



Abner Sibal, Esq.
General Counsel
Equal Employment Opportunity Commission
2401 E Street, N.W.
Washington, D.C. 20506

Re: Local Union No. 336, United
Rubber, Cork, Linoleum and
Plastic Workers of America v.
Firestone Plastics Company,
Charge No. 031-77 0534

Dear Mr Sibal:

Firestone Plastics Company, a division of The Firestone Tire & Rubber Company ("Firestone"), is Respondent in the above-referenced proceeding. The reference in the charge of discrimination to a "Firestone Chemical & Plastic Company" is incorrect and should be changed to conform with Respondent's proper designation.

In substance, the above-referenced charge of discrimination alleges that a female employee, laid off from the tire division, located at the same Pottstown, Pennsylvania site as the plastics division, was "most senior bidder" for an available opening in the plastics division; that the female employee was "denied the opportunity to transfer" into the plastics division job because such position would have exposed her to vinyl chloride monomer, "a transplacental carcinogen which may cause cancer in fetuses"; that the female employee in question was not pregnant at that time; that no females are employed in production and laboratory areas where they will be exposed to VCM; and, that such action by Firestone is sexually discriminatory in violation of Title VII of the Civil Rights Act of 1964, as amended.

Factual Misstatements And Omissions In
The Charge of Discrimination

The aforescribed charge of discrimination is replete with errors and misstatements of fact. First, the employee referred to was not "on layoff"; rather, she had been terminated from employment on January 31, 1975 due to a reduction in workforce. Second, this employee was not "the most senior bidder" for the available plastics division position. Indeed, no person bid for that position. Rather, certain former employees of all divisions at the Pottstown facility were voluntarily called in by Firestone to be considered for rehire. The collec-

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tive bargaining agreement governing the employment relationship between Firestone and the employee in question merely states that: "In the event more than one person is considered, proper consideration for seniority will be given."^{1/} Third, the allegation in the charge of discrimination that this employee was "denied the opportunity to transfer" is without basis. This matter has nothing to do with transfers. As Article VI, Section 3 of the collective bargaining agreement referred to in footnote one clearly explains, employees terminated due to a reduction in work-force may not transfer on the basis of seniority into another division. Finally, the charge of discrimination states that the allegedly aggrieved employee was denied the plastics division position because "she was female." However, the fact that this employee was and is female was not "(t)he reason Firestone gave for the denial." The reason for not rehiring this former employee into a job involving exposure to vinyl chloride monomer ("VCM")^{2/} was the employee's child-bearing ability.

The charge of discrimination fails to indicate certain facts crucial to the question of sex discrimination. These omissions will be discussed in the next section of this letter. However, a fact important to the discrimination issue in this proceeding -- a fact not referred to in the charge of discrimination -- was the rehire of the employee in question approximately two months following her consideration for the plastics division position into the first available job not involving VCM.

Firestone's Policy Excluding Women of Child-Bearing Ability From Positions Which Will Expose Such Women to VCM

As a result of substantial, credible medical and scientific data that fetuses are more susceptible than adults to health

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1/ Agreement Between The Firestone Tire & Rubber Company (Pottstown Plant) and Amalgamated Local Union No. 336, United Rubber, Cork, Linoleum & Plastic Workers of America, effective June 1, 1974 through May 31, 1977, Article VI, Section 3(c) at 29.

2/ VCM is a gas at room temperature and pressure and is derived ultimately from ethylene or acetylene and chloride. It is a vital component in the production of PVC, a thermal plastic resin which is the basic element of essential plastic products. Firestone is in the business of converting VCM gas into PVC resins. It is the VCM which is the primary carcinogen.

hazards resulting from occupational exposure of the mother to VCM, Firestone instituted a policy whereby women of child-bearing ability would not be employed in positions involving such exposure.

