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WESTERN DISTRICT OF TEXAS

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IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION

FILED

JUL 18 2001

U. S. DISTRICT COURT
CLERK'S OFFICE
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DEPUTY

EQUAL EMPLOYMENT OPPORTUNITY §
COMMISSION, §

Plaintiff, §

VS. §

Civil Action No. A00CA595SS

CAPITOL ANESTHESIOLOGY §
ASSOCIATION, §

Jury Trial Demanded

Defendant. §

FIRST AMENDED COMPLAINT IN INTERVENTION

TO THE HONORABLE COURT:

Intervenors, Jo Ann Diaz, Theresa Hitt, Debora Kruger, Diana Martinez, Annette Rinehart, Gina Wolff, and Shirley Wolff, file this First Amended Complaint in Intervention as Party-Plaintiffs, pursuant to Rule 24, Federal Rules of Civil Procedure.

Parties

1. Intervenor Jo Ann Diaz is an individual who resides in Austin, Texas.
2. Intervenor Theresa Hitt is an individual residing in Austin, Texas.
3. Intervenor Debora Kruger is an individual residing in Bastrop, Texas.
4. Intervenor Diana Martinez is an individual residing in Round Rock, Texas.
5. Intervenor Annette Rinehart is an individual residing in Austin, Texas.
6. Intervenor Gina Wolff is an individual residing in Bertram, Texas.
7. Intervenor Shirley Wolff is an individual residing in Bertram, Texas.
8. Plaintiff Equal Employment Opportunity Commission ("EEOC") is an agency of the

United States government.

9. Defendant, Capitol Anesthesiology Association (“CAA”), is a professional association. Defendant CAA has answered and appeared herein.

The Original Lawsuit

10. The EEOC sued Defendant alleging that Defendant had committed unlawful employment practices, and seeking relief for Intervenors who were adversely affected by those practices. The EEOC alleges that Intervenors were not given an opportunity to apply for a position, and were denied a promotion because they are female. Defendant has answered denying the allegations.

Factual Allegations

11. Intervenors were all employed by Defendant in its insurance section.

12. At all times relevant, Defendant was an “employer” of the Intervenors, has continuously had at least fifteen employees, and has been an employer engaged in an industry affecting commerce within the meaning of Section 701(b), (g), and (h) of Title VII of the Civil Rights Act, 42 U.S.C. §§2000e-(b), (g), and (h).

13. At all times relevant, Intervenors were “employees” of the Defendant, as that term is defined in Section 701(f) of Title VII of the Civil Rights Act, 42 U.S.C. § 2000e(f).

14. At all times relevant, Defendant was an “employer” of the Plaintiffs, and Plaintiffs were “employees” of the Defendant, as those terms are defined in the Texas Commission on Human Rights Act, Tex. Labor Code §§ 21.002 (7) & (8).

15. The Intervenors are all female. On or about January 28, 1999, Defendant promoted a male employee to the position of Insurance Supervisor. Although the Defendant had routinely

posted available positions and allowed applications for vacant positions from within its organization, the position of Insurance Supervisor was not posted and each Intervenor was denied the opportunity to apply for the position. Intervenors were denied the promotion because they were female.

16. At the time of his promotion to Insurance Supervisor, the male employee was far less qualified for the position than any of the Intervenors. The male employee had less than 18 months experience working for Defendant and no prior insurance experience prior to his employment with Defendant. Each Intervenor had worked for Defendant for at least as long as the male employee (four of them having been with Defendant for 8 years or more). Each Intervenor had more experience in insurance work than the male employee Defendant promoted. Intervenors' prior work performance with Defendant had all been evaluated as good, very good, outstanding, and superior.

17. Intervenor Diana Martinez continued to work for Defendant into the year 2000. In June, 2000, Martinez was served with a subpoena to appear as a witness in Williamson County Court at Law Number Three in a domestic relations matter. Martinez received less than 48 hours notice that her presence in court as a witness was required. Martinez notified Defendant that she would be absent due to the subpoena, but her absence was determined to be "unexcused" under Defendant's policy requiring 48 hours notice of any absence. This in turn deprived Martinez of eligibility for any bonus compensation from Defendant for that calendar quarter.

Cause of Action - Employment Discrimination in Violation of Federal Law

18. At all times material to this action, Defendant wrongfully discriminated against each Intervenor in violation of the Title VII of the Civil Rights Act, and intentionally engaged in practices, policies, customs and usages made unlawful by Title VII, which denied Intervenors equal employment opportunities because of their gender, by failing to consider any of them for the

promotion to the position of Insurance Supervisor.

19. By reason of the foregoing, Defendant deprived Intervenors of certain benefits, privileges, terms and conditions of employment, because they are female, all to their damage and injury.

Cause of Action - Employment Discrimination in Violation of Texas Law

20. At all times material to this action, Defendant wrongfully discriminated against each Intervenor in violation of the Texas Commission on Human Rights Act, Tex. Labor Code § 21.051, *et seq.*, by failing to consider any of them for the promotion to the position of Insurance Supervisor.

21. By reason of the foregoing, Defendant deprived Intervenors of certain benefits, privileges, terms and conditions of employment, because they are female, all to their damage and injury.

Cause of Action - Penalizing Employee for Compliance with Subpoena

22. Defendant wrongfully disciplined and penalized Intervenor Diana Martinez in violation of Tex. Labor Code § 52.051, by depriving her of eligibility for bonus compensation during the relevant time period due to her absence in June 2000 when she was required to appear in a state court matter under subpoena.

23. By reason of the foregoing, Defendant deprived Intervenors of certain benefits, privileges, terms and conditions of employment, because they are female, all to their damage and injury.

Damages

24. As a result of the above discriminatory conduct, each Intervenor has been damaged in that each Intervenor has lost wages and benefits in the past and will reasonably suffer a loss of

future earnings and earning capacity and benefits. Each Intervenor has further suffered non-pecuniary losses resulting from the unlawful employment practices complained of above, including, but not limited to, emotional pain, suffering, loss of enjoyment of life, and humiliation, and may continue so to suffer in the future, in amounts to be determined at trial.

25. Intervenors will show that they are entitled to exemplary damages in amounts to be determined at trial as a result of the willful, intentional, reckless, and malicious wrongful conduct by the Defendant.

26. Intervenors have employed an attorney to vindicate their rights under the law, and seek reasonable and necessary attorneys' fees through trial and in the event of any appeals. In addition, Intervenors seek to recover prejudgment and postjudgment interest.

Conditions Precedent

27. Intervenors each timely filed a charge of discrimination. All conditions precedent to the filing of this action have been met.

Jury Demand

28. Intervenors continue to request a jury trial, as Plaintiff previously requested in the Original Complaint filed in this action, and as Intervenors Requested in their Complaint in Intervention..

Prayer for Relief

WHEREFORE, Intervenors pray that upon final trial of this cause, Intervenors have and recover judgment from the Defendant as follows: actual damages in a sum to be determined at trial; punitive damages in a sum to be determined at trial; attorney's fees; prejudgment interest as provided by law; interest on the judgment at the legal rate; costs of court; and such other and further relief to

which Intervenors may be justly entitled.

Respectfully submitted,

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By: 
Carter C. White
State Bar No. 21290300

Attorney for Intervenors

Certificate of Service

On this 9th day of July, 2001, I served all parties with a copy of the above document, as follows:

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Jenkins & Gilchrist
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Austin, Texas 78701

Judith G. Taylor
Equal Employment Opportunity Commission
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Carter C. White