

FILE NAME: NS

DATE: 1988 NS004

DOC#: NS004

DOCUMENT DESCRIPTION: Legal - Answers & Objections of Defendant NS vs. C. Smith

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF ILLINOIS
DANVILLE, ILLINOIS

CAROL SMITH, Administrator of
the Estate of RICHARD SMITH,
Deceased,

Plaintiff,

v.

NORFOLK AND WESTERN RAILWAY
COMPANY,

Defendant.

CIVIL NO. 88-2050

ANSWERS AND OBJECTIONS OF DEFENDANT NORFOLK AND WESTERN
RAILWAY COMPANY TO PLAINTIFF'S INTERROGATORIES DIRECTED TO
THE NORFOLK AND WESTERN RAILWAY COMPANY

Defendant Norfolk and Western Railway Company (NW), for its answers and objections to plaintiff's interrogatories directed to NW, states as follows:

PRELIMINARY STATEMENT

The following answers are being provided after diligent investigation and inquiry by defendant. However, because some of the events relating to the matters inquired about by plaintiff's interrogatories occurred more than fifty (50) years ago, the availability of persons involved and the existence of applicable documents has been limited.

As a result of the foregoing factors, many of the individuals who might have had personal knowledge of the matters to which plaintiff's interrogatories relate are deceased, retired, or are otherwise unavailable to NW, and investigations to date indicate that at least some documents

which relate to matters inquired about by these interrogatories may have been destroyed in keeping with normal corporate record retention policy. Accordingly, some answers are possibly incomplete. NW's investigation is continuing and should additional information surface, supplemental answers will be submitted. The following is a part of and is incorporated by reference in every answer provided hereinafter:

This answer is accurate as of the date of the Answers and Objections of Defendant Norfolk and Western Railway Company to Plaintiff's Interrogatories. However, NW's investigation is continuing, and NW cannot exclude the possibility that it may be able to obtain more complete information or even information which indicates that the answer being supplied is incorrect. NW objects to answering this interrogatory in regard to any period of time other than the period during which it allegedly employed plaintiff and further objects to providing information about geographic locations and operating units within the system other than those at which and for whom plaintiff's decedent allegedly worked. The bases for such objections are that any answers would be irrelevant to the subject matter of the pending litigation, would not be reasonably calculated to lead to the discovery of admissible evidence, and would be burdensome and oppressive.

NW objects to the instructions and definitions supplied by plaintiff with regard to these interrogatories, on the bases that the definitions are overbroad, vague and often inconsistent with the normal usage and meaning of such words. The instructions are overbroad, burdensome and constitute an unreasonable expansion of the interrogatories themselves. NW therefore gives notice that it does not consider itself bound by the instructions and definitions propounded by plaintiff,

and instead has answered these interrogatories in a manner consistent with the normal understanding of the language used in the interrogatory and to the extent necessary to fairly and fully answer the interrogatory. Further the answers that follow, unless otherwise apparent from the context, are limited to the years 1971 - 1986, the period that NW employed plaintiff as a machinist, and to the Decatur Shops the place where, according to the information to date, plaintiff worked.

INTERROGATORIES

1. List each and every place of work and job assignment of the Plaintiff/Plaintiff's decedent, during his employment with the defendant railroad.

ANSWER: See copy of plaintiff's personnel file.

2. Describe in detail the duties involved in each of the job assignments described in answer to Interrogatory No. 1.

ANSWER: Exact job descriptions and duties of individual machinists may have varied. See Answer to Interrogatory No. 1.

3. Describe in detail the nature of other work performed in your railroad shops where asbestos-containing products were installed, removed or used in such a manner as to create airborne fiber or dust.

ANSWER: NW does not understand the meaning of the phrase "other work" as used in this interrogatory. If it is meant to connote work other than that which plaintiff's decedent performed, then NW states that it has no evidence of and does not concede that Richard Smith was exposed to any significant amounts of asbestos during his years of employment with NW.