While much of the medical/scientific research with respect to the effect of VCM on fetuses or women of child-bearing ability is in an early stage, preliminary data indicates that exposure of pregnant women to VCM may result in transplacental carcinogenesis and that fetuses may be more susceptible to the carcinogenic effects of VCM than are adults.^{3/}

Since 1974 there has been substantial concern on the parts of the scientific community, the VCM industry, and the unions that VCM is a transplacental carcinogen. Dr. Cesare Maltoni, an Italian scientist whose on-going study of the carcinogenic effects of VCM is the most advanced experimentation done on the subject, has shown that VCM is a transplacental carcinogen in rats. Dr. Maltoni's experiments show that offspring of pregnant rats who were exposed to VCM for seven (7) days only during their pregnancy developed angiosarcomas;^{4/} however, the mothers of such offspring showed no such cancerous tumors. From these experiments Dr. Maltoni has concluded not only that VCM is a transplacental carcinogen but, also, that fetuses who come into contact with VCM through their mothers' exposures are probably more susceptible to the carcinogenic effects of VCM than are adults. See, Maltoni, Cesare and Lefemine, Giuseppe, "Carcinogenicity Bio-Assays of Vinyl Chloride: Current Results," 246 Annals of New York Academy of Sciences 195-218 (1975), a true and correct copy of which is attached hereto, incorporated herein, and marked Exhibit A.

At about the same time that Dr. Maltoni was discovering the transplacental carcinogenic effects of VCM, Dr. Gerhard Volkheimer of Berlin was conducting experiments with VCM resins. Dr. Volkheimer's experiments showed that there is potentially a transplacental passage of VCM particles. Persorbed VCM particles also were found in the milk of lactating women. Although certain inaccuracies and deficiencies appear in said study it is mentioned only to bring the General Council up to date on all research in the area. See, Volkheimer, Gerhard, "Hematogenous Dissemination of Ingested Polyvinyl Chloride Particles," 246 Annals of New York

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3/ A carcinogen is any cancer producing substance. A transplacental carcinogen is a cancer producing substance that crosses the placenta and reaches the fetus.

4/ An angiosarcoma is a relatively rare malignant tumor.

Academy of Sciences 164-171 (1975), a true and correct copy of which is attached hereto, incorporated herein, and marked Exhibit B.

Since 1973 and 1974, when the carcinogenic potential of VCM became known to the scientific community, to government, to the VCM industry, and to organized labor, Dr. Maltoni has been looked to by all concerned as the leading authority on this subject. His experiments have been applauded by the scientific community and his conclusions have been accorded deserved credence. Thus, in response to an inquiry by Dr. Laurence H. Ballou, The Firestone Tire & Rubber Company Medical Director, Dr. Joseph S. Mallov of the Division of Field Studies and Clinical Investigations for the National Institute for Occupational Safety and Health ("NIOSH"), Department of Health, Education and Welfare, Public Health Service, Center for Disease Control, stated:

"In answer to your questions, I can cite a 1974 experiment by Maltoni (experiment BT5)* in which two groups of 30 female Sprague-Dawley rats were treated with 6000 and 10,000 ppm vinyl chloride monomer respectively for 4 hours daily between the 12th and 19th day of pregnancy (i.e. for only one week). Both the adult animals and their offspring were followed for 75 weeks. As of August 1974 no tumors developed in the adults but 2 subcutaneous angiosarcomas developed in a total of 86 offspring: one developed in a 24 week old male whose mother was exposed to 10,000 ppm for 1 week, and the other developed in a 22 week old female whose mother was exposed to 6000 ppm for 1 week. These results, though not conclusive, do suggest that vinyl chloride does have a transplacental effect, and that fetuses may be more sensitive to it than are adults.

"Therefore I would agree that women of child bearing age should not be exposed to vinyl chloride.

*Reference: Maltoni, Cesare and Lefemine, Giuseppe, 'Carcinogenicity Bio-Assays of Vinyl Chloride: Current Results' August 31, 1974"

A true and correct copy of Dr. Mallov's letter is attached hereto, incorporated herein, and marked Exhibit C.

