



NO. 95-12951-D

JEANIE LEIGH FLEMING, individually and as,)	IN THE DISTRICT COURT
Personal Representative of the Heirs and Estate)	
of ROY FLEMING, Deceased; and THOMAS)	
RICHARD GORMAN and ROSE MARY)	
GORMAN;)	
)	
Plaintiffs,)	
)	
v.)	DALLAS COUNTY, TEXAS
)	
)	
OWENS-CORNING FIBERGLAS)	
CORPORATION, et al.,)	
)	
)	
Defendants.)	95TH JUDICIAL DISTRICT

**RESPONSES OF DEFENDANT NORFOLK SOUTHERN RAILWAY
COMPANY TO REQUESTS FOR ADMISSION PROPOUNDED BY
PLAINTIFF JEANIE LEIGH FLEMING**

Defendant Norfolk Southern Railway Company (NSRC) f/k/a/ Southern Railway
Company (Southern), for its answers to Plaintiff's Requests for Admission, states as follows:

PRELIMINARY STATEMENT AND GENERAL OBJECTION

NSRC objects to the Requests for Admission propounded by Plaintiff for the reason that Plaintiff's decedent was never employed by NSRC. At the time of the deposition of Plaintiff's decedent NSRC became aware that Plaintiff's decedent was employed by Nickel Plate Road (The New York, Chicago and St. Louis Railroad Company) and Norfolk and Western Railway Company. NSRC has requested the personnel and medical files of Plaintiff's decedent from Norfolk and Western Railway Company (NW) and that file reveals that Plaintiff's decedent was first employed by Nickel Plate in August, 1955 as a brakeman in Bellevue, Ohio and

through his career for the Nickel Plate and NW, he worked as a brakeman and switchman in the Bellevue, Ohio and Conneaut, Ohio area. Plaintiff's decedent voluntarily resigned from the NW and took a buy-out in December, 1986.

NSRC has not located any employment information to support the allegation that Plaintiff's decedent, Roy Fleming was employed by it. For that reason, NSRC believes that Plaintiff's decedent was never employed by NSRC or Southern. Accordingly, at this time NSRC is unable to respond to any of the requests for admission, other than Request No. 23, except by denial.

REQUESTS FOR ADMISSION

REQUEST FOR ADMISSION NO. 1: Admit or deny that asbestos-containing products were in general use aboard Defendant's railroad during the time period Plaintiff was employed by Defendant.

RESPONSE: Defendant objects to the form and substance of this request on the following grounds:

1. the request is overly broad;
2. the request is unlimited in terms of geographic scope;
3. the request is vague;
4. the request is ambiguous;
5. the overly broad nature of the request is such that it would be unduly burdensome and prohibitively expensive to gather the information necessary to respond to this request; and,
6. the request exceeds the scope of discovery permitted by Rule 166b of the Texas Rules of Civil Procedure.

Subject to and without waiving the foregoing objections, this request for admission is DENIED as stated.

REQUEST FOR ADMISSION NO. 2: Admit or deny that Defendant transported, ordered, purchased or otherwise acquired asbestos-containing products, asbestos-containing friction products, machinery requiring the use of asbestos or asbestos-containing products.

RESPONSE: Defendant objects to the form and substance of this request on the following grounds:

1. the request is overly broad;
2. the request is unlimited in terms of time;
3. the request is unlimited in terms of geographic scope;
4. the request is vague;
5. the request is ambiguous;
6. the request is multifarious;
7. the request seeks information which is not relevant and which is not reasonably calculated to lead to the discovery of admissible evidence;
8. the overly broad nature of the request is such that it would be unduly burdensome and prohibitively expensive to gather the information necessary to respond to this request; and,
9. the request exceeds the scope of discovery permitted by Rule 166b of the Texas Rules of Civil Procedure.

Subject to and without waiving the foregoing objections, this request for admission is DENIED as stated.

REQUEST FOR ADMISSION NO. 3: Admit or deny that Defendant used or implemented on defendant's railroad, asbestos-containing products.

RESPONSE: Defendant objects to the form and substance of this request on the following grounds:

1. the request is overly broad;
2. the request is unlimited in terms of time;
3. the request is unlimited in terms of geographic scope;
4. the request is vague;
5. the request is ambiguous;
6. the request is multifarious;
7. the overly broad nature of the request is such that it would be unduly burdensome and prohibitively expensive to gather the information necessary to respond to this request; and,
8. the request exceeds the scope of discovery permitted by Rule 166b of the Texas Rules of Civil Procedure.

