

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

-----X
THE CITY OF NEW YORK, THE NEW YORK CITY :
HOUSING AUTHORITY and THE NEW YORK CITY :
HEALTH AND HOSPITALS CORPORATION, :

Plaintiffs, :

- against -

LEAD INDUSTRIES ASSOCIATION, INC., NL :
INDUSTRIES, INC., EAGLE-PICHER :
INDUSTRIES, INC., ATLANTIC RICHFIELD :
COMPANY, THE SHERWIN-WILLIAMS COMPANY, :
SCM CORPORATION, THE GLIDDEN COMPANY, :
AMERICAN CYANAMID COMPANY, and FULLER- :
O'BRIEN CORPORATION, :

Defendants. :

-----X

NEW YORK
COUNTY CLERK

AUG - 1993

NOT
WITH
Index No. 14365/89

IAS Part 39
(Justice Freedman)

ANSWER OF DEFENDANT
AMERICAN CYANAMID
COMPANY

Defendant American Cyanamid Company ("Cyanamid"),
by its undersigned attorneys, Donovan Leisure Newton &
Irvine, as and for its answer to plaintiffs' Amended
Complaint dated September 3, 1993 ("Amended Complaint"),
respectfully alleges as follows:

1. Denies knowledge or information sufficient to
form a belief as to the truth of the allegations of Paragraph
1 of the Amended Complaint.

2. Denies knowledge or information sufficient to
form a belief as to the truth of the allegations of Paragraph
2 of the Amended Complaint.

3. Paragraph 3 of the Amended Complaint asserts a conclusion of law, as to which no responsive pleading is required.

4. Paragraph 4 of the Amended Complaint asserts a conclusion of law, as to which no responsive pleading is required.

5. Paragraph 5 of the Amended Complaint asserts a conclusion of law, as to which no responsive pleading is required.

6. Denies knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 6 of the Amended Complaint.

7. Denies knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 7 of the Amended Complaint.

8. Denies knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 8 of the Amended Complaint.

9. Denies knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 9 of the Amended Complaint.

10. Denies knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 10 of the Amended Complaint.

11. Denies knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 11 of the Amended Complaint.

12. Denies knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 12 of the Amended Complaint.

13. Admits that Cyanamid is a Maine corporation with its principal place of business in New Jersey, and except as so admitted, denies the allegations of Paragraph 13 of the Amended Complaint.

14. Denies knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 14 of the Amended Complaint.

15. Denies the allegations of Paragraph 15 of the Amended Complaint to the extent they are directed against Cyanamid, and denies knowledge or information sufficient to form a belief as to the truth of the allegations to the extent they are directed against other defendants.

16. Paragraph 16 sets forth a definition, as to which no responsive pleading is required.

17. Admits that Cyanamid did and does business in the State of New York and that Cyanamid has transacted business in the State of New York, and except as so admitted, denies the allegations of Paragraph 17 of the Amended

Complaint to the extent they are directed against Cyanamid, and denies knowledge or information sufficient to form a belief as to the truth of the allegations to the extent they are directed against other defendants.

18. Admits that Cyanamid derives substantial revenue for the sale and use of its products in New York, and except as so admitted, denies knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 18 of the Amended Complaint to the extent they are directed against other defendants.

19. Denies the allegations of Paragraph 19 of the Amended Complaint.

20. Denies the allegations of Paragraph 20 of the Amended Complaint.

21. Denies knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 21 of the Amended Complaint.

22. Denies knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 22 of the Amended Complaint.

23. Denies knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 23 of the Amended Complaint.

24. Denies knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 24 of the Amended Complaint.

25. Denies knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 25 of the Amended Complaint.

26. Denies knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 26 of the Amended Complaint.

27. Denies knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 27 of the Amended Complaint.

28. Denies knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 28 of the Amended Complaint.

29. Denies knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 29 of the Amended Complaint.

30. Denies knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 30 of the Amended Complaint.

31. Denies knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 31 of the Amended Complaint.

32. Denies knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 32 of the Amended Complaint.

33. Denies knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 33 of the Amended Complaint.

34. Denies knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 34 of the Amended Complaint.

35. Denies knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 35 of the Amended Complaint.

36. Denies knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 36 of the Amended Complaint.

37. Denies knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 37 of the Amended Complaint.

38. Denies the allegations of Paragraph 38 of the Amended Complaint to the extent they are directed against Cyanamid, and denies knowledge or information sufficient to form a belief as to the truth of the allegations to the extent they are directed against other defendants.

