

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF OHIO  
EASTERN DIVISION

WANDA PATTERSON

[REDACTED]  
MILLERSBURG, OH 44654,

and

ARIE SCHLEGEL

[REDACTED]  
MILLERSBURG, OH 44654,

and

DIXIE AKERS

[REDACTED]  
HOLMESVILLE, OH 44633,

and

EDNA DAWSON

[REDACTED]  
SHREVE, OH 44676,

and

PAUL PHILLABAUM

[REDACTED]  
COSHOCOTON, OH 43812,

and

SHELLEY CORNWELL

[REDACTED]  
BIG PRAIRIE, OH 44611,

Plaintiffs,

VS.

CASE NO. 5:03-CV-1596

Judge Dowd

SECOND AMENDED COMPLAINT

|                               |   |
|-------------------------------|---|
| HEARTLAND INDUSTRIAL          | ) |
| PARTNERS, LLP                 | ) |
| 39400 NORTH WOODWARD AVE.     | ) |
| SUITE 130                     | ) |
| BLOOMFIELD HILLS, MI 48304,   | ) |
|                               | ) |
| and                           | ) |
|                               | ) |
| DAVID A. STOCKMAN             | ) |
| FOUNDING PARTNER              | ) |
| HEARTLAND INDUSTRIAL          | ) |
| PARTNERS, LLP                 | ) |
| 39400 NORTH WOODWARD AVE.     | ) |
| SUITE 130                     | ) |
| BLOOMFIELD HILLS, MI 48304,   | ) |
|                               | ) |
| and                           | ) |
|                               | ) |
| COLLINS & AIKMAN CORPORATION  | ) |
| 250 STEPHENSON HIGHWAY        | ) |
| TROY, MI 48083,               | ) |
|                               | ) |
| and                           | ) |
|                               | ) |
| COLLINS & AIKMAN PRODUCTS CO. | ) |
| 250 STEPHENSON HIGHWAY        | ) |
| TROY, MI 48083,               | ) |
|                               | ) |
| and                           | ) |
|                               | ) |
| UNITED STEELWORKERS OF        | ) |
| AMERICA, AFL-CIO              | ) |
| FIVE GATEWAY CENTER           | ) |
| PITTSBURGH, PA 15222,         | ) |
|                               | ) |
| and                           | ) |
|                               | ) |
| LEO W. GERARD, INTERNATIONAL  | ) |
| PRESIDENT                     | ) |
| UNITED STEELWORKERS OF        | ) |
| AMERICA, AFL-CIO              | ) |
| FIVE GATEWAY CENTER           | ) |
| PITTSBURGH, PA 15222,         | ) |

|                          |   |
|--------------------------|---|
| and                      | ) |
|                          | ) |
| GEORGE BECKER, PRESIDENT | ) |
| EMERITUS                 | ) |
| UNITED STEELWORKERS OF   | ) |
| AMERICA, AFL-CIO         | ) |
| FIVE GATEWAY CENTER      | ) |
| PITTSBURGH, PA 15222,    | ) |
|                          | ) |
| Defendants.              | ) |

### **PRELIMINARY STATEMENT**

This is a suit under 29 U.S.C. § 186 seeking declaratory and injunctive relief. Section 186 of the Labor-Management Relations Act makes it unlawful, with certain limited exceptions not applicable here, for an employer and anyone acting on its behalf to deliver things of value to a labor organization or its agents. It is conversely unlawful for a labor organization or its agents to request or receive things of value from an employer or its agents.

Defendant Heartland Industrial Partners LLP (“Heartland”) is a private investment firm established to acquire and invest in industrial enterprises. Heartland is a party to two agreements with the United Steelworkers of America, AFL-CIO (“USWA”): the “Framework for a Constructive Collective Bargaining Relationship” and an accompanying “Side Letter” (hereinafter collectively referred to as “the Agreements” or the “Framework and Side Letter”). Under the terms of the Agreements, Heartland must compel all enterprises it acquires or substantially invests in to become a party to the Framework and Side Letter.

The Framework and Side Letter grant the USWA and its top officials exceedingly valuable contractual powers and privileges over any Heartland-acquired enterprise and its employees. Such enterprises are contractually obligated to assist the Steelworkers in organizing

their employees, impose collective bargaining agreements on employees with terms and conditions of employment limited by the Framework and Side Letter, and compel all organized employees to pay dues to the USWA as a condition of employment. The Framework and Side Letter further require any Heartland-acquired enterprise to impose the Agreements on its parents, affiliates, and joint ventures. In consideration for Heartland's delivery of the above-mentioned things of value, the USWA and its top officials provide Heartland with significant financial assistance. In addition, the union and its officials contractually commit to act in a manner favorable to the investment interests of Heartland (and indirectly the USWA) after successfully organizing employees under the Agreements. In particular, the USWA agrees to waive the right and option of employees to strike, to demand and obtain wage increases better than those prearranged by the Agreements, and to work under employment terms and conditions of their own choosing.

In the first quarter of 2001, Heartland acquired a controlling interest in Collins & Aikman Corporation, which manufactures automotive interior components. Pursuant to the Agreements with the USWA, Heartland imposed the Framework and Side Letter on Collins & Aikman Corporation and its employees. The USWA and its agents are currently utilizing the powers and privileges granted to them by the Agreements to organize the employees of a Collins & Aikman facility in Holmesville, Ohio.

