

CAUSE NO. 153-167812-97

THOMAS HOVELL, SR.	§	IN THE DISTRICT COURT OF
	§	
vs.	§	TARRANT COUNTY, TEXAS
	§	
OWENS-CORNING FIBERGLAS	§	
CORPORATION, ET AL.	§	153rd JUDICIAL DISTRICT

DEFENDANT'S RESPONSES TO REQUESTS FOR PRODUCTION

To: Plaintiff, Thomas Hovell, Sr., by and through his attorney of record, Ms. Kimberly A. Castles, Baron & Budd, P.C., 3102 Oak Lawn Avenue, Suite 1100, Dallas, Texas 75219-4281.

COMES NOW, The Burlington Northern Railway Company, Defendant in the above-entitled and numbered cause, pursuant to the TEXAS RULES OF CIVIL PROCEDURE, and makes and files these its Responses and Objections to Plaintiff's Requests for Production.

Respectfully submitted,
McLEOD, ALEXANDER, POWEL
& APFFEL, P.C.

By: _____

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ATTORNEYS FOR DEFENDANT BURLINGTON NORTHERN RAILWAY COMPANY

CERTIFICATE OF SERVICE

I, J.D. Bashline, do hereby certify that a true and correct copy of the foregoing instrument has been forwarded to all counsel of record this 5 day of June, 1997, by certified U.S. Mail, return receipt requested, by facsimile and regular mail or by regular mail.

J.D. BASHLINE

DEFINITIONS

As used in these Requests for Production, the following terms mean:

1. The words "Defendant," "You," "Your," "Your company," agents, employees and borrowed servants all mean the corporate Defendant answering these Requests for Production, and any of its merged, consolidated, or acquired predecessors, divisions, subsidiaries, foreign subsidiaries, foreign subsidiaries of predecessors, and/or affiliates. This definition includes present and former officers, directors, agents, employees, and all other persons acting or purporting to act on behalf of the corporate Defendant or its predecessors, subsidiaries, and/or affiliates. "Predecessors" further means any business firm, whether or not incorporated, which had all or some of its assets purchased by you or came to be acquired by you whether by merger or consolidation. "Subsidiaries" further means any business firm, whether or not incorporated, which is or was in any way owned or controlled, in whole or in part by Defendant or its predecessors.

2. The words "document", "documents", "written materials", or "printed matter" include any written, printed, recorded or graphic matter of any kind or character, photographic or videographic matter or sound reproductions or computer input or output, including but not limited to: brochures, pamphlets, catalogs, warning signs or statements, packaging, logs, bills of lading, invoices, transport logs, contracts, notes, rough drafts, inter-office memoranda, reports, research materials, logs, diaries, calendars, bank statements, tax invoices, diagrams, studies, manuals, minutes, by-laws, articles of incorporation, resolutions, shareholder endorsements, or partnership documents however produced or reproduced, that (1) are now or were formerly in the possession, custody, or control of the Defendant (including documents at any time in the possession, custody or control of their subsidiaries, whether domestic or international, or merged or acquired predecessors), or (2) are known or are believed to be responsive to these Interrogatories and Requests for Production regardless of who now has or formerly had custody, possession or control.

3. The words "person" or "persons" include natural persons, firms, partnerships, associations, joint ventures, corporations, and any other form of business organization or arrangement, and officers, directors, shareholders, employees, agents, and contractors of any business organization or arrangement.

4. The words "meeting" or "meetings" may mean any coincidence or presence of any persons, whether or not such coincidence or presence was pre-arranged, was formal or informal, or was in connection with some other activity.

5. The words "describe" or "description", when referring to a place, thing, or occurrence, mean to identify with sufficient particularity the place, thing, or occurrence so as to enable one to locate, examine and fully comprehend or understand the place, thing, or occurrence described.

6. The words "asbestos," "product containing asbestos fibers," "asbestos-containing products," "asbestos products" all refer to any products or materials prepared in any way for sale and or distribution that contained any kind of asbestos in any possible form, including, but not limited to fibers and dust. The words "asbestos materials" refer to any and all materials, substance, or matter used or assembled or fabricated during the manufacture of a product, and that contain at least some asbestos fibers. "Product" includes, but is not limited to, pipecovering, pipe turbines, cement, filler, flatsiding, corrugated siding, roofing, block, gaskets, packing, plaster, joint compound, floor and ceiling tiles, mastics, boilers, raw fibers, fireproofing, shingles, panels., sheets, paper, clothing, flooring, tapes, wire, cable, casings, boards, millboard, refractory cement, boilers, firebrick, brake and clutch linings and facings, finishing compound, texture, and other construction, building, drywall, lath and insulation materials, containing trace amounts of asbestos.

7. The words "distribute," "distributed," "distributor," and "distribution" all refer to the sale, marketing, dispersal and/or shipment of asbestos-containing products for purposes of their sale, resale and/or for purposes of filling orders provided by other business concerns. The word "distributor" specifically refers to a company or its sales representatives, whether dependent or independent, responsible for sales or marketing of products.

8. The words "medical advisory capacity" refer to the duties, abilities or capabilities of any member of Defendant's staff, or any individual or organization who has contracted with Defendant, to provide services of a medical nature, including but not limited to providing medical advice.

