



CAUSE NO. 96-05440-K

|                                |   |                         |
|--------------------------------|---|-------------------------|
| SEATON, JESSE CHALMERS         | § | IN THE DISTRICT COURT   |
| BEATTY WYNN MORGAN, ET. AL     | § |                         |
|                                | § |                         |
| VS.                            | § | DALLAS COUNTY, TEXAS    |
|                                | § |                         |
| OWENS-CORNING FIBERGLAS, ET AL | § | 192ND JUDICIAL DISTRICT |

**DEFENDANT'S OBJECTIONS**  
**TO PLAINTIFFS' REQUESTS FOR PRODUCTION**

TO: Plaintiffs Beatty Wynn Morgan and Shirley Ann Morgan, by and through their attorney of record, Peter K. Kraus/Kimberly A. Castles, Baron & Bud, P.C., 3102 Oak Lawn Ave., Suite 1100, Dallas, Texas 75219

Defendants Norfolk Southern Railway Company (NSRC) and Norfolk Southern Corp. (NSC), pursuant to Rules 166b and 168 of the Texas Rules of Civil Procedure, hereby serve their Objections to Plaintiffs' Requests for Production as follows:

**PRELIMINARY STATEMENT**

The following responses are being provided after diligent investigation and inquiry by Defendant. However, because some of the evidence relating to the matters inquired about by Plaintiffs' Requests for Production 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 Plaintiffs' Requests for Production relate are deceased, retired, or are otherwise unavailable to NSRC, and investigations to date indicate that at least some documents which relate to matters inquired about by these requests may have been destroyed in keeping with normal corporate record retention policy. Accordingly, some responses are possibly

incomplete. NSRC's investigation is continuing and should additional information surface, supplemental responses will be submitted. The following is a part of and is incorporated by reference in every response provided hereinafter:

This response is accurate as of the date of the Answers of Defendant Norfolk Southern Railway Company to Plaintiffs' Request for Production. However, NSRC's investigation is continuing, and NSRC cannot exclude the possibility that it may be able to obtain more complete information or even information which indicates that the response being supplied is incorrect. NSRC objects to responding to this request in regard to any period of time other than the period during which it allegedly employed Plaintiff. NSRC objects to providing information about geographic locations and operating units within the system other than those at which and for whom Plaintiff worked. The basis for such objections are that any responses 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 to NSRC.

The responses that follow, unless otherwise apparent from the context, are limited to the specific period that NSRC allegedly employed Plaintiff; and to the area in and around the place where Plaintiff allegedly worked for NSRC.

NSRC would also state that the answers to these Requests for Production are not complete since the Defendants have not been supplied with information regarding the Plaintiff's work history. Therefore, NSRC is unaware of the exact dates and locations in which the Plaintiff allegedly work for NSRC.

Finally, Defendant, Norfolk Southern Corporation objects to answering each and every request in this set of Requests for Production due to the fact that the Plaintiff was never an employee of this Defendant and it was not in existence at the time of the Plaintiff's alleged employment. Effective June 1, 1982, Southern Railway Company and Norfolk and Western Railway Company became sister

corporations and the stock of each became owned by the Norfolk Southern Corporation, a non-carrier holding company which has never operated a railroad. Each of the carriers continued to operate as separate legal entities, a practice which continues to date. Southern Railway Company subsequently changed its name to Norfolk Southern Railway Company, but never employed the Plaintiff. Norfolk Southern Railway Company remains a separate distinct entity.

### **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:**

Defendants object to the form and substance of this request on the following grounds: The request is overly broad; the request is unlimited in terms of time; the request is vague; the request is ambiguous; 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; the request infringes on the attorney work product privilege; the request infringes on the investigative/party communication privilege; the request infringes on the attorney-client privilege; the request exceeds the scope of discovery permitted by Rule 166b of the Texas Rules of Civil Procedure; and, the request seeks information which is private, confidential and/or proprietary.

**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:**

Defendants object to the form and substance of this request on the following grounds: The request is overly broad; the request is unlimited in terms of time; the request is vague; the request is ambiguous; 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; the request infringes on the attorney work product privilege; the request infringes on the investigative/party communication privilege; the request infringes on the attorney-client privilege; the request exceeds the scope of discovery permitted by Rule 166b of the Texas Rules of Civil Procedure; and, the request seeks information which is private, confidential and/or proprietary.