39. Denies the allegations of Paragraph 39 of the Amended Complaint to the extent they are directed against Cyanamid, and denies knowledge or information sufficient to form a belief as to the truth of the allegations to the extent they are directed against other defendants.

PLAINTIFFS' DAMAGES

40. Denies knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 40 of the Amended Complaint.

41. Denies knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 41 of the Amended Complaint.

42. Denies knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 42 of the Amended Complaint.

43. Denies knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 43 of the Amended Complaint.

44. Denies knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 44 of the Amended Complaint.

PLAINTIFFS ACTIVITIES TO ABATE
LEAD PAINT HAZARDS

45.(a-e). Denies knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraphs 45(a-e) of the Amended Complaint.

AS AND FOR AN ANSWER TO
THE FIRST CAUSE OF ACTION

46. By order entered June 2, 1994 and judgment entered June 17, 1994, plaintiffs' cause of action for negligent product design was dismissed by this Court as against Cyanamid, and thus no responsive pleading is required by Cyanamid to paragraphs 46 through 52 of the Amended Complaint.

AS AND FOR AN ANSWER TO
THE SECOND CAUSE OF ACTION

47. By order entered June 2, 1994 and judgment entered June 17, 1994, plaintiffs' cause of action for negligent failure to warn was dismissed by this Court as against Cyanamid, and thus no responsive pleading is required by Cyanamid to paragraphs 53 through 56 of the Amended Complaint.

AS AND FOR AN ANSWER TO
THE THIRD CAUSE OF ACTION

48. By order entered June 2, 1994 and judgment entered June 17, 1994, plaintiffs' cause of action for strict products liability was dismissed by this Court as against Cyanamid, and thus no responsive pleading is required by Cyanamid to paragraphs 57 through 62 of the Amended Complaint.

AS AND FOR AN ANSWER TO
THE FOURTH CAUSE OF ACTION

49. Denies the allegations of Paragraph 63 of the Amended Complaint to the extent they are directed against Cyanamid, and denies knowledge or information sufficient to form a belief as to the truth of the allegations to the extent they are directed against other defendants.

50. Denies knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 64 of the Amended Complaint.

51. Denies knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 65 of the Amended Complaint.

52. Denies the allegations of Paragraph 66 of the Amended Complaint.

53. Denies the allegations of Paragraph 67 of the Amended Complaint.

54. Paragraph 68 of the Amended Complaint contains no factual allegations to which a responsive pleading is required.

55. Denies the allegations of Paragraph 69 of the Amended Complaint to the extent they are directed against Cyanamid, and denies knowledge or information sufficient to form a belief as to the truth of the allegations to the extent they are directed against other defendants.

AS AND FOR AN ANSWER TO
THE FIFTH CAUSE OF ACTION

56. Denies the allegations of Paragraph 70 of the Amended Complaint to the extent they are directed against Cyanamid, and denies knowledge or information sufficient to form a belief as to the truth of the allegations to the extent they are directed against other defendants.

57. Denies knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 71 of the Complaint.

58. Denies knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 72 of the Complaint.

59. Denies the allegations of Paragraph 73 of the Amended Complaint.

60. Denies the allegations of Paragraph 74 of the Amended Complaint.

61. Denies the allegations of Paragraph 75 of the Amended Complaint to the extent they are directed against Cyanamid, and denies knowledge or information sufficient to form a belief as to the truth of the allegations to the extent they are directed against other defendants.

AS AND FOR AN ANSWER TO
THE SIXTH CAUSE OF ACTION

62. By order entered June 2, 1994 and judgment entered June 17, 1994, plaintiffs' cause of action for fraud and misrepresentation was dismissed by this Court as against Cyanamid, and thus no responsive pleading is required by Cyanamid to paragraphs 76 through 83 of the Amended Complaint.