9. The words "trade organization," or "trade association" mean any organizations or associations of business or industrial entities that are associated and/or meet for the purpose of achieving common goals and/or exchanging information related to common needs or interests, and/or learning information or facts of interest to the various members of the organization or association.

10. The words "research" and "research department" refer to efforts, whether scientific or otherwise, to develop new and/or different types of products, processes or designs of pre-existing products and is meant to incorporate all efforts that specifically contemplated the possible alteration of products.

11. The words "medical department" and "safety department" refer to an individual or a section or group of individuals working for Defendant, either directly or in a contractual capacity, whose purpose was or is to provide guidance, assistance, or advice concerning any aspects of medical health, including but not limited to, the safety of Defendant's workers and the safety of individuals using or exposed to asbestos products.

12. The words "industrial hygiene surveys" mean surveys, tests, interviews, or other procedures taken or effectuated for the purpose of determining the possibility or existence of detrimental health effects caused by exposure to asbestos.

13. The words "potential health hazards," or "health hazards" refer and relate to any injury, effect, damage, scarring, wound, impairment or disability of any part of the human anatomy, including but not limited to the lungs and lung linings, that is caused by or associated with exposures to asbestos dust and fibers.

14. The terms "test" and "testing" are used in their broadest sense, including but not limited to, studies of atmospheric dust samples, studies of the concentration of asbestos in such airborne test sample, studies of the lung conditions of workers (by x-ray or other means of medical surveillance), pulmonary function studies of workers, animal studies, pathological studies, industrial hygiene studies, risk assessment studies, cost-benefit analyses and any other studies concerning health and safety.

15. The terms "the railroads," "railroad", "railway cars and/or engines" "railroad component(s)" and/or "railyard(s)", refer and relate to any and all railroad track lines, roundhouses, shops, railyards, and freight, passenger, refrigerator or other railroad cars, engines, and/or locomotives, as well as the brakes and boilers used in the operation of such freight, passenger, refrigerator or other railroad cars, engines and/or locomotives, and/or in operation of the roundhouses and/or shops and including those containing boilers owned, either as owner or owner pro hac vice, rented, leased, chartered, operated, or otherwise utilized by Defendant in Defendant's regular course of business or over which Defendant had the right to direct, control, repair, or place in railway operation.

16. The terms "railroad worker" "employee" includes any operator, laborer, or maintenance and/or repair workers, persons who have been hired by or contacted at the direction of Defendant to include maintain or operate cars and/or engines or railroad track lines, or who are connected with the railroad as such and in some capacity to assist in its conduct, maintenance, or service, including all those whose labor contributes to the operation of the railroad in any capacity. The term includes anyone who, in the course of his work about a railroad, exposes himself to risk traditionally associated with railroad duties of a member of a railroad's crew. As such, a "railroad worker" is an employee whose duties contribute to the function of the "railroad" on which he works or the accomplishment of its mission.

17. The term "agreement" includes any contract either oral or written entered into between Defendant and any other party either voluntarily or as the result of any sale, purchase, negotiation, collective bargaining or course of dealing.

18. "EPA" means Environmental Protection Agency. This agency is charged with the promulgation and enforcement of emissions from manufacturing sources into the air and water. It is charged with maintaining and/or improving the quality of the environment. Several other agencies have groups which work on asbestos diseases, including the National Institutes of Health, the National Cancer Institute, and several interagency committees.

19. "NIOSH" means National Institute for Occupational Safety and Health. This group, part of Health, Education and Welfare, is responsible for providing data on the toxicity and safe exposure

limits for chemical and physical agents found in the workplace.

20. "NIEHS" means National Institute of Environmental Health Sciences. This group, also an agency of Health, Education and Welfare, performs studies on chemical and physical agents emitted into the environment which may have an impact on the population.

21. "OSHA" means Occupational Safety and Health Administration. This group is responsible for promulgating and enforcing exposure of workers in the workplace. It is part of the Department of Labor.

22. "Friction product" includes any product used to absorb, alleviate, disperse or distribute friction or the effects of friction and includes, but is specifically not limited to, brake shoes and linings and clutch linings.

23. "Each" shall mean each and every; "All" shall mean any and all.

24. "Identify" or "identity" when used in reference to documents shall be understood as an instruction to identify the document completely. The identification shall include, but not be limited to, the document's date, title, authors, addresses and other recipients, type (eg. letter, notes, memoranda, diary, etc.), subject matter, present location, present custodian, and the purposes for which the document was created or prepared.

25. "Relating to" and "regarding" shall mean embodying, pertaining to, concerning, constituting, comprising, reflecting, discussing, referring to, or having any logical or factual connection whatsoever with the subject matter in question.

26. "Relationship" means any connection, affiliation or association of any nature or kind whatsoever, currently or previously in existence.

27. The words "releasing products to the public" means selling, distributing, marketing, or otherwise causing the products to be available to the general public and/or retail and wholesale outlets for further distribution or sale.

28. The words "marketed," and "market" mean and include all efforts to aid or assist in the distribution and/or sale of products, including offers on the part of the manufacturer or distributor to sell products and the advertising of products and sales solicitation efforts.

29. The word "manufacture," or "manufactured" means to fabricate, to construct, to assemble, to prepare for fabrication, construction or assembly, and any other action taken prior to completion of the product or material before the time of its shipment.

