

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF ERIE

OMAR J. GATES
132 Sundridge Drive
Amherst, New York,

Plaintiff,

vs.

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,

HELP A NEIGHBOR, INC.
122 Bidwell Parkway
Buffalo, New York,

EAST SIDE PROFITS, INC.
345 Middlesex Road
Buffalo, New York,

THOMAS G. KOUGH
345 Middlesex Road
Buffalo, New York,

EUNICE R. JONES
39 Erskine
Buffalo, New York,

WILLIE J. CYLAR and MARILYN CYLAR
125 Battle Greene Drive
Chili, New York,

Defendants.

Index No.
I1996-2114

ANSWER OF
DEFENDANT
AMERICAN CYANAMID
COMPANY

AUG - 1 1996
ERIE CO.
CLERK'S OFFICE

Defendant American Cyanamid Company ("Cyanamid"),
by its attorneys Donovan Leisure Newton & Irvine, hereby

responds to the verified Complaint of Omar Gates (the "Complaint") as follows:

Response to Allegations as to
"PARTIES"

1. Denies knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 1.

2. Admits, in response to the allegations in paragraph 2, that Cyanamid is a Maine corporation with its principal place of business in the State of New Jersey, and denies that Cyanamid is a "successor-in-interest" to MacGregor Lead Company.

3. Denies knowledge or information sufficient to form a belief as to the truth of the allegations in paragraphs 3 through 17.

4. Paragraph 18 sets forth a definition, as to which no responsive pleading is required.

5. Admits, in response to the allegations in paragraph 19, that Cyanamid has transacted business in the State of New York, denies the remaining allegations in paragraph 19 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 in paragraph 19 to the extent they are directed against other defendants.

6. Denies knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 20.

7. Denies the allegations in paragraph 21 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 in paragraph 21 to the extent they are directed against other defendants.

8. Denies knowledge or information sufficient to form a belief as to the truth of the allegations in paragraphs 22 through 24.

Response to Allegations as to
"THE HAZARDS OF LEAD PAINT"

9. Denies knowledge or information sufficient to form a belief as to the truth of the allegations in paragraphs 25 through 40.

10. Denies the allegations in paragraph 41 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 in paragraph 41 to the extent they are directed against other defendants.

Response to
"FIRST CAUSE OF ACTION"

11. Repeats and realleges, in response to paragraph 42, the answers to paragraphs 1 through 41 as if fully set forth herein.

12. The allegation in paragraph 43 is a conclusion of law as to which no responsive pleading is required.

13. Denies the allegations in paragraphs 44 through 50 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 in paragraphs 44 through 50 to the extent they are directed against other defendants.

Response to
"SECOND CAUSE OF ACTION"

14. Repeats and realleges, in response to paragraph 51, the answers to paragraphs 1 through 50 as if fully set forth herein.

15. Denies the allegations in paragraph 52 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 in paragraph 52 to the extent they are directed against other defendants.

16. Denies knowledge or information sufficient to form a belief as to the allegations in paragraphs 53.

17. Denies the allegations in paragraph 54 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 in paragraph 54 to the extent they are directed against other defendants.

18. Denies knowledge or information sufficient to form a belief as to the truth of the allegations in paragraphs 55 and 56.

19. Denies the allegations in paragraphs 57 and 58 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 in paragraphs 57 and 58 to the extent they are directed against other defendants.

Response to
"THIRD CAUSE OF ACTION"

20. Repeats and realleges, in response to paragraph 59, the answers to paragraphs 1 through 58 as if fully set forth herein.

21. Denies the allegations in paragraphs 60 through 67 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 in paragraphs 60 through 67 to the extent they are directed against other defendants.

Response to
"FOURTH CAUSE OF ACTION"

22. Repeats and realleges, in response to paragraph 68, the answers to paragraphs 1 through 67 as if fully set forth herein.

23. Denies the allegations in paragraphs 69 through 73 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 in paragraphs 69 through 73 to the extent they are directed against other defendants.

Response to
"FIFTH CAUSE OF ACTION"

24. Repeats and realleges, in response to paragraph 74, the answers to paragraphs 1 through 73 as if fully set forth herein.

