

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF ERIE

FILED

FEB 08 1994

STATE CLERK
CLERK'S OFFICE

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RICHARD K. BRENNER and TERRY L. BRENNER,
as Parents and Natural Guardians of :
the Estate, Goods and Chattels of :
RICHARD BRENNER, III, an Infant Minor, :
ESTELLE TERRELL, Individually and as :
Parent and Natural Guardian of :
ANTONIO FIGUEROA, an Infant Minor, :

Plaintiffs, : Index No. 12596/93

- against - : (Justice Cosgrove)

AMERICAN CYANAMID COMPANY, Successor :
in interest to MacGREGOR LEAD COMPANY, :
ATLANTIC RICHFIELD COMPANY, :
EAGLE-PICHER INDUSTRIES, INC., :
LEAD INDUSTRIES ASSOCIATION, INC., :
N.L. INDUSTRIES, INC., :
SCM CORPORATION, Successor in interest :
to the GLIDDEN COMPANY, :
SCM CHEMICALS, INC., f/k/a :
SCM PIGMENTS and GLIDDEN PIGMENTS, :
THE GLIDDEN COMPANY, :
THE O'BRIEN CORPORATION, d/b/a :
FULLER-O'BRIEN PAINTS, :
THE SHERWIN-WILLIAMS COMPANY, :

ANSWER OF
DEFENDANT
AMERICAN CYANAMID
COMPANY

Defendants. :

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Defendant American Cyanamid Company ("American
Cyanamid"), by its undersigned attorneys, Donovan Leisure
Newton & Irvine, for its answer to the amended complaint
dated November 15, 1993 ("Amended Complaint"), upon
information and belief, alleges as follows:

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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. Denies knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 3 of the Amended Complaint.

4. Denies knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 4 of the Amended Complaint.

5. Denies knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 5 of the Amended Complaint.

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. Admits that American Cyanamid is a Maine corporation with its principal place of business in the State of New Jersey, denies that American Cyanamid is a "successor-in-interest" to MacGregor Lead Company, and denies the remaining 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. Denies knowledge or information sufficient to form a belief as to the truth of 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 knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 15 of the Amended Complaint.

16. Denies knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 16 of the Amended Complaint.

17. Denies knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 17 of the Amended Complaint.

18. Denies knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 18 of the Amended Complaint.

19. Denies knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 19 of the Amended Complaint.

20. Denies knowledge or information sufficient to form a belief as to the truth of 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 the allegations of Paragraph 22 of the Amended Complaint to the extent they are directed against American 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.

23. Paragraph 23 of the Amended Complaint sets forth a definition, as to which no responsive pleading is required.

24. Admits that American Cyanamid has transacted business in the State of New York, denies the other allegations of Paragraph 24 of the Amended Complaint to the extent they are directed against American 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.

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 knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 38 of the Amended Complaint.

39. Denies knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 39 of the Amended Complaint.

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.

45. Denies the allegations of Paragraph 45 of the Amended Complaint to the extent they are directed against American 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.

46. Paragraph 46 of the Amended Complaint alleges a conclusion of law, as to which no responsive pleading is required.

AS AND FOR AN ANSWER TO
THE FIRST CAUSE OF ACTION

47. In response to Paragraph 47 of the Amended Complaint, American Cyanamid repeats and realleges each and every response set forth in this answer to the allegations contained in Paragraphs 1 through 46 of the Amended Complaint, as though each such response was set forth in full at this point.

48. Denies the allegations of Paragraph 48 of the Amended Complaint to the extent they are directed against American 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.

49. Denies the allegations of Paragraph 49 of the Amended Complaint to the extent they are directed against American 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 the allegations of Paragraph 50 of the Amended Complaint to the extent they are directed against American 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.

51. Denies the allegations of Paragraph 51 of the Amended Complaint to the extent they are directed against American 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.

52. Denies the allegations of Paragraph 52 of the Amended Complaint to the extent they are directed against American 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.

53. Denies the allegations of Paragraph 53 of the Amended Complaint to the extent they are directed against American 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.

54. Denies the allegations of Paragraph 54 of the Amended Complaint to the extent they are directed against American 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 SECOND CAUSE OF ACTION

55. In response to Paragraph 55 of the Amended Complaint, American Cyanamid repeats and realleges each and every response set forth in this answer to the allegations contained in Paragraphs 1 through 54 of the Amended Complaint, as though each such response was set forth in full at this point.

56. Denies the allegations of Paragraph 56 of the Amended Complaint to the extent they are directed against

American 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 57 of the Amended Complaint.

58. Denies the allegations of Paragraph 58 of the Amended Complaint to the extent they are directed against American 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.

59. Denies knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 59 of the Amended Complaint.

60. Denies knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 60 of the Amended Complaint.

61. Denies the allegations of Paragraph 61 of the Amended Complaint to the extent they are directed against American 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.

62. Denies the allegations of Paragraph 62 of the Amended Complaint to the extent they are directed against American 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 THIRD CAUSE OF ACTION

63. In response to Paragraph 63 of the Amended Complaint, American Cyanamid repeats and realleges each and every response set forth in this answer to the allegations contained in Paragraphs 1 through 62 of the Amended Complaint, as though each such response was set forth in full at this point.

64. Denies the allegations of Paragraph 64 of the Amended Complaint to the extent they are directed against American 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.

