

UNITED STATES DISTRICT COURT
FOR
THE NORTHERN DISTRICT OF WEST VIRGINIA
U. S. DISTRICT COURT
HOLDING AT PARKERSBURG, W. VA.

APR - 7 1980

BARBARA CANTWELL CHRISTMAN,
et al.,

Plaintiffs,

v.

AMERICAN CYANAMID COMPANY,

Defendant.

THOMAS F. STAFFORD, CLERK

Civil Action
No. 80-0024-P

AMENDED ANSWER

Defendant American Cyanamid Company (hereafter, "Cyanamid") answers the Complaint in this action as follows. Each numbered paragraph answers a correspondingly numbered paragraph in the Complaint.

1. Paragraph 1 of the Complaint contains primarily arguments and conclusions of law which require no answer. Insofar as it contains allegations of fact, they are denied.

2. Cyanamid denies that the Court has jurisdiction of some or all of plaintiffs' claims.

3. Cyanamid denies that plaintiffs Carpenter, Cline, or Richardson filed EEOC charges or received right to sue letters. It otherwise admits the allegations in paragraph 3 of the Complaint, but it denies that such an admission establishes that the Court has jurisdiction.

4. Cyanamid is without sufficient knowledge to admit or deny allegations about plaintiff Christman's citizenship or residence. Cyanamid denies that plaintiff Christman has always been a production worker during her tenure at Willow Island, but admits that she was hired on July 18, 1974.

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5. Cyanamid is without sufficient knowledge to admit or deny allegations about plaintiff Cline's citizenship or residence. Cyanamid denies that plaintiff Cline has always been a production worker during her tenure at Willow Island but admits that she was hired on October 10, 1976.

6. Cyanamid is without sufficient knowledge to admit or deny allegations about plaintiff Martin's citizenship or residence. Cyanamid denies that plaintiff Martin has always been a production worker during her tenure at Willow Island, but admits that she was hired on October 22, 1974.

7. Cyanamid is without sufficient knowledge to admit or deny allegations about plaintiff Matheny's citizenship or residence. Cyanamid denies that plaintiff Matheny has always been a production worker during her tenure at Willow Island, but admits that she was hired on October 22, 1974.

8. Cyanamid is without sufficient knowledge to admit or deny allegations about plaintiff Riggs' citizenship or residence. Cyanamid denies that plaintiff Riggs has always been a production worker during her tenure at Willow Island, but admits that she was hired on December 8, 1975.

9. Cyanamid is without sufficient knowledge to admit or deny allegations about plaintiff Rymer's citizenship or residence. Cyanamid denies that plaintiff Rymer has always been a production worker during her tenure at Willow Island, but admits that she was hired on September 23, 1975.

10. Cyanamid is without sufficient knowledge to admit or deny the allegations in paragraph 10 of this Complaint.

11. Cyanamid is without sufficient knowledge to admit or deny the allegations in paragraph 11 of the Complaint.

12. Cyanamid is without sufficient knowledge to admit or deny allegations about plaintiff Carpenter's citizenship or residence. Cyanamid denies that plaintiff Carpenter has always been a production worker during her tenure at Willow Island, but admits that she was hired in July 1974.

13. Cyanamid is without sufficient knowledge to admit or deny allegations about plaintiff Richardson's citizenship or residence. Cyanamid denies that plaintiff Richardson has always been a production worker during her tenure at Willow Island, but admits that she was hired in September 1975.

14. Cyanamid is without sufficient knowledge to admit or deny allegations about plaintiff Whitehair's citizenship or residence. Cyanamid denies that plaintiff Whitehair has always been a production worker during her tenure at Willow Island and states that she was hired on April 30, 1974.

15. Cyanamid is without sufficient knowledge to admit or deny allegations about plaintiff Moore's citizenship or residence. Cyanamid denies that plaintiff Moore has always been a production worker during her tenure at Willow Island, and states that she was hired on April 30, 1974.

16. Cyanamid is without knowledge to admit or deny allegations about plaintiff Lowe's citizenship or residence. Cyanamid denies that plaintiff Lowe has always been a production worker during her tenure at Willow Island, but admits that she was hired in December 1975.

17. Cyanamid denies that any OCAW member has been affected by unlawful actions by Cyanamid. It is without sufficient knowledge to admit or deny the stated purpose for the existence of OCAW. Cyanamid otherwise admits the allegations in paragraph 17 of the Complaint.