25. Denies the allegations in paragraphs 75 through 79 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 in paragraphs 75 through 79 to the extent they are directed against other defendants.

Response to
"SIXTH CAUSE OF ACTION"

26. Repeats and realleges, in response to paragraph 80, the answers to paragraphs 1 through 79 as if fully set forth herein.

27. Denies the allegations in paragraphs 81 through 84 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 in paragraphs 81 through 84 to the extent they are directed against other defendants.

Response to
"SEVENTH CAUSE OF ACTION"

28. Repeats and realleges, in response to paragraph 85, the answers to paragraphs 1 through 84 as if fully set forth herein.

29. Denies knowledge or information sufficient to form a belief as to the truth of the allegations in paragraphs 86 through 89.

30. Denies the allegations in paragraphs 90 and 91 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 in paragraphs 90 and 91 to the extent they are directed against other defendants.

Response to
"EIGHTH CAUSE OF ACTION"

31. Repeats and realleges, in response to paragraph 92, the answers to paragraphs 1 through 91 as if fully set forth herein.

32. Denies knowledge or information sufficient to form a belief as to the truth of the allegations in paragraphs 93 through 96.

33. Denies the allegations in paragraphs 97 and 98 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 in paragraphs 97 and 98 to the extent they are directed against other defendants.

Response to
"NINTH CAUSE OF ACTION"

34. Repeats and realleges, in response to paragraph 99, the answers to paragraphs 1 through 98 as if fully set forth herein.

35. Denies knowledge or information sufficient to form a belief as to the truth of the allegations in paragraphs 100 through 107.

Response to
"TENTH CAUSE OF ACTION"

36. Repeats and realleges, in response to paragraph 108, the answers to paragraphs 1 through 107 as if fully set forth herein.

37. Denies knowledge or information sufficient to form a belief as to the truth of the allegations in paragraphs 109 through 114.

Response to
"ELEVENTH CAUSE OF ACTION"

38. Repeats and realleges, in response to paragraph 115, the answers to paragraphs 1 through 114 as if fully set forth herein.

39. Denies knowledge or information sufficient to form a belief as to the truth of the allegations in paragraphs 116 through 122.

Response to
"TWELFTH CAUSE OF ACTION"

40. Repeats and realleges, in response to paragraph 123, the answers to paragraphs 1 through 122 as if fully set forth herein.

41. Denies knowledge or information sufficient to form a belief as to the truth of the allegations in paragraphs 124 through 129.

Response to
"THIRTEENTH CAUSE OF ACTION"

42. Repeats and realleges, in response to paragraph 130, the answers to paragraphs 1 through 129 as if fully set forth herein.

43. Denies knowledge or information sufficient to form a belief as to the truth of the allegations in paragraphs 131 through 137.

Response to
"FOURTEENTH CAUSE OF ACTION"

44. Repeats and realleges, in response to paragraph 138, the answers to paragraphs 1 through 137 as if fully set forth herein.

45. Denies knowledge or information sufficient to form a belief as to the truth of the allegations in paragraphs 139 through 144.

AS AND FOR A FIRST
AFFIRMATIVE DEFENSE

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

AS AND FOR A SECOND
AFFIRMATIVE DEFENSE

47. The causes of action set forth in the Complaint are barred in whole or in part by the applicable

statutes of limitations to the extent they are directed against Cyanamid.

**AS AND FOR A THIRD
AFFIRMATIVE DEFENSE**

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

**AS AND FOR A FOURTH
AFFIRMATIVE DEFENSE**

49. Plaintiff's damages, if any, were caused by the acts or omissions of third parties over whom or which Cyanamid had no control.

**AS AND FOR A FIFTH
AFFIRMATIVE DEFENSE**

50. Plaintiff has failed to join parties indispensable to a just adjudication of this lawsuit.

**AS AND FOR A SIXTH
AFFIRMATIVE DEFENSE**

51. Plaintiff is barred from recovery for some or all of the causes of action asserted against Cyanamid because plaintiff's own fault or negligence caused or contributed to the alleged injuries.