AS AND FOR AN ANSWER TO
PUNITIVE DAMAGES

63. Denies the allegations of Paragraph 84 of the Amended Complaint to the extent they are directed against Cyanamid, and denies knowledge or information sufficient to

form a belief as to the truth of the allegations to the extent they are directed against other defendants.

64. Admits that plaintiffs purport to seek punitive or exemplary damages, but otherwise denies the allegations of Paragraph 85 of the Amended Complaint to the extent they are directed against Cyanamid, and denies knowledge or information sufficient to form a belief as to the truth of the allegations to the extent they are directed against other defendants.

AS AND FOR AN ANSWER TO
JOINT AND SEVERAL LIABILITY:
CIVIL CONSPIRACY

65. Denies the allegations of Paragraph 86 of the Amended Complaint to the extent they are directed against Cyanamid, and denies knowledge or information sufficient to form a belief as to the truth of the allegations to the extent they are directed against other defendants.

66. Denies the allegations of Paragraph 87 of the Amended Complaint to the extent they are directed against Cyanamid, and denies knowledge or information sufficient to form a belief as to the truth of the allegations to the extent they are directed against other defendants.

67. Denies the allegations of Paragraph 88 of the Amended Complaint to the extent they are directed against

Cyanamid, and denies knowledge or information sufficient to form a belief as to the truth of the allegations to the extent they are directed against other defendants.

68. Denies the allegations of Paragraph 89 of the Amended Complaint to the extent they are directed against Cyanamid, and denies knowledge or information sufficient to form a belief as to the truth of the allegations to the extent they are directed against other defendants.

AS AND FOR AN ANSWER TO
JOINT AND SEVERAL LIABILITY:
CONCERT OF ACTION

69. Denies the allegations of Paragraph 90 of the Amended Complaint to the extent they are directed against Cyanamid, and denies knowledge or information sufficient to form a belief as to the truth of the allegations to the extent they are directed against other defendants.

70. Denies the allegations of Paragraph 91 of the Amended Complaint to the extent they are directed against Cyanamid, and denies knowledge or information sufficient to form a belief as to the truth of the allegations to the extent they are directed against other defendants.

71. Denies the allegations of Paragraph 92 of the Amended Complaint to the extent they are directed against Cyanamid, and denies knowledge or information sufficient to

form a belief as to the truth of the allegations to the extent they are directed against other defendants.

72. Denies the allegations of Paragraph 93 of the Amended Complaint to the extent they are directed against Cyanamid, and denies knowledge or information sufficient to form a belief as to the truth of the allegations to the extent they are directed against other defendants.

AS AND FOR AN ANSWER TO
JOINT AND SEVERAL LIABILITY:
ENTERPRISE LIABILITY

73. Denies the allegations of Paragraph 94 of the Amended Complaint to the extent they are directed against Cyanamid, and denies knowledge or information sufficient to form a belief as to the truth of the allegations to the extent they are directed against other defendants.

74. Denies the allegations of Paragraph 95 of the Amended Complaint to the extent they are directed against Cyanamid, and denies knowledge or information sufficient to form a belief as to the truth of the allegations to the extent they are directed against other defendants.

75. Denies the allegations of Paragraph 96 of the Amended Complaint to the extent they are directed against Cyanamid, and denies knowledge or information sufficient to form a belief as to the truth of the allegations to the extent they are directed against other defendants.

AS AND FOR AN ANSWER TO
JOINT AND SEVERAL LIABILITY
ALTERNATIVE AND MARKET SHARE LIABILITY

76. Denies knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 97 of the Amended Complaint.

77. Denies knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 98 of the Amended Complaint.

78. Admits that it is impossible to identify the manufacturers of the lead pigment found in any specific building in the City, and except as so admitted, denies knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 99 of the Amended Complaint.

79. Denies the allegations of Paragraph 100 of the Amended Complaint.

80. Denies the allegations of Paragraph 101 of the Amended Complaint to the extent they are directed against Cyanamid, and denies knowledge or information sufficient to form a belief as to the truth of the allegations to the extent they are directed against other defendants.