18. Cyanamid admits the allegations in paragraph 18 of the Complaint, but notes that Formica brand products are manufactured, not by Cyanamid, but by a wholly-owned subsidiary.

19. Cyanamid denies that a class is appropriate in this case and denies all allegations about its employment practices in paragraph 19 of the Complaint.

20. Cyanamid denies the allegations in paragraph 20 of the Complaint.

21. Cyanamid denies the allegations in paragraph 21 of the Complaint.

22. Cyanamid denies the allegations in paragraph 22 of the Complaint.

23. Cyanamid denies the allegations in paragraph 23 of the Complaint.

24. Cyanamid denies the allegations in the first two sentences of paragraph 24 of the Complaint and admits the allegations in the third sentence of that paragraph.

25. Cyanamid is without sufficient knowledge to admit or deny the allegations in the first sentence of paragraph 25 of the Complaint, and denies the allegations in the second sentence of that paragraph.

26. Cyanamid is without sufficient knowledge to admit or deny the allegations in the first sentence of paragraph 26 of the Complaint. Cyanamid admits that Ms. Huggins has never been employed by Cyanamid, but denies that she satisfies all requirements for the employment she sought.

27. Cyanamid denies the allegations in paragraph 27 of the Complaint.

28. Cyanamid denies the allegations in paragraph 28 of the Complaint.

29. Cyanamid admits that Mr. Mercer's title is Supervisor of Industrial Relations. It admits that the announced policy excluded fertile women from production positions where Cyanamid reasonably believed exposure to toxic substances posed a significant risk of harm to unborn children. Cyanamid otherwise admits the allegation in paragraph 29 of the Complaint.

30. Cyanamid denies any allegation that the initial announcement of its medical policy included a statement that the policy was based in any way on expectations about future federal regulations. Cyanamid otherwise admits the allegations in paragraph 30 of the Complaint.

31. Cyanamid denies the allegations in paragraph 31 of the Complaint.

32. Cyanamid admits the allegations of paragraph 32 of the Complaint.

33. Cyanamid records indicate that plaintiffs Riggs, Rymer, Martin, and Christman underwent the surgery described at about the dates indicated. Cyanamid is otherwise without sufficient knowledge to admit or deny allegations about plaintiffs' motives.

34. Cyanamid admits that certain of the plaintiffs took sick leave after the surgical procedures described in the Complaint, but it denies that Cyanamid required them to do so. Cyanamid further admits that each received sick pay which was less than her regular salary.

35. Cyanamid denies that its medical policy was "imposed" on the plaintiffs and is otherwise without sufficient knowledge to admit or deny allegations about plaintiffs' motives.

36. Cyanamid denies the allegations in paragraph 36 of the Complaint.

37. Cyanamid admits the allegations in the first sentence of paragraph 37 of the Complaint. It denies that there was a "decision to limit the policy to one department." Cyanamid denies the allegations in the last sentence of paragraph 37 of the Complaint.

38. Cyanamid admits that because plaintiff Cline could bear children she was transferred to a janitor position in accordance with the collective bargaining agreement, but it otherwise denies the allegations in the first sentence of paragraph 38 of the Complaint. Cyanamid admits the allegations in the second sentence in that paragraph.

39. Cyanamid admits that because plaintiff Carpenter could bear children, she was transferred to a janitor position in accordance with the collective bargaining agreement, but it otherwise denies the allegations in paragraph 39 of the Complaint. In particular, Cyanamid denies that that paragraph accurately characterizes the effect of the transfer on plaintiff Carpenter's compensation.

40. Cyanamid admits that because plaintiffs Cline, Carpenter, Moore, and Whitehair can bear children, they were not permitted to bid on certain positions in the Pigments Department, from October 1, 1978, until about January 30, 1980, in accordance with the collective bargaining agreement. Cyanamid otherwise denies the allegations in paragraph 40 of the Complaint.

41. Cyanamid denies the allegations in paragraph 41 of the Complaint.

42. Cyanamid is without sufficient knowledge to admit or deny allegations in paragraph 42 of the Complaint.

43. Cyanamid denies the allegations in paragraph 43 of the Complaint.

44. Cyanamid denies the allegations in paragraph 44 of the Complaint.

45. Cyanamid admits the allegations in the first sentence of paragraph 45 of the Complaint, denies the allegations in the second sentence of that paragraph, and admits the allegation of the third sentence of that paragraph.