Richard Smith worked at NW's Decatur Shops as a machinist from 1971 to 1986. His job assignments likely varied over that period of time. During the period of his employment the usage of asbestos products by the NW was limited in extent. Woven asbestos tape was used to insulate cab heater and steam generator piping in some diesel locomotives. Diesel locomotive engines utilized gaskets that contained asbestos. The overhead steam lines that furnished heat to the Decatur Shops were covered with asbestos-containing thermal insulation, and, on occasion, a section of that would require repair. Asbestos-cement board (transite) and asbestos millboard may have been used in construction applications. Roll asbestos welding paper was used to shield areas from heat and spatter during the welding process. Asbestos-containing packings may have been used in valves where high heat and pressure was encountered. Certain mastics (Duxseal) and roofing compounds used by NW may have contained asbestos, but these compounds did not release respirable fibers. Finally, until approximately 1979 some railroad friction products (brake shoes) contained asbestos fibers.

4. Describe in detail all uses of asbestos-containing products:

- (a) by employees in the job assignments which the deceased held during the time when he held such assignments, and;
- (b) by other employees working in the job categories described in answer to Interrogatory No. 3.

ANSWER: See Answer to Interrogatory No. 3.

5. Describe in detail all safety and/or protective devices by model number and trade name, provided by the defendant to plaintiff with respect to asbestos-containing products, and when each such device became available.

ANSWER: Respiratory protection equipment was available to NW employees during the period of Richard Smith's employment. A copy of a 1981 NW Safety Equipment Catalog is attached as Exhibit 1. Commencing on March 1, 1984, NW instituted an Asbestos Safety Program and an Asbestos Respirator Program. This program was revised in 1986. Copies of both are attached as Exhibits 2 and 3, respectively.

6. List all FELA claims filed against you or your predecessors for asbestosis, lung cancer, mesothelioma, or other occupational disease alleged to have been contracted because of defendant's failure to provide a respirator, mask or adequate protective equipment. For each claim so identified, indicate the date of the claim, the illness alleged and the disposition of the claim.

ANSWER: OBJECTION: The interrogatory as framed is overbroad and vague in its use of the terms "other occupational disease" and "adequate protective equipment". Plaintiff's complaint alleges a claim resulting from asbestos exposure.

Without waiving its objection, NW states that the first claim it received alleging an asbestos-related disease was filed by Ancel B. Wheeler of Portsmouth, Ohio on October 18, 1951. The complaint alleged asbestosis and diathretmatic striction. The case was settled.

In 1979 and 1980 NW received claims from Decatur Shop workers Martin Stephens and Wayne Boggs respectively, alleging asbestos-related pulmonary injuries. These claims were settled during the litigation process. Commencing in 1982 and continuing thereafter NW has received several hundred claims alleging injury as a result of exposure to asbestos while in the railroad's employ.

7. List all asbestos-containing products which you are currently using in your railroad shops.

ANSWER: Commencing in 1981 NW instituted a program to stop further purchase and use of asbestos-containing products where suitable substitutes exist. A copy of a letter regarding that program is attached as Exhibit 4. That program has continued to date and it is believed that few, if any, asbestos-containing products are being used by NW. A computer printout listing asbestos-containing product purchases from 1978-1985 is being produced and demonstrates this discontinuation of use.

8. List all asbestos-containing products which you have used since 1932, but are not currently using, by description and trade name and when use of each was discontinued.

ANSWER: **OBJECTION:** The interrogatory is overbroad and burdensome and not reasonably calculated to lead to the discovery of admissible evidence. Plaintiff's decedent worked for the NW from 1971-1986 and asbestos use during that period was described in Answer to Interrogatory No. 3. As to suppliers during the period of Richard Smith's employment, NW has a limited number of records of asbestos product purchases during the period 1958-1978. A review of those records disclosed one invoice that indicates a purchase for the Decatur Shops. It is attached as Exhibit 5. For the period 1978-1985 a computer printout exists and a copy of the purchases for the Decatur Shops is attached as Exhibit 6.

9. State when and how you became aware that asbestos-containing products were hazardous or potentially hazardous, to your shop employees.