The Plaintiffs are long-term employees of Collins & Aikman at its Holmesville, Ohio plant. They do not want the USWA's representation imposed upon them, nor do they want to be subjected to a USWA collective bargaining agreement or be forced to pay dues to the USWA as a condition of employment.

The Framework and Side Letter, on their face and as enforced, are illegal under 29 U.S.C. § 186. Both Heartland and Collins & Aikman are providing an illegal “thing of value” to the USWA and its officers and officials, in violation of 29 U.S.C. §§ 186(a). The USWA and its officials have requested and are receiving illegal “thing[s] of value” from an employer and/or its agents, in violation of 29 U.S.C. § 186(b)(1). Unless the Court restrains these serious violations of law, the Defendants will continue to violate 29 U.S.C. § 186 to the detriment of the Plaintiffs and their co-workers.

### **JURISDICTION AND VENUE**

1. This action arises under 29 U.S.C. § 186. The jurisdiction of this Court is invoked under 29 U.S.C. § 186(e), which grants this Court jurisdiction to restrain violations of 29 U.S.C. § 186, and under 28 U.S.C. § 1331, which grants this Court jurisdiction over civil actions arising under the laws of the United States.
2. This also is a case of actual controversy in which the Plaintiffs seek a declaration of their rights under both 29 U.S.C. § 186 and federal law. Under 28 U.S.C. §§ 2201 and 2202, this Court may declare the rights of the Plaintiffs and grant further necessary or proper relief based thereon, including injunctive relief, as provided under Federal Rule of Civil Procedure 65.
3. Pursuant to 28 U.S.C. §§ 1391(b), 1391(c), and 1392(a), venue is proper in this Court. A substantial number of the events giving rise to the claims herein occurred in this judicial district, commerce in this judicial district has been affected by the events giving rise to the claim, and the Defendants transact business and otherwise reside in this judicial district.

## **PARTIES**

4. Defendant Collins & Aikman Corporation is a business engaged in the design, engineering, and manufacturing of automotive interior components. Defendant Collins & Aikman Corporation, including its subsidiaries, is engaged in an “industry affecting commerce,” is an “employer,” an “association of employers,” and a “person . . . who acts in the interest of an employer,” as those terms are used in 29 U.S.C. § 186.

5. Defendant Collins & Aikman Corporation conducts all operations through its wholly owned subsidiary, Defendant Collins & Aikman Products Company (hereinafter collectively referred to as “Collins & Aikman”). Defendant Collins & Aikman is engaged in an “industry affecting commerce,” is an “employer,” an “association of employers,” and a “person . . . who acts in the interest of an employer,” as those terms are used in 29 U.S.C. § 186.

6. Plaintiffs Wanda Patterson, Shelly Cornwell, Paul Phillabaum, Dixie Akers, Arie Schlegel and Edna Dawson (“Plaintiff Employees”) are employees of Collins & Aikman at its plant in Holmesville, Ohio (“Holmesville Facility”). The Plaintiff Employees have been employed by Collins & Aikman at all times material herein. They are not members of a labor union, nor do they wish union representation or want to be members of, or pay dues to, a labor union. The Plaintiff Employees are “employee[s] . . . [who are] employed in an industry affecting commerce,” as that phrase is used in 29 U.S.C. § 186.

7. Defendant Heartland Industrial Partners LLP (“Heartland”), is a private equity firm that invests in, acquires, and attempts to develop industrial companies in sectors it considers ripe for consolidation and growth. Heartland is engaged in an “industry affecting commerce,” is an “employer,” an “association of employers,” a “person . . . who acts in the interest of an

employer,” and a “person who acts as a labor relations expert, adviser, or consultant to an employer,” as those terms are used in 29 U.S.C. § 186.

8. David Stockman, a founding partner of Heartland, has the authority to enter into contracts on behalf of Heartland. Mr. Stockman is a “person . . . who acts in the interest of an employer,” and a “person who acts as a labor relations expert, adviser, or consultant to an employer,” as those terms are used in 29 U.S.C. § 186.

9. Defendant USWA, including its affiliates, locals, and subordinate departments, is a “labor organization,” a “union,” a “representative,” a “group or committee of employees,” a “labor organization engaged in an industry affecting commerce,” and a “person,” as those terms are used in 29 U.S.C. § 186.

10. Defendant George Becker was President of the USWA from 1993 to 2001. He is currently President Emeritus of the USWA. Defendant Leo W. Gerard is the current USWA President. Both Mr. Becker and Mr. Gerard currently are and were at all times material herein, a “person,” an “officer” and an “employee” of the USWA, as those terms are used in 29 U.S.C. § 186. (Hereinafter, Defendants George Becker and Leo Gerard collectively are referred to as “Union Officials.”)

### **FACTS**

11. On November 27, 2000, Heartland, by and through its agent David Stockman, and the USWA by and through its agent then-President George Becker, became parties to a secret “Framework for a Constructive Collective Bargaining Relationship” and a “Side Letter.” Heartland and the USWA remain parties to these Agreements.