**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:**

Defendants object to the form and substance of this request on the following grounds: The request is overly broad; the request is unlimited in terms of time; the request is vague; the request is ambiguous; 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; the request infringes on the attorney work product privilege; the request infringes on the investigative/party communication privilege; the request infringes on the attorney-client privilege; the request exceeds the scope of discovery permitted by Rule 166b of the Texas Rules of Civil Procedure; and, the request seeks information which is private, confidential and/or proprietary.

**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:**

Defendants object to the form and substance of this request on the following grounds: The request is overly broad; the request is unlimited in terms of time; the request is vague; the request is ambiguous; 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; the request infringes on the attorney work product privilege; the request infringes on the investigative/party communication privilege; the request infringes on the attorney-client privilege; the request exceeds the scope of discovery permitted by Rule 166b of the Texas Rules of Civil Procedure; and, the request seeks information which is private, confidential and/or proprietary.

**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:**

Defendants object to the form and substance of this request on the following grounds: The request is overly broad; the request is unlimited in terms of time; the request is unlimited in terms of geographic scope; the request is vague; the request is ambiguous; 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; the request infringes on the attorney work product privilege; the request infringes on the investigative/party communication privilege; the request infringes on the attorney-client privilege; the request exceeds the scope of discovery permitted by Rule 166b of the Texas Rules of Civil Procedure; and, the request seeks information which is private, confidential and/or proprietary.

**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:**

Defendants object to the form and substance of this request on the following grounds: The request is overly broad; the request is unlimited in terms of time; the request is unlimited in terms of geographic scope; the request is vague; the request is ambiguous; 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; the request infringes on the attorney work product privilege; the request infringes on the investigative/party communication privilege; the request infringes on the attorney-client privilege; the request exceeds the scope of discovery permitted by Rule 166b of the Texas Rules of Civil Procedure; and, the request seeks information which is private, confidential and/or proprietary.

**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:**

Defendants object to the form and substance of this request on the following grounds: The request is overly broad; the request is unlimited in terms of time; the request is unlimited in terms of geographic scope; the request is vague; the request is ambiguous; 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; the request infringes on the attorney work product privilege; the request infringes on the investigative/party communication privilege; the request infringes on the attorney-client privilege; the request exceeds the scope of discovery permitted by Rule 166b of the Texas Rules of Civil Procedure; and, the request seeks information which is private, confidential and/or proprietary.

**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:**

Defendants object to the form and substance of this request on the following grounds: The request is overly broad; the request is vague; the request is ambiguous; the request is argumentative; the request seeks information which is not relevant and which is not reasonably calculated to lead to the discovery of admissible evidence; 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; the request infringes on the attorney work product privilege; and the request infringes on the investigative/party communication privilege.

**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:**

Defendants object to the form and substance of this request on the following grounds: The request is overly broad; the request is unlimited in terms of time; the request is vague; the request is ambiguous; 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; the request infringes on the attorney work product privilege; the request infringes on the investigative/party communication privilege; the request infringes on the attorney-client privilege; the request exceeds the scope of discovery permitted by Rule 166b of the Texas Rules of Civil Procedure; and, the request seeks information which is private, confidential and/or proprietary.

**REQUEST FOR PRODUCTION NO. 10:** Produce any and all specifications, blueprints, 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, roundhouses 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:**

Defendants object to the form and substance of this request on the following grounds: The request is overly broad; the request is unlimited in terms of time; the request is vague; the request is ambiguous; 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; the request infringes on the attorney work product privilege; the request infringes on the investigative/party communication privilege; the request infringes on the attorney-client privilege; the request exceeds the scope of discovery permitted by Rule 166b of the Texas Rules of Civil Procedure; and, the request seeks information which is private, confidential and/or proprietary.

**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:**

Defendants object to the form and substance of this request on the following grounds: The request is overly broad; the request is unlimited in terms of time; and, the request is unlimited in terms of geographic scope.

**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:**

Defendants object to the form and substance of this request on the following grounds: The request is overly broad; the request is unlimited in terms of time; and, the request is unlimited in terms of geographic scope.

