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SUSAN STOCKING, for herself and all other similarly situated, Plaintiff, v. AT&T
CORP., Defendant.

Case No. 03-0421-CV-W-HFS

UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF
MISSOURI, WESTERN DIVISION

2003 U.S. Dist. Ct. Pleadings 3030; 2004 U.S. Dist. Ct. Pleadings LEXIS 9181

January 23, 2004

Complaint

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ATTORNEYS FOR PLAINTIFFS.

TITLE: FIRST AMENDED CLASS ACTION COMPLAINT

TEXT: **[*1]** Plaintiff Susan Stocking brings this case on behalf of herself and all other women employed by AT&T
Corp. ("AT&T") who have been discriminated against by their employer, AT&T, and its affiliated companies, and
would show the Court as follows:

I. Jurisdiction, Venue, and Parties

1. Plaintiff Susan Stocking is a citizen of the state of Missouri, was employed by Defendant, and has filed an EEOC
complaint and obtained the right to sue. See attached Decision (attached as "Exhibit A") and right-to-sue letter (attached
as "Exhibit B").

2. AT&T employs Plaintiff and thousands **[**2]** of other women like her. AT&T is a citizen of the states of New

York where it is incorporated and of New Jersey where its principal place of business is located; and can be served with service of process at The Corporation Company, Inc., 515 S. Kansas Ave., Topeka, KS 66603.

3. Aetna Insurance Company ("Health Insurer") was a health insurer for Plaintiff and/or AT&T.

[*2] 4. Venue is proper in this Court as Defendant does business in this judicial district and has offered or provided health insurance to its employees in this judicial district. *28 U.S.C. § 1391* (b) and (c); *42 U.S.C. § 2000e - 5(f)(3)*.

5. This Court has subject matter jurisdiction based on federal question jurisdiction, *28 U.S.C. § 1331*, and *42 U.S.C. § 2000e - 5(f)(3)*.

A. Summary of Claims

6. Prescription medication related to reproduction is routinely covered for men, but not for women. Prescription contraception, which is used only by women, is a basic prescription medication related to reproduction; specifically, it prevents pregnancy for women who wish to do so by reversible means. Plaintiff, on [**3] behalf of herself and all others similarly situated, brings this class action against AT&T for sex discrimination in violation of Title VII of the Civil Rights Act of 1964, *42 U.S.C. § 2000e* et seq. and the Pregnancy Discrimination Act (PDA), *42 U.S.C. § 2000e(k)* for offering and/or providing health insurance that does not cover prescription contraceptives for women related to reproduction while covering sex-related prescription medication for men, such as Viagra.

7. AT&T's exclusion of prescription contraception has an adverse disparate impact on Ms. Stocking and other members of the proposed class. Because prescription contraceptives are available for use only by women, AT&T's failure to provide coverage for prescription contraception forces its female employees to choose between paying their own out-of-pocket prescription costs, or bearing the physical, emotional and financial costs of an unplanned pregnancy.

8. As a result of AT&T decision to exclude contraceptives from its benefits plan, Ms. Stocking and other members of the proposed class are being discriminated against in the [*3] terms and conditions of employment, [**4] which includes receipt of benefits under fringe benefit programs, because of their potential for pregnancy. This violates Title VII.

B. Plaintiff Susan Stocking

9. Plaintiff Susan Stocking has been employed by AT&T on a full-time basis since June 12, 1995. As part of the terms and conditions of her employment, Ms. Stocking receives health insurance coverage, including coverage of prescription drugs and devices. Ms. Stocking sues on her own behalf and as a representative of the proposed class of employees who are discriminated against by the exclusion of contraception from AT&T's benefit plan.

10. Ms. Stocking was, at all times relevant to this cause of action, a woman of childbearing age who was concerned with the prevention of an unwanted or unplanned pregnancy. Ms. Stocking requested that her prescription health care benefit provide or reimburse her for the cost of birth control. Her requests were denied. Subsequently, Ms. Stocking learned that men were provided and received plan coverage of a full range of conditions that can be treated through prescription medication.

11. On August 26, 2002, Ms. Stocking filed a charge with the EEOC at its Kansas City Area Office [**5] in Kansas City, Kansas alleging that AT&T's failure to provide her with health insurance coverage for prescription contraceptives constitutes unlawful discrimination on the basis of sex.