30. The word "use" means to install, repair, replace, fabricate, implement, prepare for use, stock or store.

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, custody or control which would indicate that asbestos fibers, when inhaled, can be hazardous to the health of human beings.

RESPONSE:

Defendant objects to this request for the reason that it is overly broad, unduly burdensome, vague, and ambiguous and not limited in any way as to the time period during which Plaintiff worked for this Defendant.

Defendant further objects to this request for the reason that it does not identify with reasonable specificity the documents requested, and is, therefore, an impermissible "fishing expedition." Dillard Department Stores v. Hall, 909 S.W.2d 491, 492 (Tex. 1995); Loftin v. Martin, 776 S.W.2d 145 (Tex. 1989).

Subject to the foregoing objections and without waiving same, Defendant is in the process of preparing a listing of texts or references in the company's Industrial Hygiene Department responsive to this request and will forward these documents to Plaintiff's counsel when such copying is completed.

REQUEST FOR PRODUCTION NO. 2:

Produce any and all documents (memoranda and/or other writings) in your possession, custody or control that in any way related to the hazards of asbestos and/or airborne asbestos.

RESPONSE:

Defendant objects to this request for the reason that it is overly broad, unduly burdensome, vague, ambiguous, and not limited in any way as to the time period during which Plaintiff worked for this Defendant.

Defendant further objects to this request to the extent that it seeks information exempted from discovery by the attorney/client, attorney work product, and party communications privilege. National Tank Co. v. Brotherton, 851 S.W.2d 193, 203 (Tex. 1993).

Defendant also objects to this request for the reason that it does not identify with reasonable specificity the documents requested, and is, therefore, an impermissible

"fishing expedition." Dillard Department Stores v. Hall, 909 S.W.2d 491, 492 (Tex. 1995); Loftin v. Martin, 776 S.W.2d 145 (Tex. 1989).

Subject to the foregoing objections and without waiving same, Defendant is in the process of preparing a listing of texts or references in the company's Industrial Hygiene Department responsive to this request and will forward these documents to Plaintiff's counsel when such copying is completed.

REQUEST FOR PRODUCTION NO. 3:

Produce any and all documents in your possession, custody or control which were disseminated or published by any person, trade association or organization of any type and that contain information relating to the hazards of asbestos and/or airborne asbestos.

RESPONSE:

Defendant objects to this request for the reason that is overly broad, unduly burdensome, and not limited in any way as to the time period during which Plaintiff worked for this Defendant.

Defendant further objects to this request for the reason that it seeks documents/information which is a part of the public record and is equally accessible to plaintiff as it is to this defendant.

Defendant objects to this request for the reason that it does not identify with reasonable specificity the documents requested, and is, therefore, an impermissible "fishing expedition." Dillard Department Stores v. Hall, 909 S.W.2d 491, 492 (Tex. 1995); Loftin v. Martin, 776 S.W.2d 145 (Tex. 1989).

Subject to the foregoing objections and without waiving same, Defendant is in the process of preparing a listing of texts or references in the company's Industrial Hygiene Department responsive to this request and will forward these documents to Plaintiff's counsel when such copying is completed.

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's railroad.

RESPONSE:

Defendant objects to this request for the reason that it is overly broad, unduly burdensome, harassing, vague, ambiguous, and it is not limited in any way as to the time period during which Plaintiff worked for this Defendant.

Defendant further objects to this request to the extent that it seeks information exempted from discovery by the attorney/client, attorney work product, and party communication privileges. National Tank Co. v. Brotherton, 851 S.W.2d 193, 203 (Tex. 1993).

Subject to the foregoing objections and without waiving same, Defendant presently knows of none which now exist for the periods before or during Plaintiff's employment with this Defendant.

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 [on] Defendant's railroad(s).

RESPONSE:

Defendant objects to this request for the reason that it is overly broad, unduly burdensome, vague, ambiguous, and not limited in any way as to the location and/or time period during which Plaintiff worked for this Defendant.

Defendant further objects to this request for the reason that it is premature in that Defendant presently does not know the areas in which Plaintiff worked during his employment with this Defendant.

REQUEST FOR PRODUCTION NO. 6:

Produce any and all documents that in any way reflect a removal plan or organized written criteria or schedule for the removal of asbestos on Defendant's railroad(s).

RESPONSE:

Defendant objects to this request for the reason that it is overly broad, unduly burdensome, vague, ambiguous, and not limited in any way as to the time period during which Plaintiff worked for this Defendant, nor the location at which he may have worked. Defendant further objects to this request for the reason that it is premature in that Defendant presently does not know the areas in which Plaintiff worked during his

employment with this Defendant.

Defendant objects to this request as it inquires into privileged attorney-client communications pursuant to TEX. R. CIV. P. 166b(3)(e) and TEX. R. CIV. EVID. 503(a)(1)-(4), (b). Ford Motor Co. v. Leggat, 904 S.W.2d 643 (Tex. 1995).

Defendant objects to this request as it inquires into privileged attorney work product pursuant to TEX. R. CIV. P. 166b(3)(a). Owens-Corning Fiberglass Corp. v. Caldwell, 818 S.W.2d 749, 750-2 (Tex. 1991); Occidental Chem. Corp. v. Banales, 907 SW 2d 488, 490 (Tex. 1995).