**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:**

Defendants object to the form and substance of this request on the following grounds: The request is overly broad; the request is unlimited in terms of time; the request is unlimited in terms of geographic scope; the request is vague; the request is ambiguous; the request seeks information which is not relevant and which is not reasonably calculated to lead to the discovery of admissible evidence; 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; the request infringes on the attorney work product privilege; the request infringes on the investigative/party communication privilege; the request infringes on the attorney-client privilege; the request exceeds the scope of discovery permitted by Rule 166b of the Texas Rules of Civil Procedure; and, the request seeks information which is private, confidential and/or proprietary.

**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:**

Defendants object to the form and substance of this request on the following grounds: The request is overly broad; the request is unlimited in terms of time; the request is unlimited in terms of geographic scope; the request is vague; the request is ambiguous; the request seeks information which is not relevant and which is not reasonably calculated to lead to the discovery of admissible evidence; 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; the request infringes on the attorney work product privilege; the request infringes on the investigative/party communication privilege; the request infringes on the attorney-client privilege; the request exceeds the scope of discovery permitted by Rule 166b of the Texas Rules of Civil Procedure; and, the request seeks information which is private, confidential and/or proprietary.

**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:**

Defendants object to the form and substance of this request on the following grounds: The request is overly broad; the request is unlimited in terms of time; the request is unlimited in terms of geographic scope; the request is vague; the request is ambiguous; the request seeks information which is not relevant and which is not reasonably calculated to lead to the discovery of admissible evidence; 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, the request exceeds the scope of discovery permitted by Rule 166b of the Texas Rules of Civil Procedure.

**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:**

Defendants object to the form and substance of this request on the following grounds: The request is overly broad; the request is unlimited in terms of geographic scope; the request is vague; the request is ambiguous; the request seeks information which is not relevant and which is not reasonably calculated to lead to the discovery of admissible evidence; 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; the request infringes on the attorney work product privilege; the

request infringes on the investigative/party communication privilege; the request infringes on the attorney-client privilege; the request exceeds the scope of discovery permitted by Rule 166b of the Texas Rules of Civil Procedure; and, the request seeks information which is private, confidential and/or proprietary.

**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:**

Defendants object to the form and substance of this request on the following grounds: The request is overly broad; the request is unlimited in terms of geographic scope; the request is vague; the request is ambiguous; the request seeks information which is not relevant and which is not reasonably calculated to lead to the discovery of admissible evidence; 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; the request infringes on the attorney work product privilege; the request infringes on the investigative/party communication privilege; the request infringes on the attorney-client privilege; the request exceeds the scope of discovery permitted by Rule 166b of the Texas Rules of Civil Procedure; and, the request seeks information which is private, confidential and/or proprietary.

**REQUEST FOR PRODUCTION NO. 18:** Please provide all documents referred to in answering Plaintiffs interrogatories propounded to the Defendant, identifying with specificity which documents were used to answer which interrogatories.

**RESPONSE:**

Defendants object to the form and substance of this request on the following grounds: The request is overly broad; the request is vague; the request is ambiguous; the request seeks information which is not relevant and which is not reasonably calculated to lead to the discovery of admissible evidence; the request infringes on the attorney work product privilege; the request infringes on the investigative/party communication privilege; the request infringes on the attorney-client privilege; the request exceeds the scope of discovery permitted by Rule 166b of the Texas Rules of Civil Procedure; and, the request seeks information which is private, confidential and/or proprietary.

**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:**

Defendants object to the form and substance of this request on the following grounds: The request is overly broad; the request is vague; the request is ambiguous; 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, 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, Defendant states at this time, NSRC has not hired an expert witness to appear and testify at the trial of this cause.

**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 tending 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:**

Defendants object to the form and substance of this request on the following grounds: The request is overly broad; the request is vague; the request is ambiguous; the request seeks information which is not relevant and which is not reasonably calculated to lead to the discovery of admissible evidence; the request infringes on the attorney work product privilege; the request infringes on the investigative/party communication privilege; the request infringes on the attorney-client privilege; and, the request exceeds the scope of discovery permitted by Rule 166b of the Texas Rules of Civil Procedure.

