

IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

EQUAL EMPLOYMENT  
OPPORTUNITY COMMISSION

Plaintiff,

and

ARLENE ANDERSON, CAROLYN  
BLOCKUS, LAURA FIGUEROA,  
DEBORAH GDOVIN, PATRICIA  
PAVALONIS, and YVONNE PRYWARA,

Intervenor Plaintiffs,

v.

SCHOTT NORTH AMERICA, INC.

Defendant.

NO. 3:06-cv-01246-JMM

JURY TRIAL DEMANDED

**FILED  
SCRANTON**

**AUG 30 2006**

PER

DEPUTY CLERK

**INTERVENOR COMPLAINT**

Intervenor Plaintiffs Arlene Anderson, Carolyn Blockus, Laura Figueroa, Debora Gdovin, Patricia Pavalonis, and Yvonne Prywara ("Intervenor Plaintiffs") file this complaint as statutory intervenors seeking to recover against Defendant Schott North America, Inc. ("Defendant") for violating Title VII of the Civil Rights Act of 1964 ("Title VII"), 42 U.S.C. § 2000e, *et seq.*, and the Pennsylvania Human Relations Act ("PHRA"), 43 P.S. § 951, *et seq.* As alleged herein, Defendant implemented corporate lay-off procedures that were undertaken with the

discriminatory intent and purpose of disadvantaging female employees, including Plaintiffs, and, these lay-off procedures had an adverse disparate impact on female employees, including Intervenor Plaintiffs. Intervenor Plaintiffs seek all injunctive and monetary relief available under Title VII and the PHRA. The allegations herein are based on Intervenor Plaintiffs' personal knowledge as to their own acts and upon information and belief as to the acts of others.

### **JURISDICTION AND VENUE**

1. This Court has jurisdiction over Intervenor Plaintiffs' federal claims pursuant to 28 U.S.C. §§ 1331, 1332, 1343, 1345, and over Intervenor Plaintiffs' PHRA claims pursuant to 28 U.S.C. § 1367.

2. Venue in this judicial district is proper under 28 U.S.C. § 1391(b) because, *inter alia*, a substantial part of the events or omissions giving rise to the claim occurred in this judicial district.

### **PARTIES**

3. Plaintiff Arlene Anderson is an individual currently residing in West Avoca, PA.

4. Plaintiff Carolyn Blockus is an individual currently residing in West Pittston, PA.

5. Plaintiff Laura Figueroa is an individual currently residing in West Wyoming, PA.

6. Plaintiff **Debora Gdovin** is an individual currently residing in West Pittston, PA.

7. Plaintiff **Patricia Pavalonis** is an individual currently residing in Avoca PA 18641.

8. Plaintiff **Yvonne Prywara** is an individual currently residing in West Wyoming, PA.

9. Plaintiffs **Anderson, Blockus, Figueroa, Gdovin, Pavalonis, and Prywara** are referred to collectively as "Intervenor Plaintiffs."

10. Defendant **Schott North America, Inc.** ("Defendant" or "Schott") is a Maryland corporation doing business in the Commonwealth of Pennsylvania and operating a manufacturing facility in Duryea, Pennsylvania.

11. Defendant has continuously employed at least 15 employees and has continuously acted as an employer engaged in an industry affecting commerce within the meaning of 42 U.S.C. §§ 2000(e), (g), and (h).

#### **EXHAUSTION OF ADMINISTRATIVE REMEDIES**

12. On February 21, 2005, Intervenor Plaintiffs dual-filed with the United States Equal Employment Opportunity Commission ("EEOC") and the Pennsylvania Human Relations Commission ("PHRC") an administrative complaint concerning the subject matter of this lawsuit. A copy of Intervenor Plaintiffs' administrative charges are attached as Item 1.

13. The EEOC conducted an investigation and, on September 16, 2005, issued a determination that Defendant violated Intervenor Plaintiffs' rights under Title VII. A copy of the EEOC's determination is attached as Item 2.

14. On June 22, 2006, the EEOC commenced the above-caption action pursuant to 42 U.S.C. § 2000e-5(f)(1) and (3) and 42 U.S.C. § 1981A. Thus, Intervenor Plaintiffs have a statutory right to intervene in this action pursuant to 42 U.S.C. § 2000e-5(f)(1).

15. Based on the above, Intervenor Plaintiffs have exhausted all administrative remedies and satisfied all prerequisites to suit under Title VII and the PHRA.

### FACTS

16. Intervenor Plaintiffs adopt the factual allegations described in the EEOC's originating complaint. These allegations are repeated verbatim herein:

(a) Since at least October 2004, Defendant employer has engaged in unlawful employment practices at its Duryea, Pennsylvania facility in violation of Title VII, 42 U.S.C. § 2000e-2(a)(1) and 2000(e)-3(a)(1) by subjecting [Intervenor Plaintiffs] and a class of female employees to a discriminatory layoff process which resulted in the loss of their jobs due to their gender.

