

**UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION**

ERIC PAYNE	:	CIVIL ACTION NO. C-1-03-677
9830 GreenRiver Drive	:	
Cincinnati, Ohio 45231	:	Judge: Spiegel, J.
	:	
Plaintiff,	:	Magistrate: J. Hogan
	:	
v.	:	
	:	INTERVENER COMPLAINT
COGNIS CORPORATION	:	WITH JURY TRIAL
4900 Este Avenue	:	
Cincinnati, Ohio 45232	:	
	:	
-and-	:	
	:	
GEORGE E. CERNIGLIA	:	
292 Glen Lake Road	:	
Loveland, Ohio 45140	:	
	:	
Defendants.	:	

NATURE OF ACTION

1. This is an action under 42 U.S.C., 1981, Section 4112.02 (a) of the Ohio Revised Code, Section 4112.99 of the Ohio Revised Code, the Ohio Public Policy Law and the Ohio Law concerning Breach of Contract. This action is filed pursuant to the Order of the Court of November 20, 2003 granting the Motion to Intervene. The action is filed on behalf of Eric Payne as Intervener who was retaliated against and discriminated against because of his race when the Defendants, Cognis Corporation and George Cerniglia, intentionally and deliberately, in violation of a Settlement Agreement, gave to Eric Payne a bad reference preventing him from obtaining new employment and intentionally causing him stress, loss of income and requiring him to file Bankruptcy.

2. This action is also brought against George E. Cerniglia, individual Defendant under the

Ohio law because the Defendant, Cerniglia deliberately and intentionally retaliated against the Plaintiff when he breached the Settlement Agreement and told perspective employers about Plaintiff's prior EEOC Charge and informed them that Cognis Corporation would not re-hire the Plaintiff.

JURISDICTION AND VENUE

3. Jurisdiction of this Court is pursuant to 28 U.S.C., 1331 and 1337. The action is authorized and instituted pursuant to Section 42 U.S.C., 1981, 42 U.S.C., 1988 and pursuant to the Ohio law under Section 4112.02 (a)(i)(j) of the Ohio Revised Code. This Court further has pendent jurisdiction under the Ohio statutes, the Ohio public policy law and the Ohio common law.

PARTIES

4. The Plaintiff, Eric Payne, is a former employee of Cognis Corporation. The Plaintiff Eric Payne entered into a Settlement Agreement and General Release with the Defendant, Cognis Corporation on or about January 17, 2002 and as part of the Release, the Defendant, Cognis Corporation agreed to provide Plaintiff, Payne a neutral employment recommendation/name, pay, grade, and job, with no comments.

5. The Defendant, Cognis Corporation is the former employer of the Plaintiff, Payne and is subject to the jurisdiction of this Court because its operations are in Cincinnati, Ohio and it is subject to both the Federal and Ohio laws.

6. The Defendant, George Cerniglia, is the former Human Resources Director at Cognis Corporation who discriminated against the Plaintiff because of his race and retaliated against the Plaintiff, Payne when he deliberately with intention gave the Plaintiff a bad recommendation to perspective employers.

ADMINISTRATIVE PROCEDURE

7. The Plaintiff, Eric Payne, filed charges with the Equal Employment Opportunity Commission claiming retaliation and discrimination due to breach of the previous Settlement Agreement and intentional actions by the Defendant, Cognis Corporation in giving the Plaintiff, Eric Payne a bad reference. The Equal Employment Opportunity Commission on March 21, 2003, found reasonable cause finding that evidence substantiates that the Charging Party was retaliated against because of his previous charge of discrimination.

FACTS

8. Plaintiff, Eric Payne was hired by the Cognis Corporation on August 10, 1998. During his employment with Cognis Corporation Plaintiff earned over \$55,000.00 per year.

9. The Personnel Manager at Cognis when Plaintiff was employed was George Cerniglia.

10. During Plaintiff's employment with Cognis Corporation, he was harassed and discriminated against because of his race and a hostile, racial environment which was present caused the Plaintiff stress, caused the Plaintiff disability, loss of income, and loss of self esteem.

11. During his work, Plaintiff complained to Managers, the Human Resources Director, Defendant George Cerniglia and others regarding the hostile, racial environment but no action was taken by the Company to stop the racial comments and actions of Supervisors and other employees.