Early results of Dr. Maltoni's experiments were the basis of recommendations of OSHA by the medical/scientific community, during the period preceding promulgation of the OSHA VCM standard, that women of child-bearing age or ability be excluded from jobs exposing them to VCM. Thus, Dr. Irving J. Selikoff, Professor of Medicine and Director of the Environmental Sciences Laboratory

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at the Mount Sinai School of Medicine, editor in chief of the Journal of Environmental Research, president of the Society for Occupational and Environmental Health, past president of the New York Academy of Sciences, and OSHA's own witness at the hearing held on the proposed permanent standard for occupational exposure to vinyl chloride testified at those hearings as follows:

"... with regard to exposure of women, the demonstration by Dr. Maltoni that exposure of pregnant rats to vinyl chloride from day 12 to day 18 of pregnancy -- one week -- may result in angiosarcoma in the offspring indicates that women in the child bearing age should not work in any area in which there are detectable levels of vinyl chloride. This should be made a hard and fast rule." (Emphasis supplied).^{5/}

Dr. Maltoni's experiments were also a significant factor in NIOSH's medical screening recommendations made to OSHA when the latter agency was involved in promulgating a standard of occupational exposure to VCM. This NIOSH recommendation provided that: "In view of the preliminary results of animal toxicology studies, it is recommended that no woman who is pregnant or who expects to become pregnant should be employed directly in vinyl chloride monomer operations." See, Section (viii) of "Medical Surveillance" attachment to March 22, 1974 letter from Clark W. Heath, Jr., M.D. Chief, Cancer and Birth Defects Division, Bureau of Epidemiology, Department of Health, Education, and Welfare, Public Health Service, Center for Disease Control, a true and correct copy of which is attached hereto, incorporated herein, and marked Exhibit D.

The scientific community has repeatedly reaffirmed its position that, on the basis of the available medical/scientific knowledge, women of childbearing ability should be excluded from jobs involving occupational exposure to VCM. Thus, in a March 5, 1975 letter to Dr. Ballou at The Firestone Tire & Rubber Company, Dr. Henry Falk, Medical Epidemiologist, Cancer and Birth Defects Division, Bureau of Epidemiology, Department of Health, Education, and Welfare, Public Health Service, Center for Disease Control, stated with respect to NIOSH's 1974 recommendation to exclude women (see supra, pp. 7-8), that: "No new scientific evidence has come to light which would make me change my opinion that the initial recommendation was appropriate." A true and correct

^{5/} Testimony of Dr. Irving J. Selikoff, Official Report of Proceedings before the Occupational Safety and Health Administration of the U.S. Department of Labor, In The Matter of Proposed Permanent Standard for Occupational Exposure to Vinyl Chloride at 212, 246 (June 25, 1974). Hereinafter these hearings will be referred to as the "VCM Hearings."

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copy of Dr. Falk's letter is attached hereto, incorporated herein and marked Exhibit E.^{6/}

6/ The VCM standard ultimately promulgated (29 C.F.R. §1910.1017), did not address itself to the subject of women workers or any other class of employees who may have a particular sensitivity to VCM. See, dialogue between Dr. John Finklea, Director of NIOSH, and Congressman David Obey (D-Wis.) during Hearings on Department of Labor and Department of Health, Education and Welfare Appropriations for 1977 Before the Subcomm. on Dept. of Labor - HEW Appropriations of the House Comm. on Appropriations, 94th Cong., 2d Sess., pt. 3, at 302 (1976):

"Mr. Obey. Would existing standards protect the unborn?

Dr. Finklea. Most consensus standards were not established with the view of protecting women of child-bearing age in the workplace.

Mr. Obey. You say they were not?

Dr. Finklea. That is correct. With our recommendations that we are making to the Department of Labor, they do address that issue, but the consensus standards established in the past do not consider that question. We are trying to relook at all of these

Mr. Obey. Most of those chemicals are not regulated at all?

Dr. Finklea. They are regulated but not with this in mind."

In a paper by Dr. Finklea entitled "Women in the Workplace -- An Emerging Social Issue" read before University of Cincinnati Seminar on January 28, 1976, Dr. Finklea observed that federal occupational safety and health standards were not established, by and large, keeping in mind the need to protect especially susceptible workers.