(b) Prior to the fall of 2004, in Defendant's Quality Assurance workforce in its glass production facility, hot end functions were predominately performed by male workers and the cold end functions, by females. According[ly], the Quality Assurance workforce was generally segregated by gender. Female Quality Assurance workers were denied adequate training in the hot end functions, discouraged from applying for hot end positions, and were subjected to sex-based differential treatment when they were permitted to perform hot end jobs.

(c) In or around September 2004, Defendant decided to combine its hot and cold end positions into one job, entitled Melting Line Operator. Defendant announced that it would create forty such positions, thirty-six full-time and four part-time. To that end, Defendant developed a matrix system, which it indicated that it would use to evaluate the skills of the applicants to determine who should be selected for the new position.

(d) Defendant's matrix system, which gave credit to the employees for their ability to perform hot and cold end functions, assessed the cold end duties as requiring a lower level of skill than the male-dominated hot end functions, even though cold end jobs were in fact highly skilled and required continuous labor. In fact, cold end trainees were required to pass more than

26 tests and three different rotations prior to receiving authorization to work in the cold end section.

(e) As part of the rating process, male applicants who had never worked in the cold end were given ratings indicating that they could "fully perform" certain cold end functions.

(f) Male applicants who had never worked in either the hot end or the cold end areas were rated well on both hot and cold end functions. At least three male employees with no experience in the hot or cold end functions were awarded Melting Line Operator positions.

(g) Even though a training "Waiting List" demonstrated that male employees were scheduled to receive needed training on cold end functions, these male employees were rated as fully capable of performing cold end tasks, or in need of only minimal assistance to perform them, on the matrix system.

(h) Defendant's Human Resources Representative approached Foremen in the Quality Assurance Department and directly asked them to provide male employees with higher scores on the matrix system.

(i) Although 25 female employees were rated by the matrix system for the Melting Line Operator positions, only two were hired for full-time positions, while 34 males were hired for these full-time jobs.

(j) The [Intervenor Plaintiffs] and other female class members who applied for the Melting Line Operator positions were not selected for these positions in or about October 2004, despite their qualifications for the job.

(k) After one female employee was awarded a Melting Line Operator position, she trained male operators in cold end functions, and was then told that her position was eliminated; she was laid off in late 2004.

(l) The effect of the practices complained of [herein] has been to deprive [Intervenor Plaintiffs] and a class of female employees of equal employment opportunities and otherwise adversely affect their status as employees because of their sex.

17. A substantial number of the job applicants were women, and many of these female applicants – including *all* of the Intervenor Plaintiffs – had significant work experience. Yet, as a result of the discriminatory “matrix” ranking system described above, of the 36 full-time positions awarded, only 2 positions were obtained by women.

18. Defendant’s lay-off practices were intentionally discriminatory and were carried out with malice or reckless indifference to the federally protected rights of Intervenor Plaintiffs and other female job candidates. As a direct result of Defendant’s discriminatory practices, none of the Intervenor Plaintiffs were hired and their employment was terminated in November 2004.

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19. The above-described lay-off/rehiring process violates Title VII and the PHRA (i) under a disparate treatment theory of liability because, *inter alia*, it was carried out by Schott with the discriminatory intent and purpose of disadvantaging female employees and (ii) under a disparate impact theory of liability because, *inter alia*, such practices have caused an adverse disparate impact on the basis of gender and are not job related for the positions in question or consistent with business necessity. The discriminatory nature of the lay-off/rehiring process is consistent with an ongoing pattern and practice of mistreatment and discrimination against female employees at SCHOTT over a number of years.

**COUNT I**  
**(Disparate Treatment Under Title VII)**

20. Intervenor Plaintiffs incorporate by reference all previous paragraphs as though fully set forth herein.

21. Title VII makes it illegal for an employer to “fail or refuse to hire or to discharge any individual, or otherwise to discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment, because of such individual's race, color, religion, sex, or national origin,” 42 U.S.C. § 2000e-2(a)(1), or to “limit, segregate, or classify his employees or applicants for employment in any way which would deprive or tend to deprive any individual of employment opportunities or otherwise adversely affect his status as



an employee, because of such individual's race, color, religion, sex, or national origin," *id.* at § 2000e-2(a)(2).

22. Based on the facts alleged herein, Defendant engaged in intentional discrimination in violation of Title VII.

23. In violating Title VII, Defendant acted with reckless indifference to the Title VII rights of Intervenor Plaintiffs, ignored a perceived risk that its actions violated Title VII, and failed to make any good faith effort to comply with Title VII.