12. As a result, Ms. Stocking received a decision and a right-to-sue letter from the EEOC (copies of which are attached hereto as "Exhibit A" and Exhibit B").

[*4] 13. On November 29, 2002, the EEOC issued a "Determination" to Plaintiff Susan Stocking, in which it considered AT&T's benefit plan and concluded that:

"...it is the Commission's position that the pre-July 2002 exclusion violates both Title VII and the PDA, since the statutes cover prescription contraceptives regardless of their intended purpose. Prescription contraceptives are available only for women. As a result, Respondent's pre-July 2002 policy is, by definition, a sex-based exclusion...It appears that Respondent's current plan uniquely classifies contraceptives used for birth control purposes by requiring their acquisition solely by mail. This also represents a sex-based distinction and violates the statutes. Coverage for prescription contraceptives must be afforded in the same manner as if the woman, or any employee, [**6] sought other preventive or health maintenance services.

14. AT&T's refusal to provide the same benefits to both men and women has caused an economic hardship on Ms. Stocking and other members of the proposed class that male employees are not required to endure.

II. AT&T's Health Plan

15. As terms and conditions of their employment, AT&T offered Ms. Stocking the opportunity to enroll in one of three health plans (Plan). The three options were: Post of Service (POS) option; Traditional Indemnity option (PPO); and Health Maintenance Organization (HMO). The POS offered the highest level of benefits. The PPO option was only offered to those employees who lived outside the POS service area, but allowed selection of physicians and reimbursement after the deductible was met. The HMO option generally had no deductibles to meet, a small co-payment but required participants to see a doctor in the HMO network.

16. Regular full-time occupational employees are eligible for coverage at the company's expense on the first day of the month in which the employee attains six months of Net Certified Service with AT&T. Regular full-time employees are not required to contribute to receive [**7] Plan benefits, but with the HMO option, they may be required to do so.

[*5] 17. Ms. Stocking elected to take advantage of the PPO option.

18. The Plan also provides for a Prescription Drug Benefit Plan which was administered by Merck-Medco (Drug Plan). The Drug Plan provided drug benefits to participants in the POS and PPO options. In general, the Drug Plan covered all drugs provided by a pharmacist at the physician's order unless specifically excluded. The Drug Plan specifically excluded "[a]ny drugs or medications used solely for birth control, including oral contraceptives, jellies, foams, devices, implants or injections."

19. Despite covering other preventative medical services and prescriptions, neither the Plan nor the Drug Plan provided for prescription drugs and/or devices used by plaintiffs and other women similarly situated to prevent pregnancy.

20. If plaintiff became pregnant, however, the Plan would have covered the costs of either an abortion or continuing the pregnancy to term - whichever she chose to do.

III. Harm to Ms. Stocking and Other Class Members

21. As a direct and proximate result of the AT&T Plan's failure to cover contraception [**8] to prevent pregnancy, Ms. Stocking and other proposed members of the class were required to pay for their monthly or periodic contraceptives on an out-of-pocket basis, or risk unintended pregnancy. Like many healthy women of reproductive age, contraception is the only prescription drug Ms. Stocking used on a regular and consistent basis.

22. On information and belief, AT&T employs hundreds of women of reproductive age who use prescription contraception.

23. If contraception were treated on an equal basis with other prescriptions under the Plan and the Drug Plan, Ms. Stocking and other proposed class members would have paid a low co-pay, or no co-pay at all, for generic or brand-name, 34 day supply, of contraception.

[*6] IV. Factual Framework

24. For over thirty years of their lives, women have the biological potential for pregnancy. Contraception is a drug or device that prevents pregnancy. Without contraception, the average woman would be expected to have between 12 and 15 pregnancies in her lifetime. In any given year, 85 out of 100 sexually active women of reproductive age who do not use contraception will become pregnant. Most American women want only two [*9] children. To achieve that goal, the typical American woman spends roughly three decades - or about 75% of her reproductive life - trying to avoid unintended pregnancy. Of the 60.2 million women of reproductive age, 64% currently use contraception. Ninety-four percent of American women use contraception at some point during their reproductive years. Among all women aged 20-44 who have ever had sexual intercourse, 85% have used prescription oral contraceptives.