12. True and correct copies of the Agreements, except for the extraneous markings, are attached hereto as Exhibit I. The Agreements are hereby expressly incorporated into this Complaint.

13. In the Framework and Side Letter, Heartland promises and provides to the USWA and the Union Officials substantial assistance with employee organizing at enterprises Heartland acquires or invests in, broad powers to impose collective bargaining agreements upon organized employees, and a guarantee that organized employees will be required to pay dues to the USWA as a condition of employment. These provisions are described in detail at Complaint ¶¶ 38(a-n).

14. In exchange for Heartland becoming a party to the Agreements and maintaining, enforcing, and otherwise giving effect to their provisions, the USWA and the Union Officials pay or make available substantial financial assistance to Heartland, contractually commit to act in a manner favorable to the interests of Heartland, and provide Heartland other consideration as described below in Complaint ¶¶ 15-20.

15. The USWA, the Union Officials, and those acting on behalf of, on orders from, or in conjunction with them, pay, contribute and otherwise make available significant financial resources and assistance to Heartland, to entities acting on behalf of or in conjunction with Heartland, to Collins & Aikman, and to any other enterprise acquired or invested in by Heartland.

16. On information and belief, the USWA and the Union Officials caused trust and pension fund investment in Heartland, and in entities acting on behalf of or in conjunction with Heartland, in Collins & Aikman, and in other enterprises acquired or invested in by Heartland.

17. On information and belief, the Steelworkers Pension Trust, other trust and pension funds over which the USWA and the Union Officials have control or influence, and those acting on



behalf of, on orders from, or in conjunction with the USWA and the Union Officials, retain a substantial financial interest in Heartland, and in entities acting on behalf of or in conjunction with Heartland, with Collins & Aikman, and with other enterprises acquired or invested in by Heartland.

18. In the Agreements, the Union Officials and the USWA and its officers and employees agree to waive, relinquish, and sacrifice numerous rights and options of employees to demand and obtain desired terms and conditions of employment in the first collective bargaining agreement, including:

- (a) the right and option of employees to strike, engage in work stoppages, and engage in concerted refusals to work in support of any bargaining demands (Framework I(F)(5));
- (b) the right and option of employees to work without being compelled to join or pay dues to the USWA as a condition of employment (Side Letter 9(C));
- (c) the right and option of employees to be evaluated, rewarded, and otherwise treated based upon merit and the quality of their work, as opposed to seniority (Side Letter 9(C));
- (d) the right and option of employees to seek and/or obtain terms and conditions of employment better or different from those imposed, or that could be imposed, upon them in binding interest arbitration (Framework I(F); Side Letter 9(A, B, H));
- (e) the right and option of employees to seek and/or obtain terms and conditions of employment different from and/or superior to those of comparable operations of the company or unionized competitors (Framework I(F); Side Letter 9(A, B, H));
- (f) the right and option of employees to seek and/or obtain high-wage increases, as annual increases in hourly compensation for many employees is limited to levels no

greater than two times the current rate of annual increases in average wage compensation in the United States (Framework I(F); Side Letter 9(B, H));

(g) the right and option of employees to seek and/or obtain wage increases quickly, as wage increases for many employees are delayed for up to five years if the employee's facility has older equipment ( Framework I(F); Side Letter 9(B, H));

(h) the option of employees to be in a single bargaining unit and be subject to a collective bargaining agreement covering only their employment, as the Agreements compel employees to be part of a larger bargaining unit and subject to a master labor agreement, even if they do not desire it (Framework II(i-ii); Side Letter 9(I)).

19. In the Agreements, the Union Officials and the USWA and its officers and employees contractually bind themselves to refrain from exercising the following rights and options they would otherwise have under the labor laws of the United States:

(a) the right to seek, cause, or otherwise have employees exercise, or exercise on behalf of employees, any and all of the rights and options described above at Complaint ¶¶ 18(a-h);

(b) the right to conduct an organizing campaign that a third party might find demeaning to the integrity or character of the company or its representatives (Framework I(B));

(c) the right to begin an organizing drive without notifying the targeted employer, as Framework I(C) requires that the targeted employer be provided with written notification before an organizing drive may begin;

(d) the right to conduct more than one organizing drive at a facility within a twelve-month period (Framework I(C); Side Letter 8(A));

- (e) the right to seek to organize employees of a facility more frequently than every three years if the USWA conducts three unsuccessful organizing drives (Side Letter 8(B));
- (f) the right to request an election supervised by the National Labor Relations Board upon securing the support of 30% of the bargaining unit pursuant to 29 U.S.C. § 159 (Framework I(C)(5-6));
- (g) the right to act in a manner contrary to that ordered, or that could be potentially ordered, by an arbitrator vested with the judicially unreviewable authority to remedy any ostensible violations of the Framework or Side Letter and compel performance pursuant to a request by Heartland and/or any other employer signatory to the Agreements (Framework I(G); Side Letter 9(E-G)).

20. On information and belief, the USWA and the Union Officials provide Heartland, entities acting on behalf of or in conjunction with Heartland, Collins & Aikman, and other enterprises acquired or invested in by Heartland, with other promises, actions, and consideration in exchange for the maintenance and enforcement of the Agreements.

