

STATE OF NEW MEXICO
COUNTY OF VALENCIA
THIRTEENTH JUDICIAL DISTRICT COURT

KAREN R. SALAZAR, Individually and as
Personal Representative of The Estate
OF SANTIAGO RILEY, Deceased

Plaintiff,

vs.

NO. D-1314-CV-2012-00163

BNSF RAILWAY COMPANY as Successor in
Interest to the ATCHISON, TOPEKA &
SANTA FE RAILWAY COMPANY,

Defendant

COMPLAINT

NOW COMES PLAINTIFF, KAREN R. SALAZAR, Individually and as Personal Representative of the Estate of SANTIAGO RILEY, Deceased, and for cause of action against the Defendant, with respect represents:

1. That Plaintiff, KAREN R. SALAZAR Individually and as Personal Representative of the Estate of SANTIAGO RILEY Deceased, is a citizen and resident of Valencia County, State of New Mexico and at all times relevant, the decedent SANTIAGO RILEY was a resident of the State of New Mexico. That the Plaintiff is the duly appointed personal representative of the Estate of his decedent by order of the Probate Court of Valencia County, and brings this action for wrongful death and survival on his behalf and on behalf all statutory beneficiaries pursuant to the provisions of the Federal Employers Liability Act, 45 U.S.C. Section 51, 59.

2. That at all times mentioned herein, and at all relevant time periods, Defendant BNSF's predecessor in interested railroad the Atchison, Topeka & Santa Fe Railway Company (hereinafter "AT&SF" or railroad defendant) was engaged in the business of interstate commerce in and throughout the United States as a common carrier by railroad; and for the purposes thereof, did operate its business, maintain its offices and track, and place its agent, servants and employees in and through Valencia County, New Mexico, and generally throughout the State of New Mexico.

3. That during the course of Plaintiff's employment, the AT&SF was engaged in interstate commerce as a common carrier by rail, and all or part of the duties of Plaintiff were in furtherance of and did closely, directly and substantially affect interstate commerce; wherefore the rights and liabilities of the parties were and are governed by the Federal Employers' Liability Act, 45 U.S.C., Section 1 et. seq., which Act grants this Court jurisdiction over this action.

4. That beginning in 1942 and throughout his employment with the railroad defendant until approximately 1955, Decedent was engaged in the performance of his duties in furtherance of interstate commerce and was required to work with and around asbestos-containing products and locomotives in the AT&SF's various railroad shops and facilities, including the Belen, New Mexico, and Winslow, Arizona locomotive shops.

5. That during the course of Decedent's employment with the defendant railroad, he was engaged in the course of his employment at its repair shops and facilities in and around the State of New Mexico and elsewhere as a laborer and in other various roles and capacities where he was required and caused to sweep, work with, and in the vicinity of toxic substances including asbestos and asbestos-containing products and materials which caused him to suffer severe and

permanent injury to his person, to wit: asbestosis and respiratory failure, ultimately contributing to his decline and eventual death on March 28, 2011 in Cibola, New Mexico.

6. That at all times relevant, Decedent was unaware of the dangerous propensities of asbestos and asbestos-containing products he was required to work with and around and was unaware of the cause of his latent abnormal medical condition until he was diagnosed with and informed that he had asbestosis, less than three years prior to the commencement of this civil action.

COUNT I - DECEDENT'S FIRST CAUSE OF ACTION

7. Plaintiff re-alleges Paragraphs 1-6 as if restated herein verbatim.

8. That the Railroad Defendant, by and through its duly authorized agents, servants and employees, was then and there guilty of one or more of the following negligent acts or omissions in violation of the Federal Employers' Liability Act:

- (a) in failing to provide Decedent with a reasonably safe place within which to work;
- (b) in failing to furnish Decedent with safe and suitable tools and equipment including adequate protective masks and/or protective inhalation devices;
- (c) in failing to warn Decedent of the true nature and hazardous effects of the asbestos-related and other hazardous materials;
- (d) in failing to operate the locomotive repair facility in a safe and reasonable manner;
- (e) in failing to provide instructions or a method for the safe use of asbestos;
- (f) in failing to provide adequate, if any, instructions in the use or removal of old asbestos products;

- (g) in failing to test asbestos-containing products prior to requiring employees to work with the same, to determine their ultra-hazardous nature;
- (h) in formulating and using a method of handling asbestos and asbestos-related materials exposing Decedent to high concentrations of asbestos fibers;
- (i) in failing to provide Decedent with safe and proper ventilation systems in the locomotive repair facility;
- (j) in allowing unsafe practices to become the standard practice;
- (k) in failing to exercise reasonable care in publishing and enforcing a safety plan and method of handling and installing said asbestos and asbestos insulation materials and other asbestos-containing products;
- (l) in failing to inquire of the suppliers of asbestos-containing products, the hazardous nature of asbestos;
- (m) in requiring employees to work with an ultra-hazardous product;
- (n) in failing to exercise adequate, if any, care for the health and safety of employees, including the Decedent;
- (o) in failing to periodically test and examine Decedent to determine if they were subject to any ill effects of their exposure to asbestos-related products and other hazardous substances;
- (p) in failing to periodically inspect its locomotives, boilers, and their appurtenances in order to ascertain any contamination by asbestos fibers;
- (q) in allowing excessive fumes, dusts, gases and mists to exist and remain in the work area;

(r) in failing to provide any or adequate warning to the Decedent of the exposure to the carcinogen asbestos at any time, including up to the time of filing.

9. That as a direct and proximate result, in whole or in part, of one or more of the foregoing negligent acts or omissions on the part of the Railroad Defendant, Decedent suffered exposure to toxic substances including asbestos and asbestos-containing materials which caused him to sustain severe injury to his person, to wit: asbestosis with respiratory failure, ultimately contributing to his decline and eventual death on March 28, 2011.

10. That, as a result, Decedent experienced severe physical and mental suffering between the period of the manifestation of his physical symptoms and his death; that his enjoyment of life, and earning capacity were greatly impaired and shortened; and further, that his expected life span was greatly shortened. Plaintiff further alleges that as a result of Decedent's health problems, Plaintiff was forced to incur medical expenses by way of doctor, hospital and drug bills and has suffered economic loss in the form of terminated financial contribution by his decedent, and in the form of termination of certain pension and other financial benefits which Plaintiff could have reasonably expected to receive had Decedent not died of his asbestos related disease.

11. That Decedent was an able-bodied man, and was capable of productive retirement employment prior to the manifestation of his illnesses. As a result of his illnesses, Decedent suffered damages by way of lost wages and retirement earning capacity, and by way of his diminished ability to render services, society, affection, counseling and support to his household and family.

WHEREFORE, Plaintiff demands judgment against the Defendant, for money damages for the injuries suffered as herein alleged, in an amount to be determined by the trier of fact; together with applicable interest, costs and all other relief permitted by law.

PLAINTIFF DEMANDS A JURY TRIAL.

Respectfully submitted,

/s/ Cindy M. Mercer

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