

**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF KENTUCKY  
ASHLAND DIVISION**

ROBERT ADKINS, JAMES SMITH, and  
CHAD S. THOMPSON, on behalf of  
themselves and all other persons similarly  
situated; and UNITED STEEL, PAPER AND  
FORESTRY, RUBBER,  
MANUFACTURING, ALLIED  
INDUSTRIAL AND SERVICE WORKERS  
INTERNATIONAL UNION, AFL-CIO/CLC,

Plaintiffs,

v.

SPECIAL METALS CORPORATION;  
PRECISION CASTPARTS CORP.; and  
HUNTINGTON ALLOYS CORPORATION,  
in their respective corporate capacities; and  
SPECIAL METALS CORPORATION and  
HUNTINGTON ALLOYS CORPORATION  
in their collective capacity as a residual  
fiduciary of the Special Metals Retiree  
Benefits Trust;

Defendants.

and

SPECIAL METALS RETIREE BENEFITS  
TRUST, ROBERT HENNESSEY, ARLENE  
QUALLS, KERRY WINTERS, TIM DEAN,  
CARL HALL and JEANETTE STUMP;

Defendants pursuant to  
Rule 19(a) of the Federal  
Rules of Civil Procedure

**CASE NO.** \_\_\_\_\_

**Jury Trial Demanded**

**COMPLAINT**

Plaintiffs Robert Adkins, James Smith and Chad S. Thompson (“Class Representatives”),  
by their attorneys Cook, Portune & Logothetis, LLC, and on behalf of themselves and all other  
persons in the proposed class described in this Complaint, and Plaintiff United Steel, Paper and

Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union, AFL-CIO/CLC (formerly known as United Steelworkers of America, AFL-CIO/CLC, and herein “USW”), by its attorneys Segal, Lindsay & Janes, PLLC, and Stember Feinstein Doyle & Payne, LLC, bring this action against Defendant Special Metals Corporation (“SMC”), and related corporations, Defendants Precision Castparts Corp. (“PCC”), and Huntington Alloys Corporation (“HAC”), and aver as follows:

### **INTRODUCTION**

1. This case is brought by Plaintiff USW, and is also brought pursuant to Rule 23 of the Federal Rules of Civil Procedure (“FRCP”) as a class action by the Class Representatives on behalf of themselves and a class of similarly situated retirees (“Retirees”), eligible surviving spouses (“Surviving Spouses”), eligible dependents of Retirees and Surviving Spouses (“Dependents”), and active employees (“Employees”). Collectively, these groups are referred to herein as “Class Members,” as defined in paragraph 26 of this Complaint. The USW was the collective bargaining representative of Retirees from SMC (and predecessor companies before the formation of SMC in 1998), including Class Representatives Robert Adkins and James Smith, and is currently the bargaining representative of Employees, including Class Representative Chad S. Thompson.

2. SMC, PCC, and HAC (referred to herein collectively as “Defendant Companies”) each are responsible for making contributions to a fund that provides retiree health care benefits to Retirees, Surviving Spouses and Dependents, and that will provide similar benefits to eligible Employees as they retire in the future. Plaintiffs bring this action to ensure the continuation of these retiree health care benefits, as a dispute has arisen about Defendant Companies’ obligation to provide funding in the future.

3. Plaintiffs seek a declaration that the Class Members have a continuing right to retiree health care benefits earned under past labor agreements, and a preliminary and permanent injunction prohibiting Defendant Companies from failing to fund the benefits.

#### **JURISDICTION AND VENUE**

4. This Court has jurisdiction under 29 U.S.C. § 1331. The Court also has jurisdiction over Count I under § 301 of the Labor Management Relations Act (“LMRA”), 29 U.S.C. § 185, and over Count II under § 502(e)(1) and (f) of the Employee Retirement Income Security Act (“ERISA”), 29 U.S.C. § 1132(e)(1) and (f). Venue in this judicial district is proper under § 301 of the LMRA, 29 U.S.C. § 185, and § 502(e)(2) of ERISA, 29 U.S.C. § 1132(e)(2).

#### **PARTIES**

5. Defendant SMC is qualified to do business in Kentucky and does business within this District, and is an employer engaged in commerce. It is a producer of steel alloys used primarily in the manufacture of jet engine components. SMC was created in late 1998, through the acquisition of Inco Alloys, Inc., HAC, and Wiggin Alloys. (Hereinafter, SMC and its predecessors will be referred to jointly as SMC.) Retired hourly production employees of SMC were represented by the USW under one or more collective bargaining agreements, which specified the terms and conditions of their employment, including the circumstances under which they, their surviving spouses, and their eligible dependents would receive health benefits. Those retired employees received or are currently receiving retiree health benefits during retirement under the plan.

