

**UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
NORFOLK DIVISION**

Roger A. Herndon, on behalf of himself and all
others similarly situated,

Plaintiff,

vs.

Huntington Ingalls Industries, Inc., the HII
Administrative Committee, and John/Jane Does
1-5,

Defendants.

Civil Action No.: 4:19-cv-00052-
HCM-DEM

CLASS ACTION

MOTION FOR CLASS CERTIFICATION

Plaintiff and Proposed Class Representative Roger A. Herndon respectfully moves the Court, pursuant to Rule 23 of the Federal Rules of Civil Procedure for an Order (i) certifying this action as a class action pursuant to Rules 23(a) and either 23(b)(1) or 23(b)(2); (ii) appointing Herndon to serve as Class Representatives; and (iii) appointing Bailey & Glasser LLP and Izard, Kindall & Raabe, LLP as Class Counsel.

Plaintiff seeks to certify the following class:

All participants or beneficiaries of the the “Legacy” part of the Huntington Ingalls Industries, Inc. Newport News Operations Pension Plan for Employees Covered by United Steelworkers Local 8888 Collective Bargaining Agreement, who began receiving pension benefits on or after May 20, 2013, in the form of a joint and survivor annuity. Excluded from the Class are Defendants and any individuals who are subsequently determined to be fiduciaries of the Plans.

The proposed Class is ascertainable, because it is defined with reference to objective criteria, and both participants and beneficiaries can readily determine whether or not they are included within the Class.

The proposed class should be certified. As required by Federal Rule 23(a): (i) joinder of individual plaintiffs is impracticable because the class numbers over 1300; (ii) there are numerous questions of law or fact common to the class, including, in particular, the central issue in the case: whether Defendants' use of an outdated mortality table to calculate monthly pension benefits was unreasonable and resulted in benefits that were not actuarially equivalent to a single-life annuity; (iii) Plaintiff's claims are typical of – and, indeed, the same as – the claims of the class; and (iv) Plaintiff has no conflicts of interest with the class, will actively represent the interests of the class in the litigation, and has retained experienced and effective counsel.

The proposed class also meets the requirements of Federal Rule 23(b)(1)(A), as “prosecuting separate actions by or against individual class members would create a risk of . . . inconsistent or varying adjudications with respect to individual class members that would establish incompatible standards of conduct for the party opposing the class.” The class also meets the requirements of Federal Rule 23(b)(1)(B), because as a practical matter an individual case that adjudicates the propriety of the actuarial formula in the Plan would be dispositive of the interests of similarly-situated plan participants.

In the alternative, the Class can be certified under Rule 23(b)(2), because (i) class members were all harmed in essentially the same way (given less than actuarially

equivalent benefits based on outdated mortality assumptions); (ii) monetary damages are incidental to, and flow directed from, Plaintiffs' request for injunctive relief; and (iii) the injunctive relief Plaintiffs seek is specific.

The Court should appoint Plaintiffs' attorneys, Izard, Kindall & Raabe, LLP and Bailey & Glasser, LLP as Co-Lead Counsel for the Class. Proposed Class Counsel are deeply experienced, have spent considerable time and effort prosecuting the case to date, and are dedicated to committing the resources to ensure the best result for the Class.

In support of this Motion, Plaintiffs submit (a) a Memorandum of Law; (b) a Proposed Order; (c) declarations from Mr. Herndon, proposed counsel and Mitchell I. Serota, a Fellow of the Society of Actuaries, along with various supporting documents.

Accordingly, Plaintiffs respectfully request that the Court issue an order:

- (1) certifying the proposed Class pursuant to Rules 23(a) and either Rule 23(b)(1) or Rule 23(b)(2);
- (2) appointing Roger A. Herndon as Class Representative; and
- (3) appointing Izard, Kindall & Raabe, LLP and Bailey & Glasser LLP as Co-Lead Counsel for the Class.

Dated: December 13, 2019

Respectfully submitted,

/s/ Gregory Y. Porter

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CERTIFICATE OF SERVICE

I certify that on December 13, 2019, I caused a copy of the foregoing to be electronically filed through this Court's CM/ECF system. I understand that notice of this filing will be sent to all parties by operation of the Court's electronic filing system.

/s/ Gregory Y. Porter _____

Gregory Y. Porter