81. Denies the allegations of Paragraph 102 of the Amended Complaint to the extent they are directed against Cyanamid, and denies knowledge or information sufficient to

form a belief as to the truth of the allegations to the extent they are directed against other defendants.

AS AND FOR A FIRST
AFFIRMATIVE DEFENSE

82. The Amended Complaint fails to state a cause of action against defendant Cyanamid upon which relief can be granted.

AS AND FOR A SECOND
AFFIRMATIVE DEFENSE

83. Plaintiffs' causes of action in the Amended Complaint are barred in whole or in part by the applicable statute of limitations to the extent they are directed against Cyanamid.

AS AND FOR A THIRD
AFFIRMATIVE DEFENSE

84. Defendant Cyanamid is not a proper party to some or all of the causes of action asserted in the Amended Complaint.

AS AND FOR A FOURTH
AFFIRMATIVE DEFENSE

85. Plaintiffs' causes of action are barred in whole or in part by the equitable doctrines of laches, waiver and estoppel.

AS AND FOR A FIFTH
AFFIRMATIVE DEFENSE

86. Plaintiffs have failed to join parties indispensable to a just adjudication of this lawsuit.

AS AND FOR A SIXTH
AFFIRMATIVE DEFENSE

87. Plaintiffs are barred from recovery for some or all of the causes of action asserted against Cyanamid because plaintiffs' own fault or negligence caused or contributed to the alleged injuries.

AS AND FOR A SEVENTH
AFFIRMATIVE DEFENSE

88. Plaintiffs assumed the risk of some or all of the conditions and damages alleged in the Amended Complaint.

AS AND FOR AN EIGHTH
AFFIRMATIVE DEFENSE

89. Some or all of the causes of action asserted by Plaintiffs are precluded because Plaintiffs have failed to mitigate damages.

AS AND FOR A NINTH
AFFIRMATIVE DEFENSE

90. Plaintiffs' damages, if any, were caused by the acts or omissions of third parties over whom Cyanamid had no control and with respect to whom Cyanamid has no liability.

AS AND FOR A TENTH
AFFIRMATIVE DEFENSE

91. Some or all of the causes of action stated in the Amended Complaint seek to impose liability for conduct that is protected from liability by the First Amendment to the United States Constitution and by Article 1, § 8 of the Constitution of the State of New York.

AS AND FOR AN ELEVENTH
AFFIRMATIVE DEFENSE

92. The Amended Complaint fails to state any cause of action against Cyanamid for which punitive or exemplary damages can be awarded.

AS AND FOR A TWELFTH
AFFIRMATIVE DEFENSE

93. Cyanamid owed no legally recognized duty to the City of New York or to the New York City Housing Authority in the City's or the Housing Authority's management of the City's or the Housing Authority's properties and, accordingly Cyanamid cannot be liable or responsible to the City or the Housing Authority for any compensatory, punitive, or exemplary damages sought to be recovered in this action.

AS AND FOR A THIRTEENTH
AFFIRMATIVE DEFENSE

94. Plaintiffs' causes of action for restitution and indemnification are barred by the equitable doctrine of unclean hands.

AS AND FOR A FOURTEENTH
AFFIRMATIVE DEFENSE

95. The causes of action stated in the Amended Complaint unlawfully seek to recover the cost of providing governmental services.

AS AND FOR A FIFTEENTH
AFFIRMATIVE DEFENSE

96. At all relevant times, customers of Cyanamid's alleged predecessor-in-interest were sophisticated users of lead pigment, having knowledge equal to or greater than Cyanamid's alleged predecessor-in-interest with respect to the properties of lead pigment and the potential hazards and appropriate uses of lead-based paint. Accordingly, no liability may directly or indirectly be imposed on Cyanamid based upon an alleged failure to warn adequately such users of lead pigment, their customers or others who subsequently became exposed to lead pigment or paint.

AS AND FOR A SIXTEENTH
AFFIRMATIVE DEFENSE

97. Cyanamid has no duty to abate lead paint or to take any other action allegedly taken by the plaintiffs relating to the alleged risks presented by lead paint.