Subject to and without waiving the foregoing objections, this request for admission is DENIED.

REQUEST FOR ADMISSION NO. 4: Admit or deny that Defendant's cars, engines and/or locomotives which Plaintiff worked on or around were unreasonably dangerous and unfit because of the presence of and/or use of asbestos-containing products.

RESPONSE: Defendant objects to the form and substance of this request on the following grounds:

1. the request is overly broad;
2. the request is vague;
3. the request is ambiguous;
4. the request is multifarious; and,
5. the request is argumentative.

Subject to and without waiving the foregoing objections, this request for admission is DENIED.

REQUEST FOR ADMISSION NO. 5: Admit or deny that Plaintiff was a railroad worker, as that term is generally understood, during his employment with Defendant.

RESPONSE: Defendant objects to the form and substance of this request on the following grounds:

1. the request is vague;
2. the request is ambiguous; and,
3. that the request is argumentative.

Subject to and without waiving the foregoing objections, Defendant states that Plaintiff's decedent was not employed by NSRC, therefore, this request for admission is DENIED.

REQUEST FOR ADMISSION NO. 6: Admit or deny that Plaintiff, in the course and scope of his work as a railroad worker and/or employee of Defendant, worked on and/or around Defendant's railroad, railway cars, engines and/or locomotives, shops, roundhouses, and transfer sheds where asbestos, and asbestos containing products were present.

RESPONSE: Defendant objects to the form and substance of this request on the following grounds:

1. the request is overly broad;
2. the request is vague;
3. the request is ambiguous;
4. the request is multifarious; and,
5. the request is argumentative

Subject to and without waiving the foregoing objections, Defendant states that Plaintiff's decedent was not employed by NSRC, therefore, this request for admission is **DENIED**.

REQUEST FOR ADMISSION NO. 7: Admit or deny that Defendant was aware during the periods of time Plaintiff worked for Defendant that airborne asbestos dust created a potential health hazard to those who breathed such dust.

RESPONSE: Defendant objects to the form and substance of this request on the following grounds:

1. the request is overly broad;
2. the request is vague;
3. the request is ambiguous; and,
4. the request is argumentative.

Subject to and without waiving the foregoing objections, this request for admission is **DENIED**.

REQUEST FOR ADMISSION NO. 8: Admit or deny that Plaintiff was employed by Defendant or by a predecessor-in-interest of Defendant.

RESPONSE: Defendant objects to the form and substance of this request on the following grounds:

1. the request is overly broad;
2. the request is vague;
3. the request is ambiguous; and,
4. the request is argumentative.

Subject to and without waiving the foregoing objections, Defendant states that Plaintiff's decedent was not employed by NSRC, therefore, this request for admission is **DENIED**.

REQUEST FOR ADMISSION NO. 9: Admit or deny that Plaintiff worked on and/or around defendant's railroad in areas where asbestos-containing products were installed, used, prepared for use, replaced or repaired, stored or loaded, unloaded or transported.

RESPONSE: Defendant objects to the form and substance of this request on the following grounds:

1. the request is overly broad;
2. the request is vague;
3. the request is ambiguous; and,
4. the request is multifarious.

Subject to and without waiving the foregoing objections, Defendant states that Plaintiff's decedent was not employed by NSRC, therefore, this request for admission is DENIED.

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

RESPONSE: Defendant objects to the form and substance of this request grounds that the request is argumentative.

Subject to and without waiving the foregoing objections, Defendant states that Plaintiff's decedent was not employed by NSRC, therefore, this request for admission is DENIED.

REQUEST FOR ADMISSION NO. 11: Admit or deny that asbestos-containing products were placed on or used in the conduct of Defendant's railroad during the time period plaintiff was employed by Defendant including the following asbestos-containing products:

- | | | | |
|----|---|----|------------------|
| a. | any asbestos-containing product and/or machinery requiring the use of asbestos or asbestos-containing products and/or materials | h. | asbestos cement |
| | | i. | asbestos block |
| | | j. | asbestos packing |
| | | k. | boilers |
| | | l. | brake shoes |

- | | | | |
|----|----------------------------|----|------------------------|
| b. | asbestos tiles | m. | brake linings |
| c. | asbestos millboard | n. | clutch linings |
| d. | asbestos friction products | o. | firebrick |
| e. | asbestos pipecovering | p. | refractories/castables |
| f. | asbestos gaskets | q. | turbines |
| g. | asbestos joint compound | | |

RESPONSE: Defendant objects to the form and substance of this request grounds that the request is argumentative.