**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:**

NSRC has no documents responsive to this request covering Plaintiff's claim.

**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:**

Defendants object to the form and substance of this request on the following grounds: The request is overly broad; the request is unlimited in terms of geographic scope; the request is vague; the request is ambiguous; the request seeks information which is not relevant and which is not reasonably calculated to lead to the discovery of admissible evidence; 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; the request infringes on the attorney work product privilege; the request infringes on the investigative/party communication privilege; the request infringes on the attorney-client privilege; the request exceeds the scope of discovery permitted by Rule 166b of the Texas Rules of Civil Procedure; and, the request seeks information which is private, confidential and/or proprietary.

**REQUEST FOR PRODUCTION NO. 23:** Provide a copy of all documents from which your present net worth may be ascertained.

**RESPONSE:**

Defendants object to the form and substance of this request on the following grounds: The request is overly broad; the request is vague; the request is ambiguous; the request seeks information which is not relevant and which is not reasonably calculated to lead to the discovery of admissible evidence; 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; the request exceeds the scope of discovery permitted by Rule 166b of the Texas Rules of Civil Procedure; and, the request seeks information which is private, confidential and/or proprietary.

Defendants further object to this Request for the reason that it could not lead to the discovery of admissible evidence. Punitive damages are not available in FELA actions.

**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:**

Defendants object to the form and substance of this request on the following grounds: The request is overly broad; the request is unlimited in terms of time; the request is unlimited in terms of geographic scope; the request is vague; the request is ambiguous; the request seeks information which is not relevant and which is not reasonably calculated to lead to the discovery of admissible evidence; 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, the request exceeds the scope of discovery permitted by Rule 166b of the Texas Rules of Civil Procedure.

**REQUEST FOR PRODUCTION NO. 25:** Provide a copy of all medical records obtained by the Defendant relating to the Plaintiff.

**RESPONSE:**

Any medical records which relates to Plaintiff and have been obtained through medical authorizations supplied by Plaintiff will be produced to counsel for Plaintiff, for the cost of copying.

**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:**

Defendants object to the form and substance of this request on the following grounds: The request is overly broad; the request is unlimited in terms of time; the request is unlimited in terms of geographic scope; the request is vague; the request is ambiguous; the request seeks information which is not relevant and which is not reasonably calculated to lead to the discovery of admissible evidence; 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, the request exceeds the scope of discovery permitted by Rule 166b of the Texas Rules of Civil Procedure.

**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:**

Defendants object to the form and substance of this request on the following grounds: The request is overly broad; the request is unlimited in terms of geographic scope; the request is vague; the request is ambiguous; and, the request exceeds the scope of discovery permitted by Rule 166b of the Texas Rules of Civil Procedure.

**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:**

To the extent that this request seeks items applicable after the dates of Plaintiff's alleged employment with NSRC, Defendants object to this Request on the following grounds: The request seeks information which is not relevant and which is not reasonably calculated to lead to the discovery of admissible evidence; and, the request exceeds the scope of discovery permitted by Rule 166b of the Texas Rules of Civil Procedure.

**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:**

NSRC has been unable to locate any such documents. Investigation continues and if any such documents are located, they will be produced to Plaintiff's counsel.

**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:**

Defendants object to the form and substance of this request on the following grounds: The request is overly broad; the request is unlimited in terms of time; the request is unlimited in terms of geographic scope; the request seeks information which is not relevant and which is not reasonably calculated to lead to the discovery of admissible evidence; the request exceeds the scope of discovery permitted by Rule 166b of the Texas Rules of Civil Procedure; and, the request seeks information which is private, confidential and/or proprietary.

**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:**

Defendants object to the form and substance of this request on the following grounds: The request is overly broad; the request is unlimited in terms of time; the request is unlimited in terms of geographic scope; the request is vague; the request is ambiguous; the request seeks information which is not relevant and which is not reasonably calculated to lead to the discovery of admissible evidence; 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; the request infringes on the attorney work product privilege; the request infringes on the investigative/party communication privilege; the request infringes on the attorney-client privilege; the request exceeds the scope of discovery permitted by Rule 166b of the Texas Rules of Civil Procedure; and, the request seeks information which is private, confidential and/or proprietary.