Defendant objects to this request as it inquires into party communications which are privileged pursuant to Tex. R. Civ. Proc. 166b(3)(d). National Tank Co. v. Brotherton, 851 S.W.2d 193, 203 (Tex. 1993).

REQUEST FOR PRODUCTION NO. 7:

Produce any and all documents that discuss or relate in any way to removal of asbestos from any Defendant's railroad(s).

RESPONSE:

Defendant objects to this request for the reason that it is overly broad, unduly burdensome, vague, ambiguous, and not limited in any way as to the time period during which Plaintiff worked for this Defendant, nor the location at which he may have worked. Defendant further objects to this request for the reason that it is premature in that Defendant presently does not know the areas in which Plaintiff worked during his employment with this Defendant.

Defendant objects to this request as it inquires into privileged attorney-client communications pursuant to TEX. R. CIV. P. 166b(3)(e) and TEX. R. CIV. EVID. 503(a)(1)-(4), (b). Ford Motor Co. v. Leggat, 904 S.W.2d 643 (Tex. 1995).

Defendant objects to this request as it inquires into privileged attorney work product pursuant to TEX. R. CIV. P. 166b(3)(a). Owens-Corning Fiberglass Corp. v. Caldwell, 818 SW 2d 749, 750-2 (Tex. 1991); Occidental Chem. Corp. v. Banales, 907 S.W.2d 488, 490 (Tex. 1995).

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, but is expressly not limited to, any and all x-rays, x-ray reports, medical notes and/or medical

records of any kind, including annual physical forms.

RESPONSE:

Defendant has no company medical records on this Plaintiff. Any and all records obtained solely by use of release will be provided to you. Records obtained by Defendant by deposition on written question may be obtained by you from the appropriate court reporter.

REQUEST FOR PRODUCTION NO. 9:

Produce any and all documents that indicate and/or refer to in any way a decision and/or discourse related to ceasing the use of asbestos-containing products on Defendant's railroad(s).

RESPONSE:

Defendant objects to this request for the reason that it is overly broad in scope as to time and location especially in view of the lack of confirmation that Plaintiff was employed by this railroad or a predecessor in interest. Moreover, it potentially invades attorney/client, attorney work product, and party communication privileges.

Subject to the foregoing objections and without waiving same, when and if Plaintiff provides evidence of when and where he worked for this Defenant, Defendant will determine if any documents exist responsive to this request, and these documents will be forwarded to Plaintiff's counsel.

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, roundbouses 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, installation and/or use of asbestos-containing products at any time within the last thirty-five (35) years on the railroad(s).

RESPONSE:

Defendant objects to this request for the reason that it is overly broad, unduly burdensome, vague, ambiguous, and not limited to the places and time period during which Plaintiff worked for this Defendant, if at all. Thus, this request is premature. Subject to the foregoing objections and without waiving same, Defendant will attempt to locate documents responsive to this request, and will supplement if such documents are

found.

REQUEST FOR PRODUCTION NO. 11:

Produce any photographs of asbestos products in place or asbestos products being used, fabricated and/or utilized on Defendant's railroad(s).

RESPONSE:

Defendant objects to request as overly broad in scope as to time and locations during which Plaintiff may have been employed.

Subject to the foregoing objections and without waiving same, Defendant will attempt to locate photographs responsive to this request, and will supplement if such photographs are found.

REQUEST FOR PRODUCTION NO. 12:

Produce any actual warning signs or photographs of warning signs or other statements in place at any time relating to asbestos-containing products [in place] at any time during the last thirty-five (35) years on Defendant's railroad(s).

RESPONSE:

Defendant objects to this request as overly broad in geographical scope.

Defendant further objects to this request as it fails to state a time reference or is not limited to the time period relevant to this lawsuit pursuant to TEX. R. CIV. P. 166b(2)(a).

Subject to the foregoing objections and without waiving same, Defendant will attempt to locate photographs responsive to this request, and will supplement if such photographs are found.

REQUEST FOR PRODUCTION NO. 13:

Produce any documents which indicate in any way that individuals claimed injury to their lungs as a result of exposure to asbestos on any of Defendant's railroad(s).

RESPONSE:

Defendant objects to this request for the reason that it is overly broad, unduly burdensome, harassing, immaterial, irrelevant, and not reasonably calculated to lead to the discovery of admissible evidence, particularly since it is not limited in time, nor to the craft or job in which Plaintiff may have served.

Defendant objects to this request as it inquires into privileged attorney-client communications pursuant to TEX. R. CIV. P. 166b(3)(e) and TEX. R. CIV. EVID. 503(a)(1)-(4), (b). Ford Motor Co. v. Leggat, 904 S.W.2d 643 (Tex. 1995).

Defendant objects to this request as it inquires into party communications which are privileged pursuant to Rule 166(b)(3)(d) of the Texas Rules of Civil Procedure. National Tank Co. v. Brotherton, 851 S.W.2d 193, 203 (Tex. 1993).

Defendant objects to this request as it inquires into privileged attorney work product pursuant to TEX. R. CIV. P. 166b(3)(a). Owens-Corning Fiberglass Corp. v. Caldwell, 818 SW 2d 749, 750-2 (Tex. 1991); Occidental Chem. Corp. v. Banales, 907 S.W.2d 488, 490 (Tex. 1995).