21. Pursuant to Side Letter 2-7 and 11, Heartland must compel or otherwise cause a business enterprise to which Heartland has majority ownership, a majority of the voting power, or otherwise has the requisite authority, to become a party to the Agreements if the USWA so requests.

22. In the first quarter of 2001, Heartland acquired a controlling interest in Collins & Aikman through a stock purchase and entered into an agreement which permits Heartland to appoint a majority of the directors to Collins & Aikman's Board of Directors. To this day, Heartland retains a controlling and/or substantial interest in Collins & Aikman.

23. At all times following the transaction described above in Complaint ¶ 22, Heartland and Collins & Aikman are jointly an “employer,” an “association of employers” and “person[s] . . . who act[ ] in the interest of an employer,” as those terms are used in 29 U.S.C. § 186.

24. Collins & Aikman is party to a services’ agreement with Heartland under which Heartland provides advisory and consulting services to Collins & Aikman in exchange for a significant advisory fee and other compensation. Accordingly, Heartland is a “person who acts as a labor relations expert, adviser, or consultant to an employer,” as those terms are used in 29 U.S.C. § 186.

25. In accordance with the agreement between the USWA and Heartland, Heartland compelled and caused Collins & Aikman to become a party to the Framework and Side Letter after the transaction described above in Complaint ¶ 22. Collins & Aikman remains a party to the Framework and Side Letter. (*See* Exhibit 2, which is a true and correct copy of USWA Flier of July 10, 2003, distributed to employees of the Holmesville Facility.)

26. Heartland compelled and caused several additional enterprises to become parties to the Agreements, including but not limited to Metaldyne Corporation, TriMas Corporation, and their subsidiaries and joint ventures.

27. The Framework obligates Collins & Aikman, and any other signatory to the Agreements to impose the Framework and Side Letter upon all of their affiliates, parents, and ventures. (*See* Framework I(E).)

28. Collins & Aikman, in conjunction with Heartland, has acquired other companies and divisions of companies, including but not limited to Becker Plastics, Jo-Ann Fabrics, and TAC-Trim. On information and belief, Collins & Aikman and Heartland have imposed the

Agreements upon these companies and/or the former divisions and facilities of these companies.

29. The Union Officials and the USWA and its officers and agents invoke and utilize the provisions of the Agreements with regard to Collins & Aikman facilities and employees.

30. In or about May 2003, the USWA launched an organizing drive against the Holmesville Facility.

31. The Union Officials and the USWA and its officers and agents have invoked and are utilizing and taking action pursuant to the provisions of the Agreements, as regards the USWA's organizing drive against the Holmesville Facility.

32. Heartland and Collins & Aikman, by and through their officers and agents, have utilized, taken actions pursuant to, and given effect to the provisions of the Agreements in assisting the USWA's organizing drive against the Holmesville Facility.

33. Heartland, Collins & Aikman, the USWA, and the Union Officials are invoking, utilizing, and taking action pursuant to the provisions of the Agreements, with the purpose and intent of influencing Holmesville Facility employees as regards their right to organize.

34. Heartland, Collins & Aikman, the USWA, and the Union Officials are invoking, utilizing, and taking action pursuant to the provisions of the Agreements with full knowledge and awareness that the targeted Holmesville Facility employees have on numerous occasions resisted and rejected union representation, including representation by the USWA.

35. The Agreements, as witnessed by the following, ensure that the USWA will reap and otherwise obtain a significant and continuing financial benefit if it successfully organizes the Holmesville Facility:

- (a) Side Letter 9(C) requires in all collective bargaining agreements the inclusion of a “union security clause” which requires new employees to join the union, maintain union membership, and pay dues through payroll deduction; and
- (b) the execution and enforcement of the “union security clause” covering the Holmesville Facility will require the Plaintiff Employees and all other employees at that facility to join or pay dues to the USWA as a condition of employment.

36. The Steelworkers Pension Trust, a USWA sponsored pension plan, reaps and otherwise obtains continuing financial benefits when the USWA successfully organizes a Collins & Aikman facility under the Agreements, as Collins & Aikman has agreed to contribute to the Steelworkers Pension Trust upon the USWA successfully organizing a Collins & Aikman facility under the Agreements.

#### **CLAIMS FOR RELIEF**

37. The Framework and Side Letter are, in their totality, a “thing of value,” as that phrase is used in 29 U.S.C. § 186.

38. The following binding contractual commitments in the Framework and/or the Side Letter are individually and cumulatively “thing[s] of value,” as that phrase is used in 29 U.S.C. § 186, to the USWA and the Union Officials:

- (a) a commitment not to oppose or take any action to resist any organizing drives of the USWA (Framework I(B));
- (b) a gag-clause prohibiting any speech or communication with employees regarding the USWA or unionization during an organizing drive, except for one written communication that cannot reflect adversely upon the USWA or unionization (Framework I(C)(1));

