



NO. 95-11267-K

MERLYN W. ALLRED, ET AL.

Plaintiffs,

vs.

OWENS-CORNING FIBERGLAS
CORPORATION, ET AL.

Defendants.

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IN THE DISTRICT COURT OF

DALLAS COUNTY, TEXAS

192ND JUDICIAL DISTRICT

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

TO: Martin L. 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 (named as successor in interest to Texas & Pacific Railway), Defendant herein, hereby submits its Fourth 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. 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 not located or been provided with details regarding the Plaintiff's alleged work background which might enable Defendant to respond to this Request. Defendant anticipates that Plaintiff may offer deposition testimony bearing on this Request. 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 those objections, Defendant conducted safety meetings during the time period of plaintiff's alleged work for the railroad. However, at the time of Plaintiff's alleged employment, Defendant had no reasonable basis to believe its workers were at risk for contracting asbestos related disease. No records responsive to this Request have been located for the time period of Plaintiff's alleged work or for Plaintiff's alleged work site.

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 does not request any documents for the time period during which plaintiff allegedly worked for Defendant. Subject to, but without waiver of these objections, Defendant has located no documents responsive to this Request for the time period of Plaintiff's alleged work or for 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 employment or for the Plaintiff's alleged work site.

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 or for Plaintiff's alleged work site. Defendant has previously produced voluminous documents in the *Antons* case which may be responsive to this Request. Those materials include Union Pacific Railroad Company documents which reference policies for handling asbestos used in the past for Union Pacific railroad operations.

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 or for Plaintiff's alleged work site. See response to Request No. 27 for the extent of Defendant's response.

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. Defendant identifies the deposition transcript of Arlene Schroeder, taken on August 20, 1996, previously produced in complete form to Plaintiff's counsel in the *Nickerson* case. Defendant agrees to allow additional inspection and copying of same at the offices of its counsel, Phelps Dunbar L.L.P., at a reasonable time upon request.

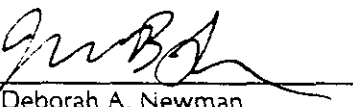
REQUEST FOR PRODUCTION NO. 44: Provide copies of any and all documentation evidencing Defendant's compliance with the Boiler Inspection Act, formerly U.S.C. §20701, during the last thirty-five (35) years.

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 or for Plaintiff's alleged work site.

Respectfully submitted,

PHELPS DUNBAR, L.L.P.

By 
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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing Defendant's Fourth Supplemental Objections and Responses to Plaintiff's Request for Production has been sent to counsel of record this 12 day of March 1998.


Mark B. Schaffer