Defendant further objects to this request for the reason that it does not identify with reasonable specificity the documents requested, and is, therefore, an impermissible "fishing expedition." Dillard Department Stores v. Hall, 909 S.W.2d 491, 492 (Tex. 1995); Loftin v. Martin, 776 S.W.2d 145 (Tex. 1989).

REQUEST FOR PRODUCTION NO. 14:

Produce any documents, 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:

Defendant objects to this request for the reason that it is overly broad, unduly burdensome, vague, ambiguous, and not limited in any way as to the time period during which Plaintiff worked for this Defendant or as to the areas in which Plaintiff worked.

Defendant objects to this request as it inquires into privileged attorney-client communications pursuant to TEX. R. CIV. P. 166b(3)(e) and TEX. R. CIV. EVID. 503(a)(1)-(4), (b). Ford Motor Co. v. Leggat, 904 S.W.2d 643 (Tex. 1995).

Defendant objects to this request as it inquires into privileged attorney work product pursuant to TEX. R. CIV. P. 166b(3)(a). Owens-Corning Fiberglass Corp. v. Caldwell, 818 SW 2d 749, 750-2 (Tex. 1991); Occidental Chem. Corp. v. Banales, 907 S.W.2d 488, 490 (Tex. 1995).

Defendant objects to this request as it inquires into party communications which are privileged pursuant to TEX. R. CIV. P. 166b(3)(d). National Tank Co. v. Brotherton, 851 S.W.2d 193, 203 (Tex. 1993).

Subject to the foregoing objections and without waiving same, Defendant presently knows of none for the periods before or during Plaintiff's employment of this Defendant. This answer will be supplemented if necessary.

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 Defendant's railroad(s).

RESPONSE:

Defendant objects to this request for the reason that it is overly broad, unduly burdensome, harassing, and not limited in any way as to the time period during which Plaintiff worked for this Defendant. Subject to the foregoing objections and without waiving same, Defendant is in the process of copying and gathering documents responsive to this request, if any, and these documents will be forwarded to Plaintiff's counsel when such copying is completed.

REQUEST FOR PRODUCTION NO. 16:

Produce any and all documents reflecting in any way any inspections by labor inspectors, insurance company inspectors or anyone from Defendant's company or hired by Defendant 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 Defendant's railroad(s) and railway car(s) and/or engine(s) and/or locomotive(s) and/or roundhouse(s) or shops during the last thirty five (35 years).

RESPONSE:

Defendant objects to this request for the reason that it is overly broad, unduly burdensome, and not limited in any way as to the time period during which Plaintiff worked for Defendant, nor the places where Plaintiff may have been employed by Defendant, if any.

Defendant Objects to this request as it inquires into party communications, attorney/client communications, attorney work product and privileged investigation which are privileged pursuant to TEX. R. CIV. P. 166b. National Tank Co. v. Brotherton, 851 S.W.2d 193, 203 (Tex. 1993).

Subject to the foregoing objections and without waiving same, all non-privileged materials, if any, will be copied and forwarded to Plaintiff's counsel.

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, produce any documents that in any way reflect or discuss the results of such studies or counts and actions, or potential actions, if any, taken as a result of such counts or studies.

RESPONSE:

Defendant objects to this request for the reason that it is overly broad, unduly burdensome, and not limited in any way as to the time period or places(s) during which and at which Plaintiff worked for Defendant.

Defendant objects to this request as it inquires into party communications, attorney/client communications, attorney work product and privileged investigation which are privileged pursuant to TEX. R. CIV. P. 166b. National Tank Co. at 203.

Subject to the foregoing objections and without waiving same, all non-privileged materials, if any, will be copied and forwarded to Plaintiff's counsel.

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:

Defendant objects to this request as it is overly broad.

Defendant further objects to this request for the reason that it seeks information exempted from discovery under the attorney/client, attorney work product, witness statements, party communications, consulting expert, and investigative privileges. National Tank Co. v. Brotherton, 891 S.W.2d 193, 203 (Tex. 1993).

Defendant objects to this request for the reason that it does not identify with reasonable specificity the documents requested, and is, therefore, an impermissible "fishing expedition." Dillard Department Stores v. Hall, 909 S.W.2d 491, 492 (Tex. 1995); Loftin v. Martin, 776 S.W.2d 145 (Tex. 1989).

REQUEST FOR PRODUCTION NO. 19:

(1) Please provide a curriculum vitae for each and every expert witness or expert that the Defendant has retained or employed 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:

Defendant objects to this request to the extent it inquires into the work product of consulting experts which is privileged pursuant to TEX. R. CIV. P. 166b(3)(b). Axelson, Inc. v. McIlhany, 798 S.W.2d 550, 553 (Tex. 1990).

Subject to the foregoing objection and without waiving same, the curriculum vitae of experts Defendant may employ, but who have not yet received materials regarding this case, are attached.

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 lending 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:

Defendant presently knows of none.

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 s 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:

Defendant objects to this request for the reason that it is overly broad, unduly burdensome, and harassing. Defendant further objects to this request for the reason that it is not limited in any way as to the time period during which Plaintiff worked for this Defendant. To the extent it contemplates production of policies beyond those that would provide coverage in this case, this request is neither relevant nor calculated to lead to the discovery of admissible evidence pursuant to TEX. R. CIV. P. 166b(2)(a), (b); E.I. DuPont de Nemours & Co. v. Robinson, 923 S.W.2d 549 (Tex. 1995).