- (c) a duty to enter into written communication with employees upon the request of the USWA, at a time during which the USWA does not represent such employees—said language lending assistance to USWA’s efforts to organize employees (Framework I(C)(1));
- (d) an obligation to provide to the USWA continually updated lists of names, home addresses, job titles, and work locations of targeted employees, at a time during which the USWA is not the representative of the listed employees (Framework I(C)(2));
- (e) a commitment to provide the USWA with detailed and sensitive information regarding enterprises in which Heartland invests (Side Letter 2);
- (f) an obligation to grant access to company facilities and property to officers, employees, and agents of the USWA who are not employees of the employer granting such access, at a time during which the USWA is not the representative of the employees employed at the facilities (Framework I (C)(4));
- (g) an obligation to give preference in hiring to employees represented by the USWA at facilities not represented by the USWA and where no collective bargaining agreement is in effect (Framework I(D); Side Letter 9(D));
- (h) a commitment not to consummate any transaction which would result in the company having or creating an affiliate, parent, and/or venture which is not, or is unwilling to become, a party to the Agreements (Framework I(E)(3));
- (i) an obligation to submit any disputed first collective bargaining agreement covering a facility to “final offer package interest arbitration”—wherein an arbitrator will impose one of two potential agreements on the employees—where such obligation was made or is

maintained at times during which the USWA does not represent the facility's employees (Framework I(F); Side Letter 9(H));

(j) a commitment to include in a facility's first collective bargaining agreement a compulsory unionism ("union security") clause which compels all employees to join the USWA as a condition of employment, where such commitment was made or is maintained at times during which the USWA is not the representative of the facility's employees (Side Letter 9(C));

(k) an obligation, which was made and is maintained at times during which the USWA does not represent the facility's employees, to refrain from locking out any employees who support a bargaining position (Framework I(F)(5));

(l) the obligation to submit to the judicially unreviewable remedial authority of an arbitrator, who is vested with the judicially enforceable power to compel recognition of the USWA, for any ostensible violations of the Agreements (Framework I(G); Side Letter 9(E-G));

(m) an obligation to submit to the judicially unreviewable remedial authority of an arbitrator, who is vested with the judicially enforceable power to compel recognition of the USWA, for any ostensible violations of the Agreements with regard to any organizing drives at a particular facility, where such obligation was made or is maintained at times during which the USWA does not represent the facility's employees (Framework I(G), Side Letter 9(E-G)); and

(n) an obligation not to permanently replace any striking employees at a USWA-represented facility, irrespective of the absence of a collective bargaining agreement,



which was made and is maintained at times during which the USWA does not represent such employees (Framework III(i-iv)).

39. The Plaintiff Employees are employed by and receive their livelihood from Heartland and Collins & Aikman, which are active parties to a corrupt arrangement unlawful under 29 U.S.C. § 186.

40. The USWA and the Union Officials, who are actively seeking to represent the Plaintiff Employees and their co-workers, are active parties to a corrupt arrangement unlawful under 29 U.S.C. § 186.

41. Heartland, Collins & Aikman, the USWA, and the Union Officials invoking, utilizing, and taking action pursuant to the provisions of the Agreements irreparably infringe on the rights of Plaintiffs Employees, including but not limited to the exercise of their right to organize and select representatives of their own choosing, or to select no representative at all.

42. If the USWA and the Union Officials successfully organize the Holmesville Facility with the Framework and Side Letter, the Plaintiff Employees will:

- (a) have the USWA as their exclusive collective bargaining representative, thereby depriving them of their ability to represent and bargain for themselves with respect to management;
- (b) be forced to work under terms and conditions of employment established in a USWA collective bargaining agreement, which in turn is limited by and consistent with the provisions of the Framework and Side Letter;
- (c) be compelled to pay dues and fees to the USWA as a condition of employment;

(d) have the Union Officials and the USWA and its officers and employees as their exclusive collective bargaining representative at a time during which the Union Officials and the USWA and its officers and employees are parties to a corrupt arrangement unlawful under 29 U.S.C. § 186; and

(e) otherwise be subjected to injury and irreparable infringements of their rights.

Accordingly, the Plaintiff Employees are in imminent danger of these deprivations and injuries.

### **FIRST COUNT**

(Defendants Violate 29 U.S.C. §§ of 186(a)(1) and (b)(1) by  
Maintaining and Utilizing the Framework and Side Letter)

The Plaintiff Employees reassert the foregoing and further allege:

43. The USWA is the exclusive collective bargaining representative of some Collins & Aikman employees and is a party to several collective bargaining agreements with Collins & Aikman.

44. The USWA, by and through its Local 550L, is the exclusive collective bargaining representative of Collins & Aikman employees at a facility in Canton, Ohio, and is party to a collective bargaining agreement with Collins & Aikman covering employees in that facility.

45. The USWA is not the representative of many Collins & Aikman employees, including the Plaintiff Employees and their co-workers at the Holmesville Facility, and is not a party to collective bargaining agreements covering such employees.

46. The Union Officials and the USWA and its other officers and employees are thereby the “representative of any of” Collins & Aikman employees, as that term is used in 29 U.S.C. § 186(a)(1), and “represents . . . any of the employees of” Collins & Aikman, as that phrase is used in 29 U.S.C. § 186(a)(2).

47. Collins & Aikman, by becoming and remaining a party to, and otherwise maintaining the

Agreements, agrees to deliver to the Union Officials and the USWA and its other officers and employees “thing[s] of value,” including each and every thing of value delineated above in Complaint ¶ 38(a-n), in violation of 29 U.S.C. § 186(a)(1).