12. On or about March 12, 2001, Plaintiff engaged Attorney, Ivan L. Tamarkin to represent him in his claims against the Defendant, Cognis Corporation. On or about March 15, 2001, through his Attorney, Ivan L. Tamarkin, contacted Defendant George Cerniglia at Cognis Corporation asking that action be taken with regard to the racial atmosphere and demanding an amicable solution.

13. After numerous negotiations and previous charges were filed with the Equal Employment Opportunity Commission, a Settlement Agreement was entered into with the approval of the Defendant, George Cerniglia, the Defendant, Cognis Corporation and the Plaintiff, Eric Payne on or about January 17, 2002 where the Defendant, Cognis and George Cerniglia agreed to provide the Plaintiff, Payne a neutral employment recommendation/name, pay, grade, jobs held, with no comment.

14. The Plaintiff, Payne left his employment with the Defendant, Cognis Corporation pursuant to the Settlement Agreement.

15. After leaving Cognis, Plaintiff applied with numerous chemical companies for a position. Plaintiff received favorable interviews but did not obtain any positions.

16. On or about August 9, 2002, the Plaintiff, Eric Payne was offered a position with Rohm Haas, Cincinnati facility at a starting salary of \$32,240.00 per year plus overtime. The offer was contingent upon a background investigation.

17. On or about August 26, 2002, the Rohm Haas Company informed the Plaintiff, Eric Payne that the information they received in his background check was inconsistent with the information provided by the Plaintiff and withdrew its offer.

18. The background check conducted by Rohm Haas on August 12, 2002 included an employment reference check with the Defendant, Cognis Corporation and the Defendant, George Cerniglia. The Defendants, in breach of the Settlement Agreement and in breach of Plaintiff's right under the Civil Rights statute, informed Rohm Haas that Plaintiff was not eligible for re-hire and stated that they would rather not comment on why he is not eligible for re-hire.

19. Plaintiff was out of work for approximately seven (7) months after he left the Cognis Corporation pursuant to the Settlement Agreement, was required to file Bankruptcy, had to

borrow money from relatives and he and his family suffered financially, emotionally and mentally because of the actions of the Defendants.

CLAIMS

20. The Plaintiff, Eric Payne was discriminated against and retaliated against under both the Federal and Ohio law due to his race.

21. The Plaintiff, Eric Payne was deliberately and with intention, slandered and retaliated against by George Cerniglia in violation of both the Ohio Civil Rights statutes and the Public Policy of Ohio.

22. The Plaintiff, Eric Payne was discriminated against and retaliated against due to his race and due to his prior complaints of race discrimination and a hostile, racial environment by the Defendants.

23. The Plaintiff, Eric Payne was discriminated against due to his race and in retaliation, in violation of 42 U.S.C., 1981 and 42 U.S.C., 1988.

24. The Defendant breached a Settlement Agreement with the Plaintiff.

PRAYER FOR RELIEF

25. Plaintiff, Eric Payne respectfully requests this Court to:

- a. Order an Injunction enjoining the Defendant, employer, its Officers, Assigns and all other persons from retaliating against the Plaintiff or any other persons who might engage in future protected activity;
- b. Order the Defendant to institute and carry out policies and practices which will provide equal opportunity for individuals who are African-American;
- c. Order the Defendants to make whole Eric Payne, by providing appropriate back-pay, pre-judgment interest, damages for loss of credit, damages for loss of self-

esteem, damages for Attorneys fees because the Plaintiff had to file Bankruptcy, and all other damages including any front pay;

- d. Order the Defendant to make whole Eric Payne because of his emotional stress, his loss of enjoyment of life, his suffering and humiliation due to the intentional and discriminatory acts;
- e. Order the Defendant to pay reasonable Attorneys fees to Eric Payne's Attorney, Ivan L. Tamarkin;
- f. Order the Defendant to pay Eric Payne punitive damages under both the Federal and Ohio law and grant such further relief as it deems necessary including the costs of Court.

Plaintiff, Eric Payne, demands a Jury.

Respectfully submitted,

s/Ivan L. Tamarkin, Esq.

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was served via regular U.S. mail and Electronic Filing upon the following on this 24th day of November, 2003:

s/Ivan L. Tamarkin, Esq.

Ivan L. Tamarkin, Esq.

C. Larry Watson, Esq.,
Regional Attorney

Eric S. Dreiband, Esq.,
General Counsel

Gwendolyn Young Reams
Associate General Counsel

Howard Besser, Esq.
Trial Attorney

Equal Employment Opportunity Commission
Cleveland District Office
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