At a November 25, 1975 NIOSH-sponsored conference on Women in the Workplace to which the VCM industry, the EEOC, and other government agencies sent representatives, Dr. Finklea noted that "a mother cannot release a company or the Government from liability on behalf of her offspring. The mother, a company, or perhaps the Government could be sued for damages by the affected offspring (T)he conservative approach from a health and liability standpoint would be to bar women of the child-bearing

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age from possible exposures to agents known or suspected of causing birth defects."^{7/} At this same conference Dr. Kenneth Birdbord of NIOSH "pointed out that the current 1 ppm standard itself is not a proven safe level for the prevention of birth defects" Similarly, Sheldon Samuels of the Industrial Union Department of the AFL-CIO, stated that women workers are advised by his department that present standards are not protective. Dr. Harold Gordon of Dow Chemical Company advised that: "If an agent is teratogenic or a transplacental carcinogen, fertile women might be excluded since they are at particular risk"8/

Dr. Finklea, in a paper read at a University of Cincinnati Seminar (see supra, p. 9 n. 6), suggested that any exposures of women of child-bearing ability above the "rather stringent action level" (0.5 ppm averaged over an 8 hour work day) are discouraged. Dr. Finklea further noted that a worker cannot bind her unborn child with a release from liability. Furthermore, a child may seek to redress any damages for up to three years after the age of majority. This would, in effect, require industry to accrue potential liability for up to two decades.

A November 5, 1976 NIOSH "Report of Work-Group On Occupational Mutagenesis,^{9/} Teratogenesis, and Transplacental Carcinogenesis" observed that ". . . the fetus is particularly susceptible to chemicals to which the pregnant woman may be exposed." Moreover, "(e)arly fetal development is often a period of greatest sensitivity to adverse effects from environmental insults. The mammalian embryo is subjected to such influences despite its sequestered position in the uterus. Concern for the unborn even extends to the period before conception In almost every case, the embryo is more sensitive to toxins than the maternal animal." This fact is accounted for in part by more rapid develop-

7/ Minutes of the 1st Meeting on "Women in the Workplace", Rockville, Maryland (Nov. 25, 1975).

8/ A teratogen is a chemical or other substance that interferes in the normal development of the fetus after conception and may result in miscarriage, visible birth defects (missing limbs, cleft palate, etc.) or defects not noticeable at birth (learning disorders, hormonal imbalance, etc.).

9/ A mutagen is a chemical or other substance that causes a mutation, i.e., a change in the character of the genetic material in the cells.

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ment (cell turnover) of the fetus, a relative lack of detoxification mechanisms, and immature biological barriers in the fetus." (Emphasis in original).

With regard to transplacental carcinogens particularly, this NIOSH report explained that carcinogens administered transplacentally could induce tumors which may become apparent at any time during postnatal life. Moreover, experiments with test animals reveal that a carcinogen administered transplacentally may result in a 10 to 100 times higher tumor incidence in offspring than in adults receiving comparable exposures. As this NIOSH report observes, ". . . fetal tissues are intrinsically highly susceptible to carcinogens." Furthermore, ". . . only the female can serve as the intermediary for exposing the fetus to a transplacental carcinogen." (Emphasis supplied).

After examining the aforescribed medical/scientific data and finding no contrary medical/scientific opinion or indicators, Firestone concluded that it must exclude women of child-bearing ability from employment in jobs in which such women would be exposed to VCM.

This decision was only made after Firestone had explored all alternative policies that would have a less inhibiting effect on female employment. However, none of these alternatives were capable of providing the protection necessary for the fetus. For example, even if Firestone required its female employees in positions involving exposure to VCM to check with the health department monthly in order to discover early pregnancies, such a procedure could at best, only reveal a pregnancy which was at least one month old. When such procedure was implemented by Amoco Oil Company for women who worked in its toxic substances division, it was found that pregnancies could go for two or three months prior to discovery by the Company. See, Amoco Oil Co., 64 LA 511 (1975). In a Memorandum for the Record by Jack Butler, M.D. of NIOSH dated February 26, 1976 re Minutes of Meeting "Workplace Exposures to Suspected Mutagens, Teratogens, and Transplacental Carcinogens", NIOSH medical personnel conclude that: "It is unrealistic to conduct routine pregnancy tests and even these are not positive early enough to present effects" (at 5).

