

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

CENTRAL STATES, SOUTHEAST AND)	
SOUTHWEST AREAS PENSION FUND,)	
and HOWARD McDOUGALL, as Trustee,)	
)	
Plaintiffs,)	Case No. 10-CV-5059
)	
v.)	Judge Castillo
)	
SOUTHCO AUTO PARTS, INC., a Missouri)	Magistrate Judge Mason
corporation,)	
)	
Defendant.)	

MOTION FOR ENTRY OF JUDGMENT

NOW COME Plaintiffs, Central States, Southeast and Southwest Areas Pension Fund, and Howard McDougall, as Trustee, and move for the entry of judgment against Defendant Southco Auto Parts, Inc., a Missouri corporation, stating as follows:

1. On August 12, 2010, Plaintiffs filed a complaint against Defendant under the Employee Retirement Income Security Act of 1974, as amended by the Multiemployer Pension Plan Amendments Act of 1980, in order to collect withdrawal liability payments due and owing to Plaintiffs, as well as interest, liquidated damages, attorneys’ fees, and costs.

2. On August 15, 2010, Defendant was personally served with a copy of the summons and complaint by and through its registered agent, John H. Schmaltz. *See* [Doc. 7]. Because Defendant failed to timely appear, answer or otherwise plead to the complaint, on September 8, 2010 the Court, *sua sponte*, entered a default against Defendant, retaining jurisdiction to enter a final default judgment. *See* [Doc. 8].

3. Defendant has failed to make any withdrawal liability payments to Plaintiffs. *See* Exhibit A, Sprau Affidavit ¶¶7, 10. Pursuant to 29 U.S.C. §1451(b), the failure to make

withdrawal liability payments when due is treated in the same manner as a delinquent contribution under 29 U.S.C. §1145. *See* Exhibit A, Sprau Affidavit ¶11; *Cent. States, Se. & Sw. Areas Pension Fund v. Slotky*, 956 F.2d 1369, 1377 (7th Cir. 1992).

4. Pursuant to 29 U.S.C. § 1132(g)(2), Plaintiffs are entitled to: delinquent withdrawal liability payments; interest on the delinquent withdrawal liability payments; an amount equal to the greater of the interest or liquidated damages as provided under the Plan in an amount not in excess of 20% of the delinquent withdrawal liability payments; and reasonable attorneys' fees and costs. *See* Exhibit A, Sprau Affidavit ¶11; *Cent. States, Se. & Sw. Areas Pension Fund v. Gerber Truck Serv.*, 870 F.2d 1148, 1156 (7th Cir. 1989).

5. Plaintiffs calculated Defendant's withdrawal liability principal pursuant to ERISA, 29 U.S.C. §1381(b). Based upon 29 U.S.C. §1132(g)(2), Defendant owes Plaintiffs \$344,695.47 in withdrawal liability principal. *See* Exhibit A, Sprau Affidavit ¶5.

6. Pursuant to 29 U.S.C. §1132(g)(2), interest is computed and charged at the rate set by Plaintiffs. Under Plaintiffs' Plan, interest is computed and charged at an annualized interest rate equal to 2% plus the prime interest rate established by JPMorgan Chase Bank, NA for the 15th day of the month for which interest is charged. Using this rate, Defendant owes Plaintiffs \$6,786.18 in interest through September 15, 2010. *See* Exhibit A, Sprau Affidavit ¶12.

7. Pursuant to 29 U.S.C. §1132(g)(2), Plaintiffs are entitled to the greater of interest on the delinquent withdrawal liability or liquidated damages of up to 20% of the delinquent withdrawal liability as provided under the Plan. Plaintiffs' Plan provides for liquidated damages in the amount of 20% of the unpaid withdrawal liability payments. Defendant therefore owes Plaintiffs \$68,939.09 in liquidated damages. *See* Exhibit A, Sprau Affidavit ¶13.

8. Pursuant to 29 U.S.C. §1132(g)(2), Defendant is also liable for attorneys' fees and court costs incurred by Plaintiffs to collect on the withdrawal liability. Defendant therefore owes Plaintiffs \$2,017.50 in attorneys' fees and \$392.00 in costs. See Exhibit B, Bogle Affidavit ¶3.

9. Finally, pursuant to the terms of Plaintiffs' Plan, Plaintiffs are entitled to post-judgment interest on the entire judgment balance at an annualized interest rate equal to 2% plus the prime interest rate established by JPMorgan Chase Bank for the 15th day of the month for which interest is charged, compounded annually. *Cent. States, Se. & Sw. Areas Pension Fund v. Bomar Nat'l Inc.*, 253 F.3d 1011, 1019-20 (7th Cir. 2001). See Exhibit A, Sprau Affidavit ¶12.

10. Attached hereto as Exhibit C is a proposed judgment order that Plaintiffs request the Court enter. A copy of the proposed order has also been submitted to the Court via e-mail to Proposed_Order_Castillo@ilnd.uscourts.gov.

WHEREFORE, Plaintiffs Central States, Southeast and Southwest Areas Pension Fund and Howard McDougall, as Trustee, request the Court enter a final judgment against Defendant Southco Auto Parts, Inc., a Missouri corporation, as follows:

- (a) A judgment against Defendant in favor of Plaintiffs in the total amount of \$422,830.24, as follows:

Withdrawal Liability Principal:	\$ 344,695.47
Interest (through 9/15/10):	\$ 6,786.18
Liquidated Damages:	\$ 68,939.09
Attorney's Fees:	\$ 2,017.50
Court Costs:	\$ 392.00
<u>TOTAL:</u>	<u>\$ 422,830.24</u>

- (b) Post-judgment interest at an annualized interest rate equal to 2% plus the prime interest rate established by JPMorgan Chase Bank, NA for the 15th day of the month for which interest is charged, compounded annually; and

(c) Such further or different relief as the Court may deem proper and just.

Respectfully submitted,

/s/ Edward H. Bogle

Edward H. Bogle (ARDC No. 6277152)
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September 15, 2010

CERTIFICATE OF SERVICE

I, Edward H. Bogle, one of the attorneys for Plaintiffs, certify that on Wednesday, September 15, 2010, I caused the foregoing Motion for Entry of Judgment to be served by mailing it to:

Southco Auto Parts, Inc.
c/o John H. Schmaltz
8470 Hampstead Avenue
St. Louis, Missouri 63123

Said document was deposited in the United States Mail at 9377 W. Higgins Road, Rosemont, Illinois 60018, with proper prepaid postage affixed thereto, this September 15, 2010.

/s/ Edward H. Bogle

Edward H. Bogle
Attorney for Plaintiffs