ANSWER: In 1977 the NW received a letter from Mr. J.E. Martin, Vice-President, Association of American Railroads, which attached a copy of a letter from Mr. Donald W. Bennett, Associate Administrator for Safety of the Department of Transportation, Federal Railroad Administration, which had originally been sent to Mr. John A. Risendahl, Executive Director, Safety and Special Services Division of the Association of American Railroads. Mr. Bennett's letter concerned a "NIOSH" survey of trade name products containing one or more carcinogens currently regulated by OSHA. Said letter pointed out that asbestos is considered a carcinogen and that some railway employees might be exposed to a risk of exposure during certain rail welding processes. A copy of the letter is attached as Exhibit 7.

10. Describe in detail all measures taken to warn the plaintiff, and/or other employees in his job category(ies) of the hazards posed by their exposure to asbestos-containing products while working for you.

ANSWER: In the September/October 1983 edition of NS World magazine a "Notice and Warning to Employees Who May Have Been Exposed to Asbestos" was published. A copy of said warning is attached as Exhibit 8.

11. Identify your medical officers who had responsibility for monitoring the health of plaintiff during his railroad employment.

- ANSWER: 1. Robert W. Edmonds, M.D. - April 1, 1970 to December 31, 1980;
2. George W. Ford, M.D. - January 1, 1981 to present.

12. Identify any industrial hygienists you have employed with responsibility for your Paducah and/or Centralia Shops since 1932. As contemplated by these interrogatories, an industrial hygienist is one who performs engineering or health studies to identify and evaluate potential occupational health hazards.

ANSWER: NW has neither Paducah nor Centralia Shops. At NW's Decatur Shops, the NW had the services of an industrial hygienist available to it during the period 1984-1986. The industrial hygienist was Mr. Fred Stanley.

13. Identify your safety directors or officers with responsibility for monitoring the safety of plaintiff during his railroad employment.

- ANSWER: 1. G.W. Gearhart, October 1, 1968 through December 31, 1982;
2. W.C. Stevens, Jr., January 1, 1983 through December 31, 1983;
3. W.M. Westerman, January 1, 1984 through 1986.

14. Indicate the dates of your membership, if any, in the National Safety Council:

- (a) Indicate the dates of your membership in any section or division of the National Safety Council;
- (b) Please identify, by year, the individual or individuals who represented you at the meetings of the National Safety Council and/or its industrial sections or subgroups;
- (c) Please identify any corporate employees or directors who held the position of an officer, director or trustee in the National Safety Council and/or in one or more of its industrial sections and identify the position held by such person.

- ANSWER:
- (a) The NW has been a member of the National Safety Council since 1913, excepting the years 1975-1979 when it was not a member. The NW has been a member of the Railroad Section.
 - (b) The NW has no records of meeting attendance for years prior to 1974. For the years 1974 to date (excluding 1975-1979) NW had a representative at the annual meeting of the National Safety Council. That representative for 1974-1984 was W.L. DeWitt, Director of Safety. Investigation continuing. Please see attached Exhibit 9 for NW committee participation from 1961-1975. Investigation continuing.
 - (c) None to NW's knowledge. Investigation continuing.

15. Please indicate all years in which you attended the Annual Safety Congress of the National Safety Council and identify the individuals attending on your behalf:

- (a) Did you receive the published record of the Annual Safety Congresses from the National Safety Council; if so, please indicate the years of receipt.

ANSWER: See Answer 14(b). NW has been unable to locate any copies of the proceedings of the Annual National Safety Council Congress in its files, and can neither confirm nor deny receipt of same. Investigation continuing.

16. Indicate the years during which you have been a member of the American Association of Railroads:

- (a) For each year, state the amount you contributed to the AAR;
- (b) Identify, for each year, any employer, officer, or director who served as an officer or committeeman in the AAR or any of its sub-organizations or sub-sections.

ANSWER: NW has been a member of the Association of American Railroads since 1934.

(a)-(b) OBJECTION: The information sought is neither relevant nor material to any issue in this litigation, is not reasonably calculated to lead to the discovery of admissible evidence. Further, said interrogatory is virtually unlimited in time or scope and due to the hundreds of committees, subcommittees and subsections within the AAR, it is impossible for defendant to ascertain the information sought with respect to meeting attendance over the entire period of its membership.