Medical science has yet to determine the exact nature of the environmental insult necessary to start in fetuses or adults the physiologic process called cancer. Some scientists have even gone so far as to indicate that a one-time carcinogenic insult or exposure may be sufficient to set the process in motion. Thus, only by totally excluding women of child-bearing ability from jobs in areas in which they will be exposed to VCM can Firestone sufficiently protect the fetus and the mother from the possible deleterious results of such exposure. Even if it were technologically feasible to bring the VCM exposures

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down to a no detectable level, the state of the art is such that there can be no guarantee against accidents, excursions, leaks or other sudden exposures. Nor can women be sufficiently protected merely by donning respirators when the VCM exceeds the 1 ppm level mandated by OSHA. The 1 ppm level is a time-weighted average only. Thus, women working in regulated areas could easily receive higher exposures as a result of excursions, leaks, or other sudden massive releases. Before a respirator could even be donned, significant damage could occur.

The Inconsistent Position Of Local 336 And Organized Labor

It is difficult to understand the current opposition to Firestone's policy by Local Union No. 336, United Rubber, Cork, Linoleum & Plastic Workers of America ("Local 336"), manifested by the above-referenced charge of discrimination, filed by Martin J. Higgins, President of Local 336. Organized labor was most vociferous during the VCM Hearings on the subject of protecting female employees from the transplacental carcinogenic effects of VCM. Indeed, Peter Bommarito, President of the United Rubber Workers ("URW"), the international union to which Local 336 is affiliated, testified against:

"Remember that at the prior hearing Dr. Maltoni demonstrated a transplacental effect on vinyl chloride exposure.^{10/}

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^{10/} Testimony of Peter Bommarito, VCM Hearings at 145-46 (June 25, 1974).

Similarly, in its "Handbook for OCAW Women", the Oil, Chemical and Atomic Workers International Union, AFL-CIO^{11/} advises at 61 that:

"When a woman is pregnant, the health hazards to which she is exposed are a threat to her child as well as to herself. Toxic substances that enter her bloodstream are transmitted to the fetus. Because unborn children are small and growing rapidly, they are often more sensitive than adults to small doses of dangerous chemicals. Thus a woman who is pregnant must be doubly wary of the dangerous substances she finds at work. She must avoid even small exposures to toxic substances that might harm the fetus."

By their own admissions, the URW and OCAW recognize that only a few minutes exposure (URW) and very small exposures (OCAW) can result in damage to a fetus. In light of the unfuted medical/scientific data indicating that pregnancies cannot be discovered until they are of several weeks or two or three months duration, the current opposition of Local 336 to the only employment policy capable of protecting fetuses is unreasonable.

Firestone's Efforts To Obtain An Opinion Letter From The EEOC

Firestone believes that the medical/scientific data regarding (1) the transplacental effect of VCM and (2) the inability to detect pregnancies until they are of several weeks or two to three months duration compels it to follow the policy of excluding women of child-bearing ability from jobs involving exposure to VCM. However, it is mindful that this policy has an inhibiting effect upon the employment of most women into production and research positions. Accordingly, Firestone, by its attorneys, in a letter dated May 14, 1976 requested an opinion letter from the EEOC pursuant to Section 713 of Title VVI, the Civil Rights Act of 1964, as amended, 42 U.S.C. §2000e-12, and Sections 1601.28 - 1601.30 of the EEOC's Procedural Regulations, 29 C.F.R. §§1601.29 - 1601.30. A true and correct copy of this letter is attached hereto, incorporated herein, and marked Exhibit F. The EEOC, by its Associate General Counsel, Constance L. Dupre, replied to Firestone's attorneys on July 12, 1976. This expressly stated that it did "not constitute an opinion of the Commission." It did suggest Firestone look at some cases; however, these cases were inapposive to this issue. A true and correct copy of this letter is attached hereto,

^{11/} OCAW and the URW are the two international unions which represent the majority of VCM industry workers. Both unions made presentations at the VCM Hearings.

incorporated herein, and marked Exhibit G.

CONCLUSION

The unrefuted medical/scientific data discussed herein clearly establishes that Firestone's policy of excluding women with child-bearing ability from employment in jobs involving exposure to VCM is a policy compelled by humanitarian and moral concern for safety and health as well as business necessity. Accordingly, the above-referenced charge of discrimination should be dismissed. Additionally, Firestone believes that, under these somewhat unique circumstances, the EEOC should issue the advisory opinion previously requested by Firestone. Finally, Firestone hereby requests that a meeting be called to include EEOC, OFCCP, OSHA and NIOSH at which these agencies can develop a consistent policy to deal with this problem.

Very truly yours,

W. B. Connolly, Jr.
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