AS AND FOR A SEVENTEENTH
AFFIRMATIVE DEFENSE

98. Plaintiffs' damages, if any, were caused by the superseding acts or conduct of third persons other than Cyanamid. Such acts or conduct include, but are not limited to, the failure of the City of New York, a principal,

fiduciary and effective managing head of the Housing Authority, which had substantial knowledge respecting alleged lead-based paint hazards, and which information respecting lead-based paint, to take those steps necessary to protect the Housing Authority and its properties from any damage caused by the Housing Authority's use of lead-based paint.

AS AND FOR AN EIGHTEENTH
AFFIRMATIVE DEFENSE

99. Plaintiffs' causes of action are barred in whole or in part by the absence or any specific intent, conscious agreement, or common design or purpose on the part of Cyanamid to join with other defendants to injure plaintiffs or others.

AS AND FOR A NINETEENTH
AFFIRMATIVE DEFENSE

100. Plaintiffs' causes of action restitution and indemnification are barred by their active fault and their violation of their own duty to abate any alleged hazards resulting from paint containing lead.

AS AND FOR A TWENTIETH
AFFIRMATIVE DEFENSE

101. Plaintiffs' causes of action, to the extent they seek to impose liability on Cyanamid for duties imposed

on Plaintiffs under federal statutory and/or regulatory law, are preempted by federal law and barred by the Supremacy Clause of the United States Constitution.

AS AND FOR A TWENTY-FIRST
AFFIRMATIVE DEFENSE

102. Plaintiffs' claim for punitive damages violates the Excessive Fines Clause of the Eighth Amendment and the Due Process Clauses of the Fifth and Fourteenth Amendments to the United States Constitution and violates Article 1 §§ 5 and 6 of the Constitution of the State of New York.

AS AND FOR A TWENTY-SECOND
AFFIRMATIVE DEFENSE

103. Plaintiffs' claims are barred by their inability to identify Cyanamid or its alleged predecessor in interest as the particular manufacturer of the products that allegedly caused their injuries.

AS AND FOR A TWENTY-THIRD
AFFIRMATIVE DEFENSE

104. Plaintiffs' causes of action are barred because of the plaintiffs' breaches of duties which include, but are not limited to, the failure of the City of New York, a principal, fiduciary and effective managing head of the

Housing Authority sufficiently to maintain or provide the funds needed to maintain the properties of the Housing Authority and otherwise to protect the Housing Authority and its properties from any damage caused as a result of the Housing Authority's use of lead-based paint.

AS AND FOR A TWENTY-FOURTH
AFFIRMATIVE DEFENSE

105. Plaintiffs' causes of action do not arise out of the same transaction, occurrence, or series of transactions or occurrences, and should therefore be severed on the ground of misjoinder under CPLR §§ 603 and 1003.

AS AND FOR A TWENTY-FIFTH
AFFIRMATIVE DEFENSE

106. Plaintiffs' causes of action are barred in whole or in part to the extent the products that allegedly caused them injury complied with federal, New York State, New York City Housing Authority, or New York City specifications.

AS AND FOR A TWENTY-SIXTH
AFFIRMATIVE DEFENSE

107. Plaintiffs' claims against Cyanamid should be dismissed because of misuse of the product in question and because pigment was not intended or sold for ingestion.

AS AND FOR A TWENTY-SEVENTH
AFFIRMATIVE DEFENSE

108. Plaintiffs' alleged injuries were caused in whole or in part by the unforeseeable misuse of lead paint by persons or entities other than Cyanamid.

AS AND FOR A TWENTY-EIGHTH
AFFIRMATIVE DEFENSE

109. Based on the state of scientific and technological knowledge at the time lead pigment was marketed, such pigment was reasonably safe for its normal and foreseeable use.

AS AND FOR A TWENTY-NINTH
AFFIRMATIVE DEFENSE

110. The causes of action set forth in the Amended Complaint are barred in whole or in part because of the lack of defect in lead pigment.

WHEREFORE, American Cyanamid Company respectfully demands judgment dismissing the Amended Complaint and awarding Cyanamid fees, and such other and further relief as this Court may deem just and proper.

Dated: New York, New York
August 8, 1996

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