. Dr. Hinkes is an oncologist who may testify as to issues pertaining to the cause of plaintiff's medical condition. Dr. Hinkes may also testify as to issues pertaining to the state-of-the-art of medical literature relating to the potential health hazards of asbestos at all relevant times and, in particular, as the state of the art pertains to railroad employees. Dr. Hinkes is expected to testify that the medical and scientific information available to the railroad industry from the 1930s through the early 1980s was not sufficient to place the railroad industry on notice that any railroad workers were at any increased risk for contracting asbestos related diseases. Additionally, Dr. Hinkes will render testimony regarding the statistical probabilities of contracting various asbestos related diseases and cancers based upon epidemiological studies. From this testimony, Dr. Hinkes will render his opinion regarding possible causes of Plaintiff's illness. Dr. Hinkes' curriculum vitae has been previously produced to Plaintiff. A written report has been requested and will be produced to Plaintiff once it is complete and received by Defendant.

5. **Douglas K. Phillips**, Phillips Consulting, 1934 Baker Trail, Houston, Texas 77094, (713) 579-9600.

A. Mr. Phillips, an economist, is expected to testify regarding the present value of Plaintiff's economic loss. In addition, Mr. Phillips is expected to testify about the differences between his opinions, impressions, and conclusions and those of Plaintiff's witness, the source or reason for the differences and the reason why Mr. Phillips' opinions and conclusions are more sound than those of Plaintiff's witness. In arriving at his opinions, Mr. Phillips will rely upon his experience, education, and background, part of which is reflected on his resume, as well as common sense. He will consider the Plaintiff's earning history, Plaintiff's income tax returns, Plaintiff's work-related expenses and income tax, and fringe benefits; Plaintiff's age, race, education, and date of injury and death. He will consider historical trends regarding wage growth and interest rates. His opinions will also include Plaintiff's potential wage earnings based on acceptable accounting principles. Mr. Phillips' curriculum vitae has been previously produced to Plaintiff.

B. Objection. This Interrogatory 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 and without waiver of the foregoing objection, the expert's opinions and basis of opinion will be included in their reports. If experts prepare reports, Defendant will produce them.

INTERROGATORY NO. 16: Has Defendant its agents and/or employees or any other entity at the direction of Defendant, including any of its predecessor or subsidiary companies, engaged in or contracted with another entity for the acquisition, ordering, purchasing, supplying or distributing of asbestos-containing products, friction products and/or machinery requiring the use of asbestos or asbestos-containing products any time prior to or during the time Plaintiff was employed by Defendant for use on or in such of Defendant's railroad(s) and/or railway car(s) and/or engine(s) upon which Plaintiff worked including but specifically not limited to: boilers, asbestos cement pipe, pipecovering, gaskets, flat and corrugated siding, millboard, cements and fillers, insulated paper, firebrick, insulating materials, spray on fireproofing compounds, clothing, thermal, electrical and acoustical insulating materials, flooring, motor casings, insulating tapes, wire, cable, brake shoes, brake linings, and clutch linings? If so, identify:

A. Each of Defendant's railway car(s) and/or engine(s) by name and number upon which Plaintiff worked for which the asbestos-containing products, friction products and/or machinery identified were ordered, purchased, supplied or distributed during the time Plaintiff was employed by Defendant;

B. The particular type of asbestos-containing products, friction products and/or machinery requiring the use of asbestos or asbestos-containing products acquired;

C. The trade or brand name of each of those asbestos-containing products, friction products and/or machinery requiring the use of asbestos or asbestos-containing products ordered, purchased, supplied or distributed;

D. The years such asbestos-containing products were acquired, ordered, purchased, supplied or distributed by Defendant;

E. The dates of any removal or abatement of such asbestos-containing products, friction products and/or machinery requiring the use of asbestos or asbestos-containing products from the railway car(s) and/or engine(s) and/or locomotives in question.

ANSWER: Objection. This Interrogatory is vague, ambiguous, overly broad and 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 objection, see Defendant's Objection and Response to Interrogatory No. 14.

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 does not reference any 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.

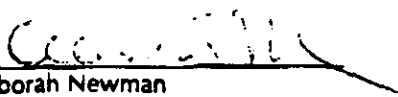
INTERROGATORY NO. 34: Does your company have, or has it ever had, or have your predecessor(s) or subsidiaries ever had, a Safety Department? If so, state:

- A. The year such Safety Department was established;
- B. Whether or not such Safety Department has operated continuously since being established;
- C. The name of each director, chief, or head of your Safety Department year by year, beginning with the first year you had a Safety Director or Safety Department, and the last known address and phone number of each;
- D. State the duties and responsibilities of such Safety Department.

ANSWER: Objection. This Interrogatory 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 but without waiver of the foregoing objections, all Railroad Departments are conscious of safety issues. The present General Director-Safety is Steve Kenyon. The General Director-Safety position is responsible for directing accident/injury prevention activities in the areas of industrial safety and health, public safety, and grade crossing safety to reduce accidents, injuries and occupational illness.

Respectfully submitted,

PHELPS DUNBAR

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

Attorney for Defendant Union Pacific Railroad Company

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing Defendant Union Pacific Railroad Company's Second Supplemental Objections and Responses to Plaintiff's Interrogatories have been sent via facsimile to Kimberly Schauck, Baron & Budd, 3102 Oak Lawn Avenue, Suite 1100, Dallas, Texas 75219-4281, this 27 day of August, 1997 and to all other parties of record on the attached service list via first class mail, this 28 day of August, 1997.