Subject to the foregoing objections and without waiving same, Defendant believes Plaintiff is self insured within limits relevant to this lawsuit, but will supplement if it learns otherwise.

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:

Defendant objects to this request for the reason that it is overly broad, unduly burdensome, and not limited in any way as to the areas in which Plaintiff worked.

Subject to the foregoing objection and without waiving same, Defendant is in the process of determining whether there are documents responsive to this request, and Defendant will forward any such documents to Plaintiff's counsel when such copying is completed.

REQUEST FOR PRODUCTION NO. 23:

Provide a copy of all documents from which your present net worth may be ascertained.

RESPONSE:

Exemplary damages are not available under F.E.L.A. or F.B.I.A. Therefore, this request is beyond the scope of discovery as permitted under TEX. R. CIV. P. 166b, 167 and 168. Al Parker Buick Co. v. Touchy, 788 S.W.2d 129, 131 (Tex. App. - Houston [1st Dist.] 1990, n.w.h.). Additionally, this request is neither relevant nor calculated to lead to the discovery of admissible evidence pursuant to Tex. R. Civ. P. 166b(2)(a), (b); E.I. DuPont de Nemours & Co. v. Robinson, 923 S.W.2d 549 (Tex. 1995).

REQUEST FOR PRODUCTION NO. 24:

Provide a copy of all photographs, diagrams, videotapes, slides and/or movie film of Defendant's railroad(s), owned or operated by Defendant including, but specifically not limited to the engine room, boiler room, common areas, living quarters, railroads, roundhouses, shops locomotives, or transport cars.

RESPONSE:

Defendant objects to this request for the reason that it is overly broad, unduly burdensome, harassing, irrelevant, immaterial, and not reasonably calculated to lead to the discovery of admissible evidence. Defendant further objects to this request for the reason that it is not limited to the time period during which Plaintiff worked for this Defendant or to the areas in which Plaintiff worked. Subject to the foregoing objections and without waiving same, Defendant will attempt to locate photographs responsive to this request and will supplement if such photographs are found.

REQUEST FOR PRODUCTION NO. 25:

Provide a copy of all medical records obtained by the Defendant relating to the Plaintiff.

RESPONSE:

Any and all records obtained solely by the use of release will be provided. Records obtained by Defendant through a deposition on written question may be obtained by you from the appropriate court reporter.

REQUEST FOR PRODUCTION NO. 26:

Provide a copy of all documents including but not limited to invoices, purchase orders, agreements and contracts involving Defendant as a result of the transport, use, installation, repair, replacement, removal and/or applying of asbestos-containing products on the railroad.

RESPONSE:

Defendant objects to this request for the reason that is overly broad, unduly burdensome, vague, ambiguous, and not limited to the time period during which Plaintiff worked for this Defendant nor the places at which he worked, if any. Defendant further objects to this request for the reason that it does not identify with reasonable specificity the documents requested, and is, therefore, an impermissible "fishing expedition." Dillard Department Stores v. Hall, 909 S.W.2d 491, 492 (Tex. 1995); Loftin v. Martin, 776 S.W.2d 145 (Tex. 1989). Subject to the foregoing objections and without waiving same, Defendant is in the process of determining whether there are documents responsive to this request, and Defendant will forward any such documents to Plaintiff's counsel when such copying is completed.

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 other railroad workers to asbestos or asbestos-containing products on the railroad. Include any documents given out at such safety meetings and copies of the minutes of or notes from all safety meetings held for the benefit of the employees or crew members that worked on the railroad in the last thirty-five (35) years.

RESPONSE:

Defendant objects to this request for the reason that it is overly broad, vague, ambiguous, and not limited to the time period during which Plaintiff worked for this Defendant, nor to documents relative to the craft or specialty of this Plaintiff. Moreover, in absence of evidence that Plaintiff worked with or around such products, irrelevant. Defendant further objects to extent that this request seeks information exempt from discovery by the attorney/client, attorney work product, and party communications privileges.

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 from 1930 to the present.

RESPONSE:

Defendant objects to this request as it is overly broad, unduly burdensome, and not limited to the time period during which the Plaintiff worked for this Defendant. Moreover, in absence of evidence that Plaintiff worked with or around such products, irrelevant. Defendant further objects to extent that this request seeks information exempt from discovery

by the attorney/client, attorney work product, and party communications privileges.

REQUEST FOR PRODUCTION NO. 29:

Provide a copy of all personnel files maintained by Defendant and/or any agent of Defendant concerning the Plaintiff including but not limited to all earnings files, administrative files, and 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:

Defendant has no file on this Plaintiff.

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, NIEHS or OSHA regarding either the potential health hazards or dangers associated with exposure to asbestos-containing products or airborne asbestos, and/or regarding any surveys, testing or other actions taken to determine the presence of and concentration of airborne asbestos on such of Defendant's railroad(s).

RESPONSE:

Defendant objects to this request because it is overly broad, unduly burdensome, harassing, and not limited to the time period during which Plaintiff worked for this Defendant, if at all. Moreover, the NIOSH/OSHA regulatory scheme is in substantial measure, if not entirely, inapplicable to over-the-road railway workers, since FRA governs such workers. Additionally, the requested documents are equally accessible to the Plaintiff's counsel.