AS AND FOR A SEVENTH
AFFIRMATIVE DEFENSE

52. Plaintiff assumed the risk of some or all of the conditions and damages alleged in the Complaint.

AS AND FOR AN EIGHTH
AFFIRMATIVE DEFENSE

53. Some or all of the causes of action asserted against Cyanamid by plaintiff are precluded because plaintiff has failed to mitigate damages.

AS AND FOR A NINTH
AFFIRMATIVE DEFENSE

54. Some or all of the causes of action stated in the 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

55. Plaintiff is barred from recovery for some or all of the causes of action asserted against Cyanamid to the extent that the products that allegedly caused him injury complied with applicable federal, New York State and/or local specifications.

AS AND FOR AN ELEVENTH
AFFIRMATIVE DEFENSE

56. Plaintiff's claims against Cyanamid should be dismissed because Cyanamid did not owe or breach any legal duty to plaintiff.

AS AND FOR A TWELFTH
AFFIRMATIVE DEFENSE

57. Plaintiff's 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 THIRTEENTH
AFFIRMATIVE DEFENSE

58. Plaintiff's 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 FOURTEENTH
AFFIRMATIVE DEFENSE

59. 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 FIFTEENTH
AFFIRMATIVE DEFENSE

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

AS AND FOR A SIXTEENTH
AFFIRMATIVE DEFENSE

61. Plaintiff's claims are barred by his inability to identify Cyanamid or its alleged predecessor in interest as the particular manufacturer of the products that allegedly caused his injury.

AS AND FOR A SEVENTEENTH
AFFIRMATIVE DEFENSE

62. Plaintiff's 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 AN EIGHTEENTH
AFFIRMATIVE DEFENSE

63. The liability for each defendant for non-economic loss must be limited in accordance with the provisions of Article 16 of the CPLR.

WHEREFORE, Cyanamid denies that plaintiff is entitled to judgment against it awarding compensatory damages, punitive damages, attorneys' fees, costs or disbursements. Cyanamid respectfully demands judgment dismissing the Complaint with prejudice as against Cyanamid and awarding Cyanamid its costs, disbursements and reasonable attorneys' fees, and such other and further relief as the Court may deem just and proper.

Dated: New York, New York
July 31, 1996

DONOVAN LEISURE NEWTON & IRVINE
30 Rockefeller Plaza
New York, New York 10112
(212) 632-3000

Attorneys for Defendant
American Cyanamid Company

TO: LIPSITZ, GREEN, FAHRINGER,
ROLL, SALISBURY & CAMBRIA LLP
42 Delaware Avenue, Suite 300
Buffalo, New York 14202-3901

Attorneys for Plaintiff

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF ERIE

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132 Sundridge Drive
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ATTORNEY'S
VERIFICATION

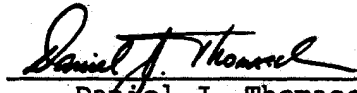
STATE OF NEW YORK)
 : ss.:
COUNTY OF NEW YORK)

DANIEL J. THOMASCH, being duly sworn, deposes and
says:

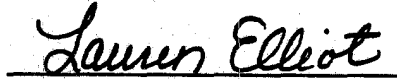
1. I am a member of the bar of the State of New
York, and the firm Donovan Leisure Newton & Irvine, attorneys
for defendant American Cyanamid Company ("Cyanamid") in this
action. I am making this verification on behalf of Cyanamid
pursuant to CPLR § 3020(d)(3) because Cyanamid is a foreign
corporation and Cyanamid is not in the county in which its
attorneys maintain an office.

2. I have read the foregoing ANSWER OF DEFENDANT
AMERICAN CYANAMID COMPANY, and I am informed and believe that
the responses stated therein are true.

3. I make this statement based upon information
contained in the case file maintained in this office.


Daniel J. Thomasch

Sworn to before me this
31st day of July, 1996


Notary Public

LAUREN ELLIOT
Notary Public, State of New York
No. 02EL5032666
Qualified in New York County
Commission Expires Aug. 29, 1996