24. As a result of Defendant's discriminatory conduct, Intervenor Plaintiffs have suffered serious damages, including, *inter alia*, lost back pay/benefits, lost front pay/benefits, mental anguish and other emotional pain and suffering, and general and special damages for lost compensation and job benefits that Intervenor Plaintiffs would have received but for Defendant's discriminatory conduct.

**COUNT II**  
**(Disparate Impact Under Title VII)**

25. Intervenor Plaintiffs repeat and reassert the allegations set forth in all preceding paragraphs as though fully stated herein.

26. Title VII "proscribes not only overt discrimination but also practices that are fair and form, but discriminatory in operation." *Griggs v. Duke Power Co.*, 401 U.S. 424, 431 (1971). Under the disparate impact theory of Title VII

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liability, a employment practice is unlawful if it “causes a disparate impact on the basis of race, color, religion, sex, or national origin and the respondent fails to demonstrate that the challenged practice is job related for the position in question and consistent with business necessity.” 42 U.S.C. § 2000e-2(k)(1)(A)(i).

27. Based on the facts alleged herein, Defendant is liable to Intervenor Plaintiffs for violating Title VII under the disparate impact theory of liability.

28. As a result of Defendant’s discriminatory conduct, Intervenor Plaintiffs have suffered serious damages, including, *inter alia*, lost back pay/benefits, lost front pay/benefits, mental anguish and other emotional pain and suffering, and general and special damages for lost compensation and job benefits that Intervenor Plaintiffs would have received but for Defendant’s discriminatory conduct.

**COUNT III**  
**(Disparate Treatment Under PHRA)**

29. Intervenor Plaintiffs repeat and reassert the allegations set forth in all previous paragraphs as though fully stated herein.

30. The PHRA prohibits employers from subjecting employees to adverse employment actions based the employee’s gender. 43 P.S. § 953.

31. Defendant is an employer covered by the PHRA.

32. By terminating Intervenor Plaintiffs’ employment based on Intervenor Plaintiffs’ gender, Defendant violated the PHRA.

33. As a direct result of Defendant's discriminatory conduct, Intervenor Plaintiffs have suffered damages, including lost earnings and emotional distress.

**COUNT IV**  
**(Disparate Impact Under PHRA)**

34. Plaintiff repeats and reasserts the allegations set forth in all preceding paragraphs as though fully stated herein.

35. An employer violates the PHRA "when its practices, though fair in form and applied without wrongful intent" discriminate against women. *See Lukus v. Westinghouse Elec. Corp.*, 276 Pa. Super. 232, 267 (Pa. Super. Ct. 1980). Under the disparate impact theory of PHRA liability, a employment practice is unlawful if it causes a disparate impact on the basis of race, color, religion, sex, or national origin and the respondent fails to demonstrate that the challenged practice is job related for the position in question and consistent with business necessity.

36. Based on the facts alleged herein, Defendant is liable to Intervenor Plaintiffs for violating the PHRA under the disparate impact theory of liability.

37. As a result of Defendant's discriminatory conduct, Intervenor Plaintiffs have suffered serious damages, including, *inter alia*, lost back pay/benefits, lost front pay/benefits, mental anguish and other emotional pain and suffering, and general and special damages for lost compensation and job benefits that Intervenor Plaintiffs would have received but for Defendant's discriminatory conduct.

**PRAYER FOR RELIEF**

**WHEREFORE**, Intervenor Plaintiffs seeks the following relief:

- a. All damages which Intervenor Plaintiffs sustained as a result of Defendant's illegal conduct, including, *inter alia*, lost back pay/benefits, lost front pay/benefits, mental anguish and other emotional pain and suffering, general and special damages for lost compensation and job benefits that Intervenor Plaintiffs would have received but for Defendant's discriminatory conduct, all available punitive damages, and all available liquidated damages;
- b. Exemplary and punitive damages in an amount commensurate with Defendant's ability to pay and to deter future conduct;
- c. A permanent injunction against Defendant and its directors, officers, owners, agents, successors, employees and representatives, and any and all persons acting in concert with them, from engaging in each of the unlawful practices, policies, customs and usages set forth herein;
- d. A declaratory judgment that the practices complained of in this complaint are unlawful and violate Title VII and the PHRA;
- e. An adjustment of the wage rates and benefits for Intervenor Plaintiffs to that level which Intervenor Plaintiffs and the class would be enjoying but for Defendant's discriminatory practices;

- f. Costs incurred, including reasonable attorneys' fees, to the extent allowable by law;
- g. Pre-judgment and post-judgment interest, as provided by law; and
- h. Such other and further legal and equitable relief as this Court deems necessary, just and proper.

**DEMAND FOR JURY TRIAL**

Intervenor Plaintiffs demand a jury trial as to all claims so triable.

Dated: July 27, 2006

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Respectfully,




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