6. Defendant Precision Castparts Corp. (“PCC”) is a worldwide manufacturer of complex metal components and products serving a wide variety of individual and aerospace applications, with its principal office at 4650 SW Macadam Avenue, Suite 440, Portland, Oregon 97239.

7. Defendant Huntington Alloys Corporation (“HAC”) is a corporation, with its principal place of business located in Huntington, West Virginia. HAC owns and operates several facilities that manufacture, fabricate, and distribute nickel based alloys in billet, bar, rod, steel, strip, plate, wire, tubular, and rod-in-coil forms. It was acquired by SMC in 1998.

8. Defendants SMC and HAC are also sued in their collective capacity as fiduciaries of the Special Metals Retiree Benefits Trust (“Benefits Trust”). The Benefits Trust was settled and established by SMC on December 22, 2003, under relevant West Virginia law, and relevant federal law (including ERISA), in a declaration of trust effective as of November 26, 2003 (the “Original Trust Agreement,” attached as Exhibit A). Under the terms of the Original Trust Agreement, SMC designated and appointed Robert Hennessey, Dan Wolfe, and Kerry Winters as the “Employer Trustees,” and later replaced Dan Wolfe with Arlene Qualls. With the consent of the USW, SMC also recognized Tim Dean, Carl Hall and Jeanette Stump as the “Union Trustees.” Under Article 6 of the Original Trust Agreement, HAC (acting with plaintiff SMC) has the power and authority to appoint and remove three (3) of the six (6) trustees of the Benefits Trust. As organized and by its terms, the Benefits Trust is intended to qualify as exempt from federal income taxation under Section 501(c)(9) of the Internal Revenue Code of 1986 (“IRC”), which provides an exemption for employee benefit plans and related trusts that qualify as voluntary employees’ beneficiary associations (“VEBAs”). Upon information and belief, the Benefits Trust was determined by the Internal Revenue Service (the “IRS”) to satisfy the VEBA requirements.

9. Defendant Benefits Trust, as well as its Employer Trustees (Robert Hennessey, Arlene Qualls, and Kerry Winters) and Union Trustees (Tim Dean, Carl Hall and Jeanette Stump), are made a party to this action pursuant to Fed. R. Civ. P. 19(a), as parties necessary for just adjudication of these claims.

10. Plaintiff USW is a labor organization representing employees in industries affecting commerce with offices in this District, including offices in Frankfort, KY.

11. Plaintiff and Class Representative Robert Adkins is an adult resident of Huntington, WV. Plaintiff Adkins worked for SMC for more than 24 years at its Huntington facility, and he retired in 2008. Plaintiff Adkins is presently a Participant in the plan (within the meaning of ERISA) which is currently funded by SMC and which provides retiree health care benefits to Retirees, Surviving Spouses and Dependents. Under the terms of the applicable collective bargaining agreements between SMC and the USW, Plaintiff Adkins and his eligible dependents are entitled to retiree health care benefits as set forth in this Complaint.

12. Plaintiff and Class Representative James Smith is an adult resident of Proctorville in southeastern Ohio, near the tri-state convergence of Kentucky, Ohio, and West Virginia. Plaintiff Smith worked for SMC for more than 35 years at its Huntington facility, and he retired in 2000. Plaintiff Smith is presently a Participant in the plan (within the meaning of ERISA) which is currently funded by SMC and which provides retiree health care benefits to Retirees, Surviving Spouses and Dependents. Under the terms of the applicable collective bargaining agreements between SMC and the USW, Plaintiff Smith and his eligible dependents are entitled to retiree health care benefits as set forth in this Complaint.

13. Plaintiff and Class Representative Chad S. Thompson is presently an employee of SMC at its Huntington facility, having been hired on February 27, 1995. He is represented by the USW for purposes of collective bargaining, and because of his employment, and under the terms of the applicable collective bargaining agreements between SMC and the USW, he and his eligible dependents may eventually satisfy the requirements to receive retiree health care benefits as set forth in this Complaint.

**STATEMENT OF FACTS**

14. The health care benefits to be provided by SMC to Class Members have been described in and provided through successive labor agreements between SMC and the USW.

15. On March 27, 2002, SMC filed a voluntary petition for relief under Chapter 11 of the Bankruptcy Code. The case was filed in the United States Bankruptcy Court for the Eastern District of Kentucky, Ashland Division, Bankruptcy Nos. 02-10335, 02-10338 and assigned to Judge William S. Howard.