46. Cyanamid denies the allegations in paragraph 46 of the Complaint.

47. Cyanamid denies the allegations in paragraph 47 of the Complaint.

48. Cyanamid admits that the announced closing involved certain positions in the Pigments Department which involved use of lead and its compounds. It otherwise admits the allegations of the first sentence of paragraph 48. Cyanamid denies that plaintiffs Christman, Martin, Riggs and Rymer have been demoted or transferred to other departments. It admits that said plaintiffs were reduced to a lower wage grade as a result of the closings and the operation of the collective bargaining agreement.

49. Cyanamid is without sufficient knowledge to admit or deny allegations about plaintiffs' motives. With respect to the second sentence of paragraph 49, see the response to paragraph 48, above.

50. Cyanamid denies the allegations in paragraph 50 of the Complaint.

51. Cyanamid denies the allegations in paragraph 51 of the Complaint.

52. Cyanamid is without sufficient knowledge to admit or deny allegations about plaintiffs' motives.

53. Cyanamid denies the allegations in paragraph 53 of the Complaint.

54. Cyanamid is without knowledge to admit or deny any allegations about plaintiffs' motives, or about their abilities to provide for their families, and it denies that it "threatened" any plaintiff with demotion or termination.

55. Cyanamid is without sufficient knowledge to admit or deny the allegations in paragraph 55 of the Complaint.

56. Cyanamid denies the allegations in paragraph 56 of the Complaint.

57. Cyanamid denies the allegations in paragraph 57 of the Complaint.

58. Cyanamid denies the allegations in paragraph 58 of the Complaint.

59. Cyanamid denies the allegations in paragraph 59 of the Complaint.

60. Cyanamid denies the allegations in paragraph 60 of the Complaint.

61. Cyanamid denies the allegations in paragraph 61 of the Complaint.

62. Cyanamid denies the allegations in paragraph 62 of the Complaint.

63. Cyanamid denies the allegations in paragraph 63 of the Complaint.

64. Cyanamid denies the allegations in paragraph 64 of the Complaint.

65. Cyanamid denies the allegations in paragraph 65 of the Complaint.

66. Cyanamid denies the allegations in paragraph 66 of the Complaint.

67. Cyanamid denies the allegations in paragraph 67 of the Complaint.

68. Cyanamid denies the allegations in paragraph 68 of the Complaint.

69. Cyanamid denies the allegations in paragraph 69 of the Complaint.

70. Cyanamid denies the allegations in paragraph 70 of the Complaint.

PLAINTIFFS' CLAIMS FOR RELIEF

Cyanamid denies that plaintiffs are entitled to any of the relief requested in paragraphs 1 through 5, and insofar as the claims for relief contain allegations of fact, such allegations are denied.

FIRST DEFENSE

The Complaint fails to state federal or West Virginia common law claims upon which any relief may be granted.

SECOND DEFENSE

The facts in this case do not support the conclusion that Cyanamid has breached any federal or West Virginia common law duties to plaintiffs.

THIRD DEFENSE

The Court does not have subject matter jurisdiction over plaintiffs' West Virginia common law claims.



FOURTH DEFENSE

The claims of plaintiffs and the members of the class they purport to represent should be dismissed, in whole or in part, for failure to meet prerequisite jurisdictional requirements under Title VII of the Civil Rights Act of 1964, 42 U.S.C. §§ 2000e et seq. ("Title VII").

FIFTH DEFENSE

Because a class is not appropriate in this case, purported class members may not press claims for relief.

SIXTH DEFENSE

The claims of plaintiffs and the members of the class they purport to represent are, in whole or in part, barred by the applicable statutes of limitations and other time limitations.

SEVENTH DEFENSE

The claims of plaintiffs and the members of the class they purport to represent are, in whole or in part, barred by laches. Defendant Cyanamid has been prejudiced by plaintiffs' delay in bringing this action.

EIGHTH DEFENSE

Plaintiffs are estopped or have otherwise waived claims for back pay and other relief in whole or in part.

NINTH DEFENSE

The claims of plaintiffs and the members of the class they purport to represent are, in whole or in part, barred by the doctrines of collateral estoppel, or res judicata.

TENTH DEFENSE

The employment practices complained of are based on rational and neutral business justifications.

ELEVENTH DEFENSE

Cyanamid has not engaged in and is not engaging in discrimination based on sex in violation of Title VII. The actions complained of were exempt from the prohibitions of Title VII by virtue of Section 703(e)(1), 42 U.S.C. § 2000e-2(e)(1).