48. Heartland, by being and remaining a party to and otherwise maintaining the Agreements after the transactions described above in Complaint at ¶¶ 22, agrees to deliver to the Union Officials and the USWA and its other officers and employees “thing[s] of value,” including each and every thing of value delineated above in Complaint ¶ 38(a-n), in violation of 29 U.S.C. § 186(a)(1).

49. Collins & Aikman and Heartland, by enforcing, utilizing, taking actions pursuant to, and otherwise giving effect to the provisions of the Agreements, including any of the contractual commitments described in Complaint ¶ 38(a-n) with regard to the Holmesville Facility and/or other Collins & Aikman facilities, deliver to the Union Officials and the USWA and its other officers and employees “thing[s] of value,” in violation of 29 U.S.C. § 186(a)(1).

50. The USWA and the Union Officials, by requesting, demanding, receiving, accepting, and agreeing to receive and accept the unlawful things of value described in Complaint ¶¶ 43-49, violate 29 U.S.C. § 186(b)(1).

#### **SECOND COUNT**

(Defendants Violate 29 U.S.C. §§ of 186(a)(2) and (b)(1) by  
Maintaining and Utilizing the Framework and Side Letter)

The Plaintiff Employees reassert the foregoing and further allege:

51. The USWA and the Union Officials “seek[ ] to represent” and “would admit to membership,” as those terms are used in 29 U.S.C. § 186(a)(2), employees of Collins & Aikman, including but not limited to the Plaintiff Employees and other employees at the Holmesville

Facility.

52. The Union Officials and the USWA and its officers and employees “seek[ ] to represent” and “would admit to membership,” as those terms are used in 29 U.S.C. § 186(a)(2), the employees of any current and/or potential “Covered Business Enterprise,” “Company,” and “Parent, Affiliate, or Venture of a Company,” as those terms are used in the Agreements, except for those employees expressly exempted under Side Letter 6.

53. Collins & Aikman, by becoming and remaining a party to, and otherwise maintaining the Agreements, agrees to deliver to the Union Officials and the USWA and its other officers and employees “thing[s] of value,” including each and every thing of value delineated above in Complaint ¶ 38(a-n), in violation of 29 U.S.C. §§ 186(a)(1) and (a)(2).

54. Heartland, by becoming and remaining a party to, and otherwise maintaining the Agreements, agrees to deliver to the Union Officials and the USWA and its other officers and employees “thing[s] of value,” including each and every thing of value delineated above in Complaint ¶ 38(a-n), in violation of 29 U.S.C. § 186(a)(2).

55. By enforcing, utilizing, taking actions pursuant to, and otherwise giving effect to the provisions of the Agreements, including any of the contractual commitments described in Complaint ¶ 38(a-n) with regard to the Holmesville Facility and any other Collins & Aikman facility, Heartland and Collins & Aikman deliver to the Union Officials and the USWA and its other officers and employees “thing[s] of value,” in violation of 29 U.S.C. § 186(a)(2).

56. By enforcing, utilizing, taking actions pursuant to, and otherwise giving effect to the provisions of the Agreements, including any of the contractual commitments described in Complaint ¶ 38(a-n), Heartland delivers to the Union Officials and the USWA and its other

officers and employees “thing[s] of value,” in violation of 29 U.S.C. § 186(a)(2).

57. By requesting, demanding, receiving, accepting, and agreeing to receive and accept the unlawful “thing[s] of value” described in Complaint ¶¶ 51-56, the USWA and the Union Officials violate 29 U.S.C. § 186(b)(1).

### **THIRD COUNT**

(Defendants Violate 29 U.S.C. §§ of 186(a)(4) and (b)(1) by Maintaining and Enforcing the Framework and Side Letter)

The Plaintiff Employees reassert the foregoing and further allege:

58. The USWA is a “labor organization engaged in an industry affecting commerce,” as that phrase is used in 29 U.S.C. § 186(a)(4).

59. The Union Officials are “officer[s]” and “employee[s]” of the USWA, as those terms are used in 29 U.S.C. § 186(a)(4).

60. Heartland and Collins & Aikman, by becoming a party to, maintaining, enforcing, and otherwise giving effect to the Agreements, agree to deliver, and have delivered, to the Union Officials and other officers and employees of the USWA “thing[s] of value,” including each and every thing of value delineated above in Complaint ¶ 38(a-n), as that phrase is used in 29 U.S.C. § 186(a).

61. Heartland and Collins & Aikman became a party to the Agreements, and have maintained, enforced, and otherwise given effect to the provisions of the Framework and Side Letter in exchange and in consideration for the Union Officials and other officers and employees of the USWA making the decisions and taking the actions described below:

- (a) paying and otherwise making available substantial financial assistance and resources to Heartland, entities acting on behalf of or in conjunction with Heartland, Collins & Aikman, and other enterprises acquired by Heartland, as per Complaint ¶¶ 15-17;
- (b) waiving, relinquishing, and sacrificing rights and options of employees to demand and obtain desired terms and conditions of employment in the first collective bargaining agreement, as per Complaint ¶ 18;
- (c) contractually obligating themselves to refrain from, and actually refraining from, exercising the rights and options otherwise available to the Union Officials and the USWA and its other officers and employees, as per Complaint ¶ 19;
- (d) all other decisions, actions, and promises, as per Complaint ¶ 20.