**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:**

Defendants object to the form and substance of this request on the following grounds: The request is overly broad; the request is unlimited in terms of geographic scope; and, the request exceeds the scope of discovery permitted by Rule 166b of the Texas Rules of Civil Procedure.

**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

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**RESPONSE:**

Defendants object to the form and substance of this request on the following grounds: The request is overly broad; the request is unlimited in terms of time; the request is unlimited in terms of geographic scope; the request is vague; the request is ambiguous; the request seeks information which is not relevant and which is not reasonably calculated to lead to the discovery of admissible evidence; 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, the request exceeds the scope of discovery permitted by Rule 166b of the Texas Rules of Civil Procedure.

**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

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:**

Defendants object to the form and substance of this request on the following grounds: The request is overly broad; the request is unlimited in terms of time; the request is unlimited in terms of geographic scope; the request is vague; the request is ambiguous; the request seeks information which is not relevant and which is not reasonably calculated to lead to the discovery of admissible evidence; 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, the request exceeds the scope of discovery permitted by Rule 166b of the Texas Rules of Civil Procedure.

**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:**

Defendants object to the form and substance of this request on the ground that the request exceeds the scope of discovery permitted by Rule 166b of the Texas Rules of Civil Procedure.

**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:**

Defendants object to the form and substance of this request on the following grounds: The request is overly broad; the request is vague; the request is ambiguous; and, 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.

**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:**

Defendants object to the form and substance of this request on the following grounds: The request infringes on the attorney work product privilege; the request infringes on the investigative/party communication privilege; the request infringes on the attorney-client privilege; the request seeks information which is private, confidential and/or proprietary; and, the request violates or infringes on the witness statement privilege.

**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:**

Defendants object to the form and substance of this request on the following grounds: The request is overly broad; the request infringes on the attorney work product privilege; the request infringes on the investigative/party communication privilege; the request infringes on the attorney-client privilege; and, the request exceeds the scope of discovery permitted by Rule 166b of the Texas Rules of Civil Procedure.

**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:**

Defendants object to this request on the grounds that the request infringes on the consulting expert privilege.

**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:**

Defendants object to the form and substance of this request on the following grounds: The request is overly broad; the request is unlimited in terms of time; the request seeks information which is not relevant and which is not reasonably calculated to lead to the discovery of admissible evidence; 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, the request exceeds the scope of discovery permitted by Rule 166b of the Texas Rules of Civil Procedure.

**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:**

Defendants object to the form and substance of this request on the following grounds: The request is overly broad; the request is vague; the request is ambiguous; the request infringes on the attorney work product privilege; the request infringes on the investigative/party communication privilege; the request infringes on the attorney-client privilege; the request exceeds the scope of discovery permitted by Rule 166b of the Texas Rules of Civil Procedure; the request violates or infringes on the witness statement privilege; and, the request infringes on the consulting expert privilege

**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:**

Defendants object to the form and substance of this request on the following grounds: The request is overly broad; the request is vague; the request is ambiguous; the request infringes on the attorney work product privilege; the request infringes on the investigative/party communication privilege; the request infringes on the attorney-client privilege; the request exceeds the scope of discovery permitted by Rule 166b of the Texas Rules of Civil Procedure; the request violates or infringes on the witness statement privilege; and, the request infringes on the consulting expert privilege

**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 Plaintiffs employer from 1930 to the present.

**RESPONSE:**

Defendants object to the form and substance of this request on the following grounds: The request is overly broad; the request is vague; the request is ambiguous; 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, the request exceeds the scope of discovery permitted by Rule 166b of the Texas Rules of Civil Procedure.

**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:**

Defendants object to the form and substance of this request on the following grounds: The request is overly broad; the request is unlimited in terms of time; the request is unlimited in terms of geographic scope; the request is vague; the request is ambiguous; the request seeks information which is not relevant and which is not reasonably calculated to lead to the discovery of admissible evidence; 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, the request exceeds the scope of discovery permitted by Rule 166b of the Texas Rules of Civil Procedure.

