

NO. 95-11267-K

MILTON ORION WEST, ET AL..	§	IN THE DISTRICT COURTS OF
	§	
Plaintiffs,	§	
	§	
VS.	§	JEFFERSON COUNTY, TEXAS
	§	
OWENS-CORNING FIBERGLAS	§	
CORPORATION, ET AL	§	
Defendants.	§	60TH JUDICIAL DISTRICT

DEFENDANT UNION PACIFIC RAILROAD COMPANY'S
FIRST AMENENDED OBJECTIONS AND RESPONSES TO
PLAINTIFF'S REQUEST FOR ADMISSIONS

TO: Plaintiff Levia Moultrie, 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 167 of the Texas Rules of Civil Procedure, Union Pacific Railroad Company, successor- in- interest to Texas & Pacific Railway (Improperly named as Missouri Pacific Railroad Co. d/b/a Union Pacific Railroad Co., successor-in-interest to Texas & Pacific Railway), Defendant herein, hereby submits its Objections and Responses to Plaintiff's Request for Admissions.

REQUESTS FOR ADMISSIONS

REQUEST FOR ADMISSION NO. 1: Admit or deny that asbestos-containing products were in general use aboard Defendant's railway cars, engines and/or locomotives during the time period Plaintiff was employed by Defendant.

RESPONSE: Objection. Defendant objects to the term "general use" in this Request. Further, this Request is vague, ambiguous, overly broad, unlimited in scope and seeks information which is neither relevant nor likely to lead to the discovery of admissible evidence.

REQUEST FOR ADMISSION NO. 2: Admit or deny that Defendant ordered, purchased or otherwise acquired asbestos-containing products, asbestos-containing friction products, machinery requiring the use of asbestos or asbestos-containing products and/or materials for use during the time period Plaintiff was employed by Defendant.

RESPONSE: Defendant admits that it used asbestos-containing products during the steam era. However, Defendant denies that it had knowledge during the period of plaintiff's employment that railroad employees were at risk of acquiring an asbestos-related disease under the circumstances in which railroad employees worked.

REQUEST FOR ADMISSION NO. 3: Admit or deny that Defendant used or implemented upon Defendant's railway cars, engines and/or locomotives on which or in the vicinity of which Plaintiff worked, asbestos-containing products, asbestos-containing products, asbestos-containing friction products or machinery requiring the use of asbestos or asbestos-containing products.

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REQUEST FOR ADMISSION NO. 10: Admit or deny that Defendant did not distribute any literature or warnings of any kind to its employees during the period of time Plaintiff worked for Defendant regarding the potential health hazards to those who breathe airborne asbestos dust.

RESPONSE: Defendant lacks sufficient knowledge to admit or deny this Request in its entirety. Defendant admits that asbestos-containing products were used during the steam era but denies that it had knowledge that the products were a potential health hazard to railroad employees under the type of duties they performed.

REQUEST FOR ADMISSION NO. 11: Admit or deny that the friction products and/or machinery requiring the use of asbestos or asbestos-containing products and/or materials were placed on or used in Defendant's railway cars, engines and/or locomotives during the time period Plaintiff was employed by Defendant and upon Defendant's railway cars, engines and/or locomotives where Plaintiff worked were the following asbestos-containing products.

a. any asbestos-containing product and/or machinery requiring the use of asbestos packing or asbestos-containing products and/or materials
b. asbestos tiles
c. asbestos millboard
d. asbestos friction products
e. asbestos pipecovering
f. asbestos gaskets
g. asbestos joint compound
h. asbestos cement
i. asbestos
j. asbestos
k. boilers
l. brake shoes
m. brake linings
n. clutch linings
o. firebrick
p. refractories/castables
q. turbines

RESPONSE: Defendant lacks sufficient knowledge to admit or deny this Request in its entirety. Defendant admits that asbestos-containing products were used during the steam era but denies that it had knowledge that the products were a potential health hazard to railroad employees under the type of duties they performed.

REQUEST FOR ADMISSION NO. 12: Admit or deny that Defendant engaged in any abatement programs for the removal of asbestos or asbestos-containing products, asbestos-containing friction products and/or machinery requiring the use of asbestos or asbestos-containing products and/or materials at any time since 1965 on Defendant's railroad, railway cars, engines and/or locomotives during the time of Plaintiff's employment.

RESPONSE: Defendant denies this Request.

REQUEST FOR ADMISSION NO. 13: Admit or deny that Defendant was aware of the presence of and/or use of asbestos-containing products and/or machinery requiring the use of asbestos or asbestos-containing products and/or

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materials during the time period Plaintiff was employed by Defendant and upon Defendant's railroad, railway cars, engines and/or locomotives where Plaintiff worked.

RESPONSE: Defendant lacks sufficient knowledge to admit or deny this Request in its entirety. Defendant admits that asbestos-containing products were used during the steam era but denies that it had knowledge that the products were a potential health hazard to railroad employees under the type of duties they performed.

REQUEST FOR ADMISSION NO. 14: Admit or deny that Defendant became aware of the potential health hazards of airborne asbestos during the time periods in which Plaintiff was employed by Defendant.

RESPONSE: Defendant denies that it was aware of any potential health hazard to railroad workers under the type of duties they performed.

REQUEST FOR ADMISSION NO. 15: Admit or deny that Defendant did not continuously provide face masks to crew members working with or around asbestos, asbestos-containing products, asbestos-containing friction products and/or machinery requiring the use of asbestos and/or asbestos-containing products upon Defendant's railway cars, engines and/or locomotives from 1945 to the present for the purpose of protecting these crew members from inhaling asbestos, air borne asbestos fibers and/or dust.

RESPONSE: Defendant denies this Request.

REQUEST FOR ADMISSION NO. 16: Admit or deny that during the time Plaintiff was employed by Defendant, it was foreseeable that asbestos-containing products on Defendant's railway cars, engines and/or locomotives would or could be removed, stripped, replaced or repaired at some time after installation.

RESPONSE: Objection. Defendant objects to the term "foreseeable" in this Request. Further, this Request is vague, ambiguous, overly broad, unlimited in scope and seeks information which is neither relevant nor likely to lead to the discovery of admissible evidence.

REQUEST FOR ADMISSION NO. 17: Admit or deny that during the time Plaintiff was employed by Defendant, Defendant failed to comply with the requirements of the Boiler Inspection Act, formerly 45 U.S.C. § 23; and restated at 49 U.S.C. § 20701 et seq.

RESPONSE: Defendant denies this Request.

REQUEST FOR ADMISSION NO. 18: Admit or deny that Plaintiff filed suit against Defendant within three (3) years of the date of discovering his asbestos-related condition or the existence of any asbestos-related causes of action.

RESPONSE: Defendant denies this Request.

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Respectfully submitted,

PHELPS DUNBAR

By _____

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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 First Amended Objections and Responses to Plaintiff's Request for Admissions has been sent via Facsimile to Kimberly Schauck, Baron & Budd, 3102 Oak Lawn Avenue, Suite 1100, Dallas, Texas 75219-4281 this 27th day of August, 1997 and via First Class Mail to all parties of record on attached service list, this 27th day of August, 1997.

_____
Deborah Newman

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