25. The Food and Drug Administration (FDA) has approved five methods of reversible prescription contraception: oral contraception; Norplant; Depo-Provera; intra-uterine device ("IUD"); and the diaphragm. Only women can use these methods of prescription contraception. Other forms of contraception are sold over the counter (OTC) and thus generally are not covered by health insurance. The OTC methods include the male condom and five female methods: spermicidal foam, jelly, film, suppositories and the female condom. All methods work either by preventing fertilization of a woman's ovum or by preventing implantation of the blastocyst in the uterine wall.

26. Women bear all of the physical burdens of pregnancy, which are quite substantial. [*10] Pregnancy itself can put a woman's life at risk. Ectopic pregnancy is the deadliest complication in the early stages of pregnancy. The three deadliest complications of full-term pregnancy are hemorrhage, hypertension and thrombosis. In the United States today, for every 100,000 births, [*7] 8-22 women (depending on their county of residence) die as a result of pregnancy-related complications.

27. Pregnancy also poses non-life threatening health risks for women. The morbidity rate during pregnancy is quite high. Twenty-two percent of all pregnant women are hospitalized before delivery because of various complications. Pre-term labor is one of the most common reasons women are hospitalized before delivery. In such instances, the medical interventions a woman must undergo often include long-term bed rest and administration of various drugs, some of which have significant side effects for the woman.

28. The more pregnancies she bears, the greater the likelihood a woman will suffer one or more of the myriad life and/or health-threatening complications of pregnancy. Women who experience a large number of pregnancies are known to be at far greater risk for certain permanent health [*11] problems such as uterine prolapse (downward displacement of the uterus so that some or all of the uterus comes outside of the vagina), rectocele (hernial protrusion of the rectum into the vagina), cystocele (hernial protrusion of the urinary bladder through the vaginal wall), pelvic floor disorders and varicose veins.

29. For women with pre-existing medical conditions, even one pregnancy can pose grave health risks. Preexisting medical conditions that are exacerbated by pregnancy include: certain blood diseases, including sickle-cell disease; heart disease; cancer; endocrine disorders such as diabetes; diseases of the nervous system such as epilepsy; kidney and liver diseases; connective tissue disorders such as systemic lupus erythematosus and rheumatoid arthritis; chronic hypertension; respiratory disease including asthma and pneumonia; and HIV present in the blood stream.

30. Unintended pregnancy poses far greater health risks to women and children than does intended pregnancy. The medical risks of unintended pregnancy are well documented. In [*8] general, women who become pregnant unexpectedly are less likely to receive adequate pre-natal care and thus have less opportunity [*12] to manage pre-existing medical conditions and other risks during pregnancy. For instance, unintended pregnancy is quite

dangerous, and may even be deadly, for women with hypertension or diabetes. These conditions are best managed when medical care is begun before conception. In addition, women who become pregnant unexpectedly forego the opportunity to receive pre-conception counseling to improve the health of the fetus and are more likely to have low birth weight babies and experience a higher rate of neonatal mortality.

31. Unintended pregnancy is both frequent and widespread in the United States. Forty-nine percent of all pregnancies in the United States are unintended. Among Western Nations, the United States has one of the highest rates of unintended pregnancy. Unintended pregnancy affects all segments of society. Four out of ten pregnancies among married women are unintended. Low-income women and unmarried women experience even higher rates of unintended pregnancy.

32. Contraception enables women to plan their pregnancies and time the spacing between pregnancies. The shorter the interval between her pregnancies, the greater the likelihood a woman will experience pre-term labor, [**13] depression and other health problems. Recognizing that contraception is central to the health and well-being of women and their children, the Center for Disease Control and Prevention has recognized that "[s]maller families and longer birth intervals have contributed to the better health of infants, children, and women, and have improved the social and economic role of women."

33. Furthermore, even in an otherwise healthy woman, pregnancy poses medical risks that are significantly greater than the risks of using contraception. In any given year, the average risk of death from pregnancy is 1 in 11,000 while the risk of death from contraception is much less: 1 in 63,000 for non-smoking oral contraceptive users; 1 in 100,000 for IUD users; and no risk of death for diaphragm users.

[*9] 34. Due to the wide variation in effectiveness, cost, and medical appropriateness of available forms of contraception, choice of contraceptive method is essential to successful pregnancy prevention. Other factors that contribute to what type of contraception a woman chooses to use are whether the woman intends to delay, space, or entirely prevent future childbearing.

35. Women with medical conditions [**14] that require pregnancy avoidance, in particular, require a full range of contraceptive options because their medical conditions often preclude the use of one or more contraceptive methods. For example, birth control pills are medically contraindicated for smokers over age 35 and women who are at risk of cardiovascular problems, such as stroke, heart attack, blood clots, and hypertension, as well as women who have, or are at risk of, depression or hepatic adenomas.

36. For all of the above reasons, a recent study by the Institute of Medicine recommends improving contraceptive coverage in health plans in order to reduce the number of unintended pregnancies and to improve health outcomes for women and children. Similarly, the United States Department of Health and Human Services has adopted the goal of improving pregnancy planning and spacing and preventing unintended pregnancy. Moreover, the Guidelines for Women's Health Care published by the American College of Obstetricians and Gynecologists (ACOG), which represents 38,000 physicians in this country, advises that "prevention of unwanted pregnancy" and "contraceptive options" be discussed with all women over the age of 13 during routine [**15] primary care assessments. In sum, contraception is basic to women's health and well-being.

37. The physical burdens of pregnancy increase the risk of interruption to a woman's education, career and professional development opportunities. The ability to control her biological [*10] potential for pregnancy is central to a woman's ability to participate in the workplace on an equal basis with men.

38. Inadequate insurance coverage of contraception has substantial adverse economic consequences for the 67% of American women of reproductive age who rely on employer-sponsored health insurance coverage. These women pay 68% more in out-of-pocket expenditures for health care services than men, and reproductive health services account for much of that difference.

V. Statutory Framework

39. Title VII provides that: "It shall be an unlawful employment practice for an employer to ... discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment, because of such individual's ... sex." 42 U.S.C. § 2000e-2(1).

40. In 1978, Congress enacted the Pregnancy Discrimination Act ("PDA") which provides [**16] that the term "because of sex" in Title VII includes, but is not limited to, "because of or on the basis of pregnancy, childbirth, or related medical conditions." 42 U.S.C. § 2000e(k). The PDA further states that "women affected by pregnancy, childbirth, or related medical conditions shall be treated the same for all employment-related purposes, including receipt of benefits under fringe benefit programs as other persons not so affected but similar in their ability or inability to work." Id. Thus, Title VII specifically mandates that employers may not single out employees for disadvantageous treatment based on "pregnancy, childbirth, or related medical conditions."

41. Contraception is "pregnancy-related" within the meaning of the PDA because it is medical treatment that provides women with the ability to control their biological potential for pregnancy. Exclusion of contraception from a health plan is sex discrimination in violation of the PDA because it treats women differently on the basis of their potential to become pregnant. The [*11] exclusion of contraception from the Health Plan is, therefore, sex discrimination on its face in violation of [**17] Title VII, as amended by the PDA.

42. The exclusion of contraception from the Health Plan also has an adverse disparate impact on women in violation of Title VII because it forces them either to pay for prescription contraceptives out of pocket, despite having prescription insurance coverage, or to bear the physical, emotional and financial burdens of unplanned pregnancy. Defendant's policy of excluding contraceptive coverage cannot be justified as job-related and consistent with business necessity.

VI. Class Action Allegations

43. The proposed class of plaintiffs in this case consists of:

All female employees of AT&T Corp. covered or offered to be covered by health insurance who used prescription contraceptives from August , to the present (hereinafter, Plaintiff Class).

44. This action is properly maintainable as a class action under Fed. R. Civ. P. 23(a). Plaintiff is informed and believes that the class is so numerous that joinder of all members is impracticable. AT&T employs thousands of people across the nation, a large percentage of whom are women, who participate in the AT&T health and drug plans. Given the number of qualifying employees and [**18] the well-documented utilization rates for prescription contraceptive drugs and devices, plaintiff is informed and believes that the class consists of at least 100 persons.

45. Commonality is met. Plaintiff class members have common issues of law:

(i) whether the failure to provide coverage for female prescription contraceptives a violation of Title VII and/or the PDA by disparate treatment or disparate impact;

(ii) whether AT&T violated Title VII and/or PDA;

(iii) whether Health Insurer violated Title VII and/or PDA;

[*12] (iv) the measure of damages for Plaintiffs who obtain contraceptives anyway; and

(v) the measure of damages for Plaintiffs who did not obtain contraceptives.

The common factual issues are:

(i) Did Defendants provide and/or offer health insurance that did not provide coverage for prescription contraceptives for women;

(ii) did Defendants cause damages to Plaintiff Class as a result;

(iii) what amount of damages resulted from the discrimination to the Plaintiff Class;

(iv) whether equitable relief, such as an injunction, should be awarded by the Court.

46. The claims of the representative party are typical [**19] of the claims of the class. Ms. Stocking was enrolled in AT&T's health and drug plans during the class period. Like every other member of the class, Ms. Stocking has been denied benefits of her employment based on a pregnancy-related medical condition. Furthermore, the AT&T contraception exclusion has had an adverse disparate impact on her, as it has on other female employees of AT&T.

47. Plaintiff is an adequate class representative for the Plaintiff Class and Plaintiff's counsel are experienced in prosecuting nationwide class actions and in federal court litigation. Ms. Stocking has exhausted administrative remedies on behalf of herself and the class.

48. The common questions of fact or law will predominate over any individual issues as every class member would have the same law applicable to its claims for liability and for damages and the same common questions of fact would have to be presented each time a class member brought suit against Defendants.

49. A nationwide class action is superior to any other method to adjudicate the claims of all members of the Plaintiff Class.

[*13] 50. This action is properly maintainable as a class action under Fed. R. Civ. P. 23(b)(2) [**20] because AT&T has acted or refused to act on grounds generally applicable to the class, thereby making compensation, declaratory, injunctive and other equitable relief appropriate for the class as a whole.

VII. Claims

A. Violation of Title VII

51. By providing or offering discriminatory health insurance to its employees, AT&T violates Title VII by disparate treatment since the benefit plan for health insurance is discriminatory on its face and by disparate impact because the health insurance excludes coverage for benefits that are uniquely designed for women. As a direct and proximate result of Defendant's violation of Title VII, Plaintiff and other AT&T female employees have suffered damages by paying for prescription contraceptives and are entitled to injunctive relief to prevent further discrimination.

B. Violation of Pregnancy Discrimination Act

52. In addition to violating Title VII, Defendants have also violated the PDA by disparate treatment and/or disparate impact, causing proximate damages to Plaintiff and entitling her to injunctive relief.

VIII. Prayer for Relief

53. On behalf of herself and all other persons similarly [**21] situated, Plaintiff Susan Stocking seeks the following relief:

(a) That an order be entered certifying the Class pursuant to Fed. R. Civ. P. 23(b)(2) and/or (b)(3).

[*14] (b) That a declaratory judgment be entered declaring that AT&T has violated the civil rights of Ms. Stocking and the Class she represents as guaranteed by *42 U.S.C. § 2000e*.

(c) That a permanent injunction be entered prohibiting AT&T from engaging in the illegal and discriminatory conduct alleged herein.

(d) That the Court award equitable relief to Ms. Stocking and the Class in the form of damages and incidental monetary relief.

(e) That the Court award Ms. Stocking and the Class their attorneys' fees and costs pursuant to *42 U.S.C. § 2000e-5(k)*.

(f) That the Court award such other and further relief as it deems just and proper under the circumstances.

WHEREFORE, Plaintiff prays that the Court certify this case as a class action, approve an appropriate class notice, require Defendants to provide the class notice in accordance with their regular distribution of paychecks or health insurance information, and upon the trial [**22] of this case award the Plaintiff Class damages, attorneys' fees, pre-judgment and post-judgment interest, equitable relief such as an injunction, and costs.

ATTORNEYS' LIEN CLAIMED.

JURY TRIAL DEMANDED.

[*15] Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the above and foregoing was mailed, via U.S. Mail, postage prepaid, this 23rd day of January, 2004, to:

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[SEE EXHIBIT A IN ORIGINAL]

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