16. Each of the successive labor agreements before SMC filed for bankruptcy in 2002 promised that specified benefits would be provided to retirees and their eligible dependents throughout retirement or as long as prerequisite status was maintained (e.g., as long as children are non-students under age 19, full-time students under age 23, or any age if they are disabled and became disabled prior to reaching age 19).

17. After negotiating for several months with its various labor constituencies, an agreement was reached for the necessary labor concessions to allow SMC to emerge from bankruptcy.

18. The agreements with the USW included substantial changes to retiree health benefits pursuant to Section 1114(e)(1)(B) of the Bankruptcy Code (which authorizes debtors to reject retiree health obligations), as well as changes to the medical and other benefits to active employees pursuant to Section 1113 of the Bankruptcy Code.

19. On or about August 19, 2003, pursuant to Section 1114(e)(1)(A) of the Bankruptcy Code, SMC requested that the Court modify retiree health benefits for USW retirees and others. Specifically, as to the USW, SMC asked that the medical benefits to their retirees be modified as follows:

- a. SMC would establish a VEBA and pay for the costs of creating said VEBA;
- b. After initial formation of the VEBA, all costs of administration would be borne by the VEBA;
- c. SMC would contribute \$2.5 million annually to said VEBA (along with payments determined in accordance with a profit sharing formula), and would have no other financial obligation towards the VEBA.

20. The creation of the proposed VEBA (the Benefits Trust) and related terms of SMC's proposal were ultimately contained in a memorandum of agreement, a true and accurate copy of which is attached as Exhibit B.

21. On September 15, 2003, the Bankruptcy Court granted SMC's motion to modify the retiree health plan as it affected retired USW employees, and it treated the USW retirees' claim as an allowed claim.

22. As part of the bankruptcy reorganization, SMC established the Benefits Trust on or about December 22, 2003, but effective as of November 26, 2003, with the purpose of satisfying SMC's pre-bankruptcy petition health and pension benefits obligations to the retired bargaining unit employees of SMC (based on collective bargaining agreements SMC had negotiated with USW).

23. Following the Court's order as described above, the reorganization was confirmed and the bankruptcy case was closed on November 26, 2003.

24. As a result of the bankruptcy proceedings and labor agreements negotiated during those proceedings in 2003, SMC agreed to fund the Benefits Trust which would continue to provide retiree health care benefits to Class Members. The 2003 collective bargaining agreement covering Class Members at Burnaugh, Kentucky, Huntington, West Virginia, and Dunkirk, NY, set forth SMC's obligation to make contributions to the Benefits Trust.

25. Since 2003, the amount of funding required by Defendant Companies has been a contentious issue in labor negotiations, particularly in bargaining which occurred in late 2008 in connection with the expiration of the 2003 collective bargaining agreement, and a dispute has arisen about the level of funding and Defendant Companies' obligation to make contributions to the Benefits Trust. Defendant Companies take the position, including in negotiations, that they may terminate funding at any time. Plaintiffs bring this action to resolve this dispute and to ensure the continuation and protection of retiree health care benefits.

26. Class Representatives bring this class action on behalf of themselves and the following Class (collectively, the "Class Members"):

(a) All former employees of SMC, HAC, or any of their predecessors who, before January 5, 2010, were represented by the USW for purposes of collective bargaining in Burnaugh, Kentucky, or Huntington, West Virginia, or Dunkirk, NY, and who have received or have satisfied the requirements to receive retiree health care benefits under the applicable collective bargaining agreements and/or under the current eligibility requirements of the governing documents of the Benefits Trust, described below (herein, "Retirees"); and

(b) Deceased Retirees' spouses who also received or satisfied the requirements to receive such benefits; and spouses of former employees who were represented by the USW for purposes of collective bargaining in Burnaugh, Kentucky, or Huntington, West Virginia, or Dunkirk, NY, who died during the period of their employment with SMC, HAC or any of their predecessors with such deaths occurring before January 5, 2010, and who also have received or have satisfied the requirements to receive such benefits (herein, both categories of spouses are referred to as "Surviving Spouses"); and

(c) Dependents (including dependent spouses of living Retirees and dependent children) of either Retirees and Surviving Spouses, who also have received or satisfied the requirements to receive such benefits (herein, “Dependents”); and

(d) Persons who were, on or after January 5, 2010, employees of SMC, HAC, or any of their predecessors represented by the USW for purposes of collective bargaining in Burnaugh, Kentucky, or Huntington, West Virginia, or Dunkirk, NY, who were hired on or prior to November 1, 2008, and who because of their employment may eventually satisfy the requirements to receive such benefits (herein, “Employees”).