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 used on Defendant's railroad(s).

RESPONSE:

Defendant objects to this request as it is overly broad, unduly burdensome and not limited to the time period during which Plaintiff was employed by this Defendant or to places, if any, where he was employed. Defendant further objects to the extent it seeks information exempted from discovery by the attorney/client, attorney work product, party communications, and consulting expert privileges.

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.

RESPONSE:

Defendant objects to this request as it is overly broad, unduly burdensome and not limited to the time period during which Plaintiff was employed by this Defendant or to places, if any, where he was employed. Defendant further objects to the extent it seeks information exempted from discovery by the attorney/client, attorney work product, party communications, and consulting expert privileges.

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(s), including, but not limited to, locomotives, engine rooms, boiler rooms, railyards, roundhouses, shops and common areas, concerning any asbestos-containing products in those areas. Request is hereby made for one print of each photograph or video recording produced in response to this request.

RESPONSE:

Defendant objects to this request for the reason that it is overly broad, unduly burdensome, and not limited to the time period during which Plaintiff worked for this Defendant or to the areas in which Plaintiff worked. Objection also to any such materials as may fall within attorney/client, party communication, or attorney work product privileges.

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 objects to this request to the extent that it inquires into the work product of consulting experts which is privileged pursuant to TEX. R. CIV. P. 166b(3)(b). Axelson, Inc. v. McIlhany, 798 S.W.2d 550, 553 (Tex. 1990). Subject to the foregoing objection and without waiving same, Defendant has not yet retained any expert witnesses.

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:

Defendant has not yet retained any expert witnesses.

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:

Defendant objects to this request for the reason that it seeks information exempted from discovery by the witness statements, party communications, attorney work product, consulting expert, and investigative privileges. National Tank Co. v. Brotherton, 851 S.W.2d 193, 203 (Tex. 1993).

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:

Defendant objects to this request for the reason that it seeks information exempted from discovery under the attorney work product privilege. See Texas Tech. Univ. Health Sciences

Ctr. v. Schild, 828 S.W.2d 502 (Tex. App. - El Paso 1992, no writ).

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:

Defendant objects to this request for the reason that it inquires into the identity of consulting experts which is privileged pursuant to TEX. R. CIV. P. 166b(3)(b). Axelson, Inc. v. McIlhany, 798 S.W.2d 550, 553 (Tex. 1990). Subject to the foregoing objections and without waiving same, Defendant has not yet retained any expert witnesses.

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 at Defendant's railroad(s).

RESPONSE:

Defendant objects to this request for the reason that it is overly broad, unduly burdensome, harassing, irrelevant, immaterial, and not reasonably calculated to lead to the discovery of admissible evidence. Defendant further objects to this request for the reason that it is not limited to the time period during which Plaintiff worked for this Defendant or to the areas in which Plaintiff worked. Defendant further objects to this request for the reason that it does not identify with reasonable specificity the documents requested, and is, therefore, an impermissible "fishing expedition." Dillard Department Stores v. Hall, 909 S.W.2d 491, 492 (Tex. 1995); Loftin v. Martin, 776 S.W.2d 145 (Tex. 1989).

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 Defendant and Defendant's 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 Defendant, Defendant's insurer or any agent or representative of Defendant or Defendant's insurer concerning this incident or any injuries or disabilities allegedly resulting therefrom) in Defendant's possession or control, or that of Defendant's insurer, health insurer, disability insurer, liability insurer, or other insurer, relating to Defendant's claim or the investigation of this incident by Defendant, Defendant's insurer, or any individual or entity engaged for

such a purpose.

RESPONSE:

Defendant objects to this request for the reason that it is overly broad, unduly burdensome, harassing, vague, ambiguous, and not limited to the time period during which Plaintiff worked for this Defendant or to the areas in which Plaintiff worked.

Defendant further objects to this request for the reason that it seeks information exempted from discovery by the witness statements, party communications, and investigative privileges. National Tank Co. at 203.

Defendant further objects to this request for the reason that it does not identify with reasonable specificity the documents requested, and is, therefore, an impermissible "fishing expedition." Dillard Department Stores v. Hall, 909 S.W.2d 491, 492 (Tex. 1995); Loftin v. Martin, 776 S.W.2d 145 (Tex. 1989).

Defendant further objects to this request as is inquires into privileged attorney-client communications pursuant to TEX. R. CIV. P. 166b(3)(e) and TEX. R. CIV. EVID. 503(a)(1)-(4), (b). Ford Motor Co. v. Leggat, 904 S.W.2d 643 (Tex. 1995).

Defendant also objects to this request as it inquires into privileged attorney work product pursuant to TEX. R. CIV. P. 166b(3)(a). Owens-Corning Fiberglass Corp. v. Caldwell, 818 S.W.2d 749, 750-2 (Tex. 1991); Occidental Chem. Corp. v. Banales, 907 S.W.2d 488, 490 (Tex. 1995).

REQUEST FOR PRODUCTION NO. 41:

Provide a copy of all accident, injury or illness reports concerning the Plaintiff prepared by and/or for Plaintiffs' employer(s) and/or agents in the general course of business.