62. The contractual powers and privileges delivered to the Union Officials and other officers and employees of the USWA by Heartland and Collins & Aikman under the provisions of the Agreements listed in Complaint ¶ 38(a-n) affect and influence how the Union Officials and other officers and employees of the USWA organize employees and bargain collectively.

63. Heartland and Collins & Aikman agree to deliver the “thing[s] of value” described above in Complaint ¶ 60 with the intent to influence the Union Officials and other officers and employees of the USWA with respect to their actions, decisions, and duties as representatives of employees and with respect to their actions, decisions, and duties as officers and employees of the USWA, as per Complaint ¶¶ 61-62, in violation of 29 U.S.C. § 186(a)(4).

64. The Union Officials and the USWA, by requesting, demanding, receiving, accepting, and agreeing to receive and accept the unlawful “thing[s] of value” described in Complaint ¶¶ 58-63, violate 29 U.S.C. § 186(b)(1).

#### **FOURTH COUNT**

(Imposing the Framework and Side Letter on Other Companies Delivers a Thing of Value to the USWA, in Violation of 29 U.S.C. §§ of 186(a)(1), (a)(2), and (a)(4))

The Plaintiff Employees reassert the foregoing and further allege:

65. Pursuant to Side Letter 2-7 and 11, Heartland must compel or otherwise cause a business enterprise to become and remain a party to the Agreements where Heartland has majority ownership, majority voting power, or otherwise has the requisite authority to impose the Agreements on the business enterprise.

66. Pursuant to Framework I(E), Heartland, Collins & Aikman, and any other company that is a signatory to the Agreements must compel or otherwise cause all of its affiliates, parents, and ventures to become and remain a party to the Framework and Side Letter.

67. Compelling or causing and/or agreeing to compel and cause another business enterprise, company, or venture to become a party to the Agreements is, as used in 29 U.S.C. § 186, a “thing of value” to the Union Officials and the USWA and its officers and employees. Each and every binding contractual commitment of the Agreements described in Complaint ¶ 38(a-n), that Heartland, Collins & Aikman, and any other signatory to the Framework and Side Letter impose on another entity, are a “thing of value” to the USWA and the Union Officials.

68. Heartland, by agreeing to cause and otherwise compel other enterprises to become parties to the Agreements pursuant to Side Letter 2-7 and 11, agrees to deliver and has delivered to the USWA “thing[s] of value,” including each and every thing of value described above in Complaint ¶ 67, in violation of 29 U.S.C. §§ 186(a)(1) and (a)(2).

69. Heartland, by compelling and otherwise causing Collins & Aikman to become a party to the Agreements, has delivered to the USWA and the Union Officials “thing[s] of value,” including

each and every thing of value delineated above in Complaint ¶ 67, in violation of 29 U.S.C. §§186(a)(1) and (a)(2).

70. Heartland, by compelling and otherwise causing enterprises other than Collins & Aikman, including but not limited to Metaldyne Corporation and TriMas Corporation, to become and remain parties to the Agreements pursuant to Side Letter 2-7 and 11, delivers to the USWA and the Union Officials “thing[s] of value,” including each and every thing of value delineated above in Complaint ¶ 67, in violation of 29 U.S.C. §§ 186(a)(1) and (a)(2).

71. Heartland, by agreeing to compel and otherwise cause Collins & Aikman and other companies and enterprises to become and remain a party to the Agreements pursuant to Side Letter 2-7 and 11, agrees to deliver “thing[s] of value” described above in Complaint ¶ 67, with the intent to influence the Union Officials and the other USWA officers and employees with respect to their actions, decisions, and duties as representatives of employees and with respect to their actions, decisions, and duties as officers and employees of the USWA, as per Complaint ¶¶ 15-20 and 61-62, in violation of 29 U.S.C. § 186(a)(4).

72. Heartland and Collins & Aikman, by agreeing to compel and otherwise cause all affiliates, parents, and ventures of a company to become a party to the Agreements pursuant to Framework I(E), agree to deliver to the USWA “thing[s] of value,” including each and every individual “thing of value” delineated above in Complaint ¶ 67, in violation of 29 U.S.C. §§ 186(a)(1) and (a)(2).

73. Heartland and Collins & Aikman, by agreeing to compel or otherwise cause the affiliates, parents, and ventures of a company to become a party to the Agreements pursuant to Framework I(E), agree to deliver the “thing[s] of value” described above in Complaint ¶ 67, with the intent



to influence the Union Officials and the other USWA officers and employees with respect to their actions, decisions, and duties as representatives of employees, and with respect to their actions, decisions, and duties as officers and employees of the USWA, as per Complaint ¶¶ 15-20 and 61-62, in violation of 29 U.S.C. §186(a)(4).

74. The USWA and the Union Officials, by requesting, demanding, receiving, accepting, and agreeing to receive and accept the unlawful “thing[s] of value” described in Complaint ¶¶ 65-73, violate 29 U.S.C. § 186(b)(1).