Subject to and without waiving the foregoing objections, Defendant states that Plaintiff's decedent was not employed by NSRC, therefore, this request for admission is DENIED.

REQUEST FOR ADMISSION NO. 12: Admit or deny that Defendant engaged in no abatement programs for the removal of asbestos at any time since 1965.

RESPONSE: Defendant objects to the form and substance of this request on the following grounds:

1. the request is overly broad;
2. the request is unlimited in terms of geographic scope;
3. the request is vague;
4. the request is ambiguous;
5. the request is multifarious; and,
6. the request exceeds the scope of discovery permitted by Rule 166b of the Texas Rules of Civil Procedure.

Subject to and without waiving the foregoing objections, this request for admission is DENIED.

REQUEST FOR ADMISSION NO. 13: Admit or deny that Defendant was aware of the presence of and/or use of asbestos-containing products at the railroad during the time period Plaintiff was employed by Defendant.

RESPONSE: Defendant objects to the form and substance of this request on the following grounds:

1. the request is overly broad;
2. the request is unlimited in terms of geographic scope;
3. the request is vague;
4. the request is ambiguous;

5. the request is multifarious;
6. the request is argumentative;
7. the request seeks information which is not relevant and which is not reasonably calculated to lead to the discovery of admissible evidence;
8. the overly broad nature of the request is such that it would be unduly burdensome and prohibitively expensive to gather the information necessary to respond to this request; and,
9. the request exceeds the scope of discovery permitted by Rule 166b of the Texas Rules of Civil Procedure.

Subject to and without waiving the foregoing objections, this request for admission is DENIED.

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 objects to the form and substance of this request on the following grounds:

1. the request is overly broad;
2. the request is vague;
3. the request is ambiguous; and,
4. the request is argumentative

Subject to and without waiving the foregoing objections, this request for admission is DENIED.

REQUEST FOR ADMISSION NO. 15: Admit or deny that Defendant did not continuously provide face masks to railroad employees working with or around asbestos from 1945 to the present for the purpose of protecting these employees from inhaling asbestos.

RESPONSE: Defendant objects to the form and substance of this request on the following grounds:

1. the request is overly broad;
2. the request is unlimited in terms of geographic scope;
3. the request is vague;
4. the request is ambiguous;
5. the request is multifarious; and
6. the request is argumentative.

Subject to and without waiving the foregoing objections, this request for admission is DENIED.

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

RESPONSE: Defendant objects to the form and substance of this request on the following grounds:

1. the request is overly broad;
2. the request is unlimited in terms of geographic scope;
3. the request is vague;
4. the request is ambiguous;
5. the request is multifarious;
6. the request is argumentative;
7. the request seeks information which is not relevant and which is not reasonably calculated to lead to the discovery of admissible evidence; and,
8. the request exceeds the scope of discovery permitted by Rule 166b of the Texas Rules of Civil Procedure.

Subject to and without waiving the foregoing objections, this request for admission is DENIED.

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

RESPONSE: Defendant objects to the form and substance of this request on the following grounds:

1. the request is overly broad;
2. the request is unlimited in terms of geographic scope;
3. the request is vague;
4. the request is ambiguous;
5. the request is multifarious;
6. the request is argumentative;
7. the request seeks information which is not relevant and which is not reasonably calculated to lead to the discovery of admissible evidence;

8. the overly broad nature of the request is such that it would be unduly burdensome and prohibitively expensive to gather the information necessary to respond to this request; and,
9. the request exceeds the scope of discovery permitted by Rule 166b of the Texas Rules of Civil Procedure.

Subject to and without waiving the foregoing objections, this request for admission is DENIED.

REQUEST FOR ADMISSION NO. 18: Admit or deny that Plaintiff filed suit against

Defendant within three (3) years of the date of discovering his asbestos-related condition or the existence of any asbestos-related causes of action.

RESPONSE: Defendant objects to the form and substance of this request on the ground that the request is premature and multifarious.