**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:**

Defendants object to the form and substance of this request on the following grounds: The request is overly broad; the request is unlimited in terms of geographic scope; the request is vague; the request is ambiguous; the request seeks information which is not relevant and which is not reasonably calculated to lead to the discovery of admissible evidence; 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, the request exceeds the scope of discovery permitted by Rule 166b of the Texas Rules of Civil Procedure.

**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:**

Defendants object to the form and substance of this request on the following grounds: The request is overly broad; the request is unlimited in terms of time; the request is unlimited in terms of geographic scope; the request is vague; the request is ambiguous; the request seeks information which is not relevant and which is not reasonably calculated to lead to the discovery of admissible evidence; 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; the request exceeds the scope of discovery permitted by Rule 166b of the Texas Rules of Civil Procedure; and, the request seeks information which is private, confidential and/or proprietary.

**REQUEST FOR PRODUCTION NO. 46:** Provide a copy of all documents, reports and other materials identified in Answer to Interrogatory No. 12.

**RESPONSE:**

Defendants object to the form and substance of this request on the following grounds: The request is overly broad; the request is unlimited in terms of time; the request is unlimited in terms of geographic scope; the request is vague; the request is ambiguous; the request seeks information which is not relevant and which is not reasonably calculated to lead to the discovery of admissible evidence; 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; the request exceeds the scope of discovery permitted by Rule 166b of the Texas Rules of Civil Procedure; and, the request seeks information which is private, confidential and/or proprietary.

**REQUEST FOR PRODUCTION NO. 47:** Please produce any and all x-rays, MRIs, CT-scans, videotapes, or other electronically or technologically created representations, depictions, picturizations, imaging or imagery collected by Defendant in the course of discovery.

**RESPONSE:**

Defendants object to the form and substance of this request on the following grounds: The request is overly broad; the request is unlimited in terms of time; the request is unlimited in terms of geographic scope; the request is vague; the request is ambiguous; the request seeks information which is not relevant and which is not reasonably calculated to lead to the discovery of admissible evidence; 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; the request exceeds the scope of discovery permitted by Rule 166b of the Texas Rules of Civil Procedure; and, the request seeks information which is private, confidential and/or proprietary.

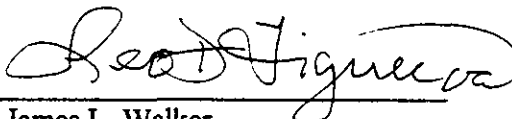
**REQUEST FOR PRODUCTION NO. 48:** Provide copies of any and all documentation relating to a National Claims Registry and/or any other entity, group, organization or membership which catalogued, reported upon or collected information relating to claims of work related injuries by railroad workers.

**RESPONSE:**

Defendants object to the form and substance of this request on the following grounds: The request is overly broad; the request is unlimited in terms of time; the request is unlimited in terms of geographic scope; the request is vague; the request is ambiguous; 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; the request infringes on the attorney work product privilege; the request infringes on the investigative/party communication privilege; the request infringes on the attorney-client privilege; the request exceeds the scope of discovery permitted by Rule 166b of the Texas Rules of Civil Procedure; and, the request seeks information which is private, confidential and/or proprietary.

Respectfully submitted,

JACKSON WALKER L.L.P.  
112 East Pecan Street, Suite 2100  
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Telephone (210) 978-7700  
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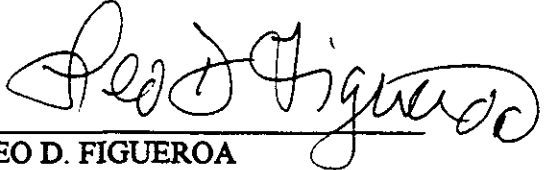
By:   
James L. Walker  
State Bar No. 20708500  
Leo D. Figueroa  
State Bar No. 06984100

ATTORNEYS FOR DEFENDANT, NORFOLK AND  
SOUTHERN RAILWAY COMPANY AND NORFOLK  
SOUTHERN CORPORATION

**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the above and foregoing was served by certified mail, return receipt requested, to Mr. Peter A. Kraus / Kimberly A. Castles, Baron & Budd, The Centrum, Suite 1100, 3102 Oak Lawn Avenue, Dallas, Texas 75219, on this the 25th day of August, 1997.

All defense counsel may request a copy of this document.

  
LEO D. FIGUEROA

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