17. If you intend to rely on the defense of contributory negligence, indicate all facts on which you base your contention that the plaintiff or decedent was contributorily negligent.

ANSWER: Such a defense has been raised by NW's answer. Discovery is incomplete at this time and final contentions will be filed as required by the Court.

18. List all expert witnesses upon whose testimony you intend to rely in the trial of this action.

ANSWER: Undetermined at this time.

19. Identify any statements having been made by the plaintiff or decedent pertaining to any circumstances or allegations concerning the subject matter of this action:

- (a) Identify the individual in your corporate structure who has knowledge of this statement and/or the individual before whom it was made;
- (b) Identify the form, nature and content of such statement and state whether you are in possession, custody or control of it.

ANSWER: None to NW's knowledge.

23. State the name and address of the person who has possession of the policy as of the date of the reply to these Interrogatories.

ANSWER: See Answer to Interrogatory No. 21.

24. State the named insured under and by virtue of any policy mentioned in the answer to Interrogatory No. 21.

ANSWER: See Answer to Interrogatory No. 21.

25. Give the names, addresses, residences, titles and functions of the defendant's officers or supervisory persons who are answering these Interrogatories.

ANSWER: M.W. Boone, Jr., General Manager - Casualty Claims, Norfolk Southern Corporation, 8 North Jefferson Street, Roanoke, Virginia 24042-0059.

20. State whether or not on the date of the occurrence mentioned in the Complaint, there was a policy of liability insurance covering the defendant.

ANSWER: Yes.

21. If the answer to Interrogatory No. 20 is in the affirmative, state the name and address of such insurer, the number of the policy, the effective date thereof and the expiration date thereof.

ANSWER: The nature and extent of NW's coverage for asbestos-related claims has been the subject of a declaratory judgment action in the United States District Court for the District of Columbia involving scores of insurance companies. That litigation has been settled pursuant to an agreement which requires that its terms be kept confidential. NW represents that as a result of that settlement there are sufficient moneys available to cover any sum that plaintiff may reasonably be expected to recover in this action.

22. If the answer to Interrogatory No. 20 is in the affirmative, state the limits of the insurance afforded by any policy mentioned in the answer to Interrogatory No. 21 as follows:

- (a) for any one person; and
- (b) for all persons injured in one occurrence.

ANSWER: See Answer to Interrogatory No. 21.

NORFOLK AND WESTERN RAILWAY COMPANY

By: M.W. Boone Jr.
M.W. Boone, Jr., General Manager
Casualty Claim Department
Norfolk Southern Corporation

STATE OF VIRGINIA)
)
CITY OF ROANOKE)

M.W. Boone, Jr., being first duly sworn upon his oath, says that he has read the above and foregoing Answer and Objections of Defendant Norfolk and Western Railway Company to Plaintiff's Interrogatories Directed to Norfolk and Western Railway Company; that he does not have personal knowledge regarding the answers thereto but that the matters set forth therein are true, according to his best information and belief; and that he is authorized to execute these answers on behalf of the Norfolk and Western Railway Company.

M.W. Boone Jr.
M.W. Boone, Jr., General Mgr.
Casualty Claim Department
Norfolk Southern Corporation

Subscribed and sworn to before me this 26th day of
October, 1988.

Charles P. Wilson
Notary Public
STATE AT LARGE

My Commission Expires:
Commission Expires March 4 1991

OBJECTIONS:

SAMUELS, MILLER, SCHROEDER, JACKSON & SLY

By: Nicholas J. Neiders
Nicholas J. Neiders, Esq.
SAMUELS, MILLER, SCHROEDER, JACKSON
& SLY
406 Citizens Building
P.O. Box 1359
Decatur, Illinois 62525
217-429-4325

CERTIFICATE OF SERVICE

I certify that on the 3rd day of ~~October~~ ^{November}, 1988, service of a true and complete copy of the above and foregoing pleading or paper was made upon each party or attorney of record herein by depositing the same in the United States mail in envelopes properly addressed to each of them and with sufficient first class postage affixed.

Nicholas J. Weiers
Nicholas J. Weiers