RESPONSE:

Defendant objects to this request for the reason that it seeks information exempted from discovery by the witness statements, party communications, and investigative privileges. National Tank Co. at 203. Subject to the foregoing objections and without waiving same, Defendant presently knows of none.

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 1930 to the present.

RESPONSE:

Defendant objects to this request for the reason that it is overly broad, unduly burdensome, harassing, irrelevant, immaterial, and not reasonably calculated to lead to the discovery of admissible evidence. Defendant further objects to this request for the reason that it is not limited to the time period during which Plaintiff worked for this Defendant.

Defendant further objects to this request for the reason that it seeks production of matters which are not related to asbestos claims. Defendant also objects to this request because the requested information is equally accessible to the Plaintiff.

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 railroad workers.

RESPONSE:

Defendant objects to this request for the reason that it is overly broad, unduly burdensome, vague, ambiguous, and not limited to time period during which Plaintiff worked for this Defendant or to the areas in which Plaintiff worked.

Subject to the foregoing objections and without waiving same, see Defendant's 2nd Set of Answers to Interrogatory No. 11. Additionally, Defendant will attempt to locate documents responsive to this request, and will supplement if such documents are found.

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:

Defendant objects to this request for the reason that it is overly broad, unduly burdensome, harassing, irrelevant, immaterial, and not reasonably calculated to lead to the discovery of admissible evidence. By way of example, the request as phrased would literally compel the Defendant to find and produce each and every document regarding *any* repair, maintenance, or inspection of *any* sort on a locomotive, since all such activity, no matter how trivial, could reflect compliance with the BIA.

Defendant also objects to this request for the reason that it does not identify with reasonable specificity the documents requested, and is, therefore, an impermissible "fishing expedition."

Dillard Department Stores v. Hall, 909 S.W.2d 491, 492 (Tex. 1995); Loftin v. Martin, 776 S.W.2d 145 (Tex. 1989).

Defendant further objects to this request as it is not limited in time to the period relevant to this suit. Defendant also objects to this request for the reason that there is no evidence at this time to show that the Boiler Inspection Act is applicable to Plaintiff's claims herein.

REQUEST FOR PRODUCTION NO. 45:

Provide copies of any and all documentation which in any way relates to the transport by Defendant's railroad(s) of asbestos-containing products.

RESPONSE:

Defendant objects to this request for the reason that it is overly broad, unduly burdensome, harassing, irrelevant, immaterial, and not reasonably calculated to lead to the discovery of admissible evidence.

Defendant also objects to this request for the reason that it does not identify with reasonable specificity the documents requested, and is, therefore, an impermissible "fishing expedition." Dillard Department Stores v. Hall, 909 S.W.2d 491, 492 (Tex. 1995); Loftin v. Martin, 776 S.W.2d 145 (Tex. 1989).

Defendant further objects to this request as it is not limited in time to the period relevant to this suit. Defendant also objects to this request for the reason that there is no evidence that Plaintiff was engaged in any task, craft, or job related to train service or transportation of such materials.

REQUEST FOR PRODUCTION NO. 46:

Provide a copy of all documents, reports and other materials identified in Answer to Interrogatory No. 12.

RESPONSE:

Defendant objects to this request for the reason that it is overly broad, unduly burdensome, harassing, irrelevant, immaterial, and not reasonably calculated to lead to the discovery of admissible evidence.

Defendant also objects to this request for the reason that it does not identify with reasonable specificity the documents requested, and is, therefore, an impermissible "fishing expedition." Dillard Department Stores v. Hall, 909 S.W.2d 491, 492 (Tex. 1995); Loftin v. Martin, 776 S.W.2d 145 (Tex. 1989).

Defendant further objects to this request as it is not limited in time to the period relevant to this suit.

REQUEST FOR PRODUCTION NO. 47:

Please produce any and all x-rays, MRI'S, CT-scans, videotapes, or other electronically or technologically created representations, depictions, picturizations, imaging or imagery collected by Defendant in the course of discovery.

RESPONSE:

Defendant objects to this request for the reason that it is overly broad, unduly burdensome, harassing, irrelevant, immaterial, and not reasonably calculated to lead to the discovery of admissible evidence.

Defendant also objects to this request for the reason that it does not identify with reasonable specificity the documents requested, and is, therefore, an impermissible "fishing expedition." Dillard Department Stores v. Hall, 909 S.W.2d 491, 492 (Tex. 1995); Loftin v. Martin, 776 S.W.2d 145 (Tex. 1989).

Objection also on ground of invasion of party communication, attorney-client, and attorney work product privileges.

REQUEST FOR PRODUCTION NO. 48:

Provide copies of any and all documents relating to a National Claims Registry and/or any other entity, group, organization or membership which catalogued, reported upon or collected information relating to claim of work related injuries by railroad workers.

RESPONSE:

Defendant objects to this request for the reason that it is overly broad, unduly burdensome, harassing, immaterial, irrelevant, and not reasonably calculated to lead to the discovery of admissible evidence, particularly since it is not limited in time, nor to the craft or job in which Plaintiff may have served.

Defendant further objects to this request for the reason that it does not identify with reasonable specificity the documents requested, and is, therefore, an impermissible "fishing expedition." Dillard Department Stores v. Hall, 909 S.W.2d 491, 492 (Tex. 1995); Loftin v. Martin, 776 S.W.2d 145 (Tex. 1989).