65. Denies the allegations of Paragraph 65 of the Amended Complaint to the extent they are directed against

American 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 66 of the Amended Complaint to the extent they are directed against American 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 67 of the Amended Complaint to the extent they are directed against American 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 68 of the Amended Complaint to the extent they are directed against American 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.

69. Denies the allegations of Paragraph 69 of the Amended Complaint to the extent they are directed against

American 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 knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 70 of the Amended Complaint.

71. Denies the allegations of Paragraph 71 of the Amended Complaint to the extent they are directed against American 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 FOURTH CAUSE OF ACTION

72. In response to Paragraph 72 of the Amended Complaint, American Cyanamid repeats and realleges each and every response set forth in this answer to the allegations contained in Paragraphs 1 through 71 of the Amended Complaint, as though each such response was set forth in full at this point.

73. Denies the allegations of Paragraph 73 of the Amended Complaint to the extent they are directed against American 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 74 of the Amended Complaint to the extent they are directed against American 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 75 of the Amended Complaint to the extent they are directed against American 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.

76. Denies the allegations of Paragraph 76 of the Amended Complaint to the extent they are directed against American 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.

77. Denies the allegations of Paragraph 77 of the Amended Complaint to the extent they are directed against American 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

78. In response to Paragraph 78 of the Amended Complaint, American Cyanamid repeats and realleges each and every response set forth in this answer to the allegations contained in Paragraphs 1 through 77 of the Amended Complaint, as though each such response was set forth in full at this point.

79. Denies the allegations of Paragraph 79 of the Amended Complaint to the extent they are directed against American 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.

80. Denies the allegations of Paragraph 80 of the Amended Complaint to the extent they are directed against American 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 81 of the Amended Complaint to the extent they are directed against American 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.

82. Denies the allegations of Paragraph 82 of the Amended Complaint to the extent they are directed against American 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.

83. Denies the allegations of Paragraph 83 of the Amended Complaint to the extent they are directed against American 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

84. In response to Paragraph 84 of the Amended Complaint, American Cyanamid repeats and realleges each and every response set forth in this answer to the allegations contained in Paragraphs 1 through 83 of the Amended

Complaint, as though each such response was set forth in full at this point.

85. Denies the allegations of Paragraph 85 of the Amended Complaint to the extent they are directed against American 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.

86. Denies the allegations of Paragraph 86 of the Amended Complaint to the extent they are directed against American 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.

87. Denies the allegations of Paragraph 87 of the Amended Complaint to the extent they are directed against American 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.

88. Denies the allegations of Paragraph 88 of the Amended Complaint to the extent they are directed against American 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 SEVENTH CAUSE OF ACTION

89. In response to Paragraph 89 of the Amended Complaint, American Cyanamid repeats and realleges each and every response set forth in this answer to the allegations contained in Paragraphs 1 through 88 of the Amended Complaint, as though each such response was set forth in full at this point.

90. Denies knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 90 of the Amended Complaint.

91. Denies knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 91 of the Amended Complaint.

92. Denies knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 92 of the Amended Complaint.

93. Denies knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 93 of the Amended Complaint.

94. Denies the allegations of Paragraph 94 of the Amended Complaint to the extent they are directed against

American 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.

95. Denies the allegations of Paragraph 95 of the Amended Complaint to the extent they are directed against American 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 EIGHTH CAUSE OF ACTION

96. In response to Paragraph 96 of the Amended Complaint, American Cyanamid repeats and realleges each and every response set forth in this answer to the allegations contained in Paragraphs 1 through 95 of the Amended Complaint, as though each such response was set forth in full at this point.

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

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

99. Denies knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 99 of the Amended Complaint.

100. Denies knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 100 of the Amended Complaint.

101. Denies the allegations of Paragraph 101 of the Amended Complaint to the extent they are directed against American 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.

102. Denies the allegations of Paragraph 102 of the Amended Complaint to the extent they are directed against American 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

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

AS AND FOR A
SECOND AFFIRMATIVE DEFENSE

104. The causes of action set forth in the Amended Complaint are barred in whole or in part by the applicable statute of limitations to the extent they are directed against American Cyanamid.

AS AND FOR A
THIRD AFFIRMATIVE DEFENSE

105. Defendant American 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

106. Plaintiffs' damages, if any, were caused by the acts or omissions of third parties over whom or which American Cyanamid had no control.

AS AND FOR A
FIFTH AFFIRMATIVE DEFENSE

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

AS AND FOR A
SIXTH AFFIRMATIVE DEFENSE

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

AS AND FOR A
SEVENTH AFFIRMATIVE DEFENSE

109. Plaintiffs assumed the risk of the conditions and damages alleged in the Amended Complaint.

AS AND FOR AN
EIGHTH AFFIRMATIVE DEFENSE

110. 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

111. 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 A
TENTH AFFIRMATIVE DEFENSE

112. Plaintiffs are barred from recovery for some or all of the causes of action asserted against American Cyanamid to the extent that the products that allegedly caused them injury complied with applicable federal, New York State and/or local specifications.

AS AND FOR AN
ELEVENTH AFFIRMATIVE DEFENSE

113. 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.

WHEREFORE, American Cyanamid respectfully demands judgment dismissing the Amended Complaint with prejudice as against American Cyanamid and awarding American Cyanamid its costs, disbursements and reasonable attorneys' fees, and such

other and further relief as this Court may deem just and proper.

Dated: New York, New York
February 1, 1994

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