Subject to and without waiving the foregoing objections, Defendant states that the NSRC has no knowledge if or when the Plaintiff "discovered" his alleged asbestos-related condition nor has Plaintiff offered proof of his employment with NSRC, therefore, NSRC is unable to admit or deny Request No. 18.

REQUEST FOR ADMISSION NO. 19: Admit or deny that Defendant is liable for Plaintiff's asbestos related illness.

RESPONSE: DENY.

REQUEST FOR ADMISSION NO. 20: Admit or deny that Defendant knew or had reason to know that the asbestos was in use on its railroad since the 1930's.

RESPONSE: Defendant objects to the form and substance of this request on the following grounds:

1. the request is overly broad;
2. the request is unlimited in terms of geographic scope;
3. the request is vague;
4. the request is ambiguous;
5. the request is multifarious;
6. the request is argumentative; and,
7. the request exceeds the scope of discovery permitted by Rule 166b of the Texas Rules of Civil Procedure.

Subject to and without waiving the foregoing objections, this request for admission is DENIED.

REQUEST FOR ADMISSION NO. 21: Admit or deny that Defendant consciously decided not to warn its employees of the dangers of asbestos.

RESPONSE: DENY.

REQUEST FOR ADMISSION NO. 22: Admit or deny that asbestos is still in use and/or in place on Defendants railroad.

RESPONSE: Defendant objects to the form and substance of this request on the following grounds:

1. the request is overly broad;
2. the request is unlimited in terms of geographic scope;
3. the request is vague;
4. the request is ambiguous;
5. the request is multifarious;
6. the request is argumentative;
7. the request seeks information which is not relevant and which is not reasonably calculated to lead to the discovery of admissible evidence; and,
8. the request exceeds the scope of discovery permitted by Rule 166b of the Texas Rules of Civil Procedure.

Subject to and without waiving the foregoing objections, this admission is DENIED.

REQUEST FOR ADMISSION NO. 23: Admit or deny that Defendant no longer uses asbestos on its railroad.

RESPONSE: Defendant objects to the form and substance of this request on the following grounds:

1. the request is overly broad;
2. the request is unlimited in terms of geographic scope;
3. the request is vague;
4. the request is ambiguous; and,
5. the request is argumentative.

Subject to and without waiving the foregoing objections, this admission is ADMITTED.

REQUEST FOR ADMISSION NO. 24: Admit or deny that Defendant acquired knowledge, during the 1930's of the Alton Railroad's responses to the Illinois Occupational Diseases Act.

RESPONSE: Defendant objects to the form and substance of this request on the following grounds:

1. the request is overly broad;
2. the request is vague;
3. the request is ambiguous;
4. the request is multifarious; and,
5. the request is argumentative.

Subject to and without waiving the foregoing objections, this request for admission is DENIED.

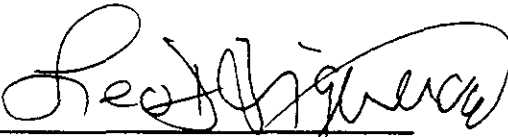
REQUEST FOR ADMISSION NO. 25: Admit or deny that Defendant was a member of the National Claims Registry which reported information regarding injury claims of railroad workers.

RESPONSE: Defendant objects to the form and substance of this request on the following grounds:

1. the request is vague; and,
2. the request is ambiguous;
3. the request is argumentative; and
4. the request is multifarious.

Subject to and without waiving the foregoing objections, this request for admission is DENIED.

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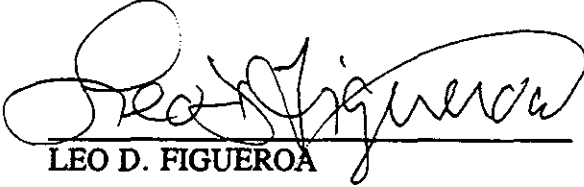
By: 
JAMES L. WALKER
State Bar No. 20708500
LEO D. FIGUEROA
State Bar No. 06984100

ATTORNEYS FOR DEFENDANT, NORFOLK
SOUTHERN RAILWAY COMPANY

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the above and foregoing was served by hand delivery, to Mr. Peter Kraus / Ms. Kimberly A. Castles, Baron & Budd, A Professional Corporation, 3102 Oak Lawn Avenue, Suite 1100, Dallas, Texas 75219, on this the 6th day of August, 1997.

All defense counsel may request a copy of this document.


LEO D. FIGUEROA

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