TWELFTH DEFENSE

Under section 706(e) of Title VII, the claims of all individuals, whether named as plaintiffs in the Complaint or as members of the class which plaintiffs purport to represent, which arise out of alleged unlawful employment practices occurring prior to the applicable period for the filing of the charges on which the Complaint is based are barred.

THIRTEENTH DEFENSE

The claims of plaintiffs and the class they purport to represent should be dismissed under Title VII insofar as



they exceed the scope justified by the charges filed with the Equal Employment Opportunity Commission which are the basis for this action.

FOURTEENTH DEFENSE

Plaintiffs' view of Title VII, which would impose on Cyanamid a federal prohibition against protecting itself from possible future liability or taking account of state and other federal laws, would - if adopted - violate Cyanamid's rights under the Due Process Clause of the Fifth Amendment to the United States Constitution.

FIFTEENTH DEFENSE

Action on the West Virginia common-law claims set forth in the Complaint was not commenced within one year next after the right to bring the same accrued.

SIXTEENTH DEFENSE

Plaintiffs who assert West Virginia common-law claims have contributed proximately to their own aggrievement and damage, if any, to such extents as would bar their common-law claims for relief.

SEVENTEENTH DEFENSE

Plaintiffs who assert West Virginia common-law claims for personal injuries assumed the risk of their own injuries and damages, if any.



EIGHTEENTH DEFENSE

Defendant breached no duty it owed to plaintiffs and did not negligently, willfully or intentionally intrude upon or invade any right of privacy allegedly possessed by those plaintiffs who claim such right; did not fraudulently or otherwise induce any of the plaintiffs to submit to any medical procedures; did not intentionally or otherwise inflict emotional distress, harassment, embarrassment or humiliation upon any of the plaintiffs; has not caused and does not continue to cause any of the plaintiffs pain, suffering or emotional anguish or any loss of income, or the incurring of unreimbursed medical expenses or incidental costs; did not engage in discriminatory acts, coercive or misleading statements or outrageous conduct; and did not make material false representations which induced the plaintiffs who claimed to be so affected into undergoing medical procedures.

NINETEENTH DEFENSE

Plaintiffs' common-law claims for injuries and related damages, if any, are covered or coverable by the West Virginia Workmen's Compensation Act, Code §23-1-1, et seq., inasmuch as defendant is a subscriber in good standing to the West Virginia Workmen's Compensation Fund; and, therefore, said claims are barred or in the alternative defendant is entitled to a pro tanto set off for all benefits paid or payable under the provisions of said Act.

TWENTIETH DEFENSE

None of the plaintiffs is entitled to any compensation or punitive damages against or from defendant.



TWENTY-FIRST DEFENSE

Each plaintiff's claim for relief under Title VII or the common law is barred, in whole or part, by her failure to mitigate damages.

WHEREFORE, Cyanamid respectfully prays this Court:

- (1) That plaintiffs' action be dismissed with prejudice;
- (2) That Cyanamid recover its costs from plaintiffs;
- (3) That Cyanamid have such other and further relief as the Court may deem appropriate.

COUNTERCLAIM AGAINST PLAINTIFF OIL CHEMICAL
AND ATOMIC WORKERS INTERNATIONAL UNION

1. The policy excluding women of child-bearing age and capability from certain work environments that could endanger the health of unborn children was a company policy which involved conditions of employment of all individual plaintiffs, except plaintiffs Nicely and Huggins, as to which condition of employment, Local 3-499, of plaintiff OCAW International Union, is the sole and exclusive bargaining agent. Defendant met with the Local Union Committee to inform them of the policy in January, 1978. Not until October 5, 1978 did the Local OCAW Union take any action in opposition to the policy.

2. In the event that Cyanamid is held to be liable in damages or otherwise for acts or omissions alleged in the complaint and effected pursuant to and in accordance with the policy set forth in paragraph 1, above, Cyanamid asserts a right of contribution from, and indemnification by, plaintiff OCAW International Union and its local affiliate, Local 3-499,

in respect to any such liability. Defendant premises such right on Title VII of the Civil Rights Act of 1964, as amended, common law, § 301 of the Labor-Management Relations Act, 29 U.S.C. § 185 (1976), and § 8(b) of the National Labor Relations Act (29 U.S.C. § 158(b) (1976)).

Respectfully submitted,

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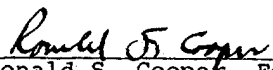
CERTIFICATE OF SERVICE

I certify that a copy of the foregoing Amended Answer of Defendant American Cyanamid Company was served on plaintiffs' counsel on April 1, 1980, by placing it in the mail, postage prepaid and addressed to:

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