#### **FIFTH COUNT**

(Heartland Violates 29 U.S.C. § of 186(b)(1) by Imposing the Framework and Side Letter on Collins & Aikman)

The Plaintiff Employees reassert the foregoing and further allege:

75. Heartland compelled and has otherwise caused Collins & Aikman to become a party to, maintain, enforce, and otherwise give effect to the Agreements pursuant to Side Letter 2-7 and 11. Collins & Aikman remains a party to the Agreements.

76. Heartland is a “person” as that term is used in 29 U.S.C. § 186(b).

77. Heartland, by compelling and otherwise causing Collins & Aikman to become a party to, maintain, enforce, and otherwise give effect to the Agreements, has requested and demanded the delivery to the USWA and the Union Officials “thing[s] of value,” prohibited by 29 U.S.C. §§ 186(a)(1), (2) and (4), as per Complaint ¶¶ 47, 53, 55, and 63 in violation of 29 U.S.C. § 186(b)(1).

**PRAYER FOR RELIEF**

WHEREFORE, Plaintiff prays that this Court:

A. Issue a declaratory judgment that:

(1) Heartland violated 29 U.S.C. § 186 by agreeing to deliver and delivering to the Union Officials and the USWA and its officers and employees “thing[s] of value,” prohibited by 29 U.S.C. §§ 186(a)(1), (2), and (4);

(2) Collins & Aikman violated 29 U.S.C. § 186 by agreeing to deliver and delivering to the Union Officials and the USWA and its officers and employees “thing[s] of value,” prohibited by 29 U.S.C. §§ 186(a)(1), (2), and (4);

(3) The USWA violated 29 U.S.C. § 186(b)(1) by requesting, demanding, receiving, accepting, and agreeing to receive and accept from Heartland and Collins & Aikman “thing[s] of value,” prohibited by 29 U.S.C. § 186(a);

(4) USWA Union Officials George Becker and Leo W. Gerard violated 29 U.S.C. § 186 (b)(1) by requesting, demanding, receiving and accepting and agreeing to receive and accept things from Heartland and Collins & Aikman “thing[s] of value,” prohibited by 29 U.S.C. § 186(a);

(5) Heartland violated 29 U.S.C. § 186(b)(1) by requesting and demanding that Collins & Aikman deliver and agree to deliver to the Union Officials and the USWA and its officers and employees “thing[s] of value,” prohibited by 29 U.S.C. §§ 186(a)(1), (2), and (4).

B. Issue a declaratory judgment that the Agreements, and the provisions thereof, constitute an unlawful agreement and arrangement under 29 U.S.C. §§ 186(a) and (b).

C. Issue a declaratory judgment that compelling or otherwise causing an employer to become a party to or maintain any of the contractual obligations listed above in Complaint ¶ 38(a-n), with a labor union, has delivered “thing[s] of value” to a labor union, as that phrase is used in 29 U.S.C. § 186.

D. Issue a permanent injunction:

- (1) enjoining the Defendants, their officers, employees, agents, affiliates, parents, subsidiaries and all other persons who act in concert with them from being a party to, maintaining, utilizing, enforcing, and taking actions pursuant to the Agreements and all provisions thereof, and any other formal or informal agreement that contains any terms substantially similar to those contained in the Framework and Side Letter;
- (2) enjoining Heartland and Collins & Aikman, their officers, employees, agents, affiliates, parents, subsidiaries and all other persons who act in concert with them from delivering and/or agreeing to deliver any and all of the prohibited “thing[s] of value” listed above in Complaint ¶ 38(a-n), to the USWA, the Union Officials, any labor organization, any officer or employee of a labor organization, and any other employee;
- (3) enjoining the USWA, its officers, employees, agents, affiliates, parents, subsidiaries and all other persons who act in concert with them from requesting, demanding, receiving, accepting, and agreeing to receive and accept any and all of the prohibited “thing[s] of value” listed above in Complaint ¶ 38(a-n);

(4) ordering that the Defendants, their officers, employees, agents, affiliates, parents, subsidiaries and all other persons who act in concert with them rescind and render null and void the Agreements and all provisions thereof, and any other formal or informal agreement that contains any terms substantially similar to those contained in the Framework and Side Letter.

The Court is also requested to Order all other legal or equitable relief as it deems just and proper.

Dated: March 23, 2004.

/s/ John N. Childs

John N. Childs (#0023489)

Colleen C. Curran (#0064819)

BRENNAN, MANNA & DIAMOND, LLC

75 East Market Street

Akron, Ohio 44308

(330) 253-5060

(330) 253-1977 (fax)

[jnchilds@bmdllc.com](mailto:jnchilds@bmdllc.com)

[ccurran@bmdllc.com](mailto:ccurran@bmdllc.com)

/s/ William L. Messenger

William L. Messenger (*pro hac vice*)

Glenn Taubman (*pro hac vice*)

National Right to Work Legal Defense Foundation

8001 Braddock Road, Suite 600

Springfield, Virginia 22160

(703) 321-8510

(703) 321-9319 (fax)

[wlm@nrtw.org](mailto:wlm@nrtw.org)

[gmt@nrtw.org](mailto:gmt@nrtw.org)

Attorneys for Plaintiff Employees