27. The exact number of Class Members is not presently known, but, on information and belief, is in excess of 1500 and is so numerous that joinder of the individual members in this action is impracticable.

28. There are common questions of law and fact in this action that relate to and affect Class Members, as set forth in Counts I and II of this Complaint. The health care benefits to which Class Members are entitled pursuant to the labor agreements are similar, and all benefits were intended to be funded by Defendant Companies.

29. The relief sought is common to all Class Members, as set forth below in the “Relief Requested” section of this Complaint.

30. The claims of the Class Representatives are typical of the claims of the Class Members they seek to represent, in that all of them assert that Defendant Companies are obligated under LMRA § 301 and ERISA to provide health care benefits to Retirees, Spouses, and their eligible Dependents throughout retirement. There is no conflict between any Class Representative and other members of the Class with respect to this action.

31. The Class Representatives are able to, and will, fairly and adequately protect the interests of the Class Members. The attorneys for the Class Representatives are experienced and capable in the fields of labor law, employee benefits law and class action law, and will adequately represent the Class Members.

32. This action is properly maintained as a class action under FRCP Rule 23(b)(2), in that Defendant Companies acted on grounds generally applicable to the Class, thereby making final injunctive relief or corresponding declaratory relief appropriate with respect to the Class as a whole.

33. Alternatively, this action is properly maintained as a class action under FRCP Rule 23(b)(1)(A), since the prosecution of separate actions by individual Class Members would create a risk of inconsistent or varying adjudications with respect to individual members which would establish incompatible standards of conduct for Defendants.

### **COUNT I**

#### **Violation of Labor Agreements Actionable Under Section 301 of the LMRA**

34. Paragraphs 1 through 33 are re-alleged and incorporated herein by reference.

35. Health care benefits for the Class Representatives and Class Members were the subject of labor agreements between SMC and the USW. Under those labor agreements, Class Members had rights to receive retiree health care benefits and to have those benefits adequately funded by Defendant Companies. Defendant Companies' actions to repudiate this funding obligation violates those rights.

36. Accordingly, Defendant Companies have breached collectively bargained obligations owed to the USW, Class Representatives and Class Members, and that breach is actionable under Section 301 of the LMRA, 29 U.S.C. § 185(a).

**COUNT II**

**Violation of Employee Welfare Benefit Plan Actionable Under  
ERISA § 502(a)(1)(B) and (a)(3)**

37. Paragraphs 1 through 36 are re-alleged and incorporated herein by reference.

38. By taking the actions described above, Defendant Companies violated the rights of the Class Representatives and other Class Members under the Plan providing retiree health benefits to Class Members. Specifically, under the Plan's governing documents (including collective bargaining agreements), Class Members had rights to receive retiree health care benefits and to have those benefits adequately funded, and Defendant Companies' contention that they can terminate funding at any time violates those rights.

39. Defendant Companies' repudiation of its obligation to provide funding as required by the governing Plan documents is actionable in this Court under ERISA § 502(a)(1)(B) and (a)(3), 29 U.S.C. § 1132(a)(1)(B) and (a)(3), which provide that a participant or beneficiary may bring a civil action "to enforce his rights under the terms of the plan, or to clarify his rights to future benefits under the terms of the plan," and further "to enjoin any act or practice which violates . . . the terms of the plan, or . . . to obtain other appropriate equitable relief . . . to redress such violations or . . . to enforce . . . the terms of the plan."

**PRAYER FOR RELIEF**

WHEREFORE, Plaintiffs respectfully request that this Court:

- A. Certify this action as a class action under Fed. R. Civ. P. 23(b)(2), appoint Plaintiffs Robert Adkins, James Smith and Chad S. Thompson as Class Representatives, and appoint Cook, Portune & Logothetis, LLC as counsel for the Class.

- B. Declare that the retiree health care benefits for Class Members as they have been set forth in the applicable collective bargaining agreements between SMC and the USW, and in the plan, must be adequately funded by Defendant Companies.
- C. Preliminarily and permanently enjoin Defendant Companies from refusing to adequately fund said benefits.
- D. Award Class Representatives and Class Members restitution of any benefits that the injunction described in subparagraph C would require Defendant Companies to provide but which have not been provided.
- E. Award Plaintiffs reasonable attorneys' fees and costs incurred in this action.
- F. Grant such further relief as may be deemed necessary and proper.

**Jury Demand**

Plaintiffs request a jury trial of all issues so triable.

Respectfully submitted,

s/ John R. Sheldon (with permission)

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\* Motions